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1971 Correspondence

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THIS FILE IS CLOSED AS OF

DECEMBER 1971.

FOR FURTHER CORRESPONDENCE SEE:

1972 - 1974.

OECD
✓ cc Expropriation & Compensation

December 30, 1971

Dear George:

Many thanks for your letter of December 23, with information on the legislative history of the OECD draft convention on the protection of foreign property.

Messrs. Amerasinghe, Dosik and I have submitted a preliminary report entitled "Part I Countries and Expropriation" to Sir Denis Rickett. The report is now being scrutinized by the Area Departments, and we will take your material into account in revising it. It covers the international law on compensation for expropriation and the attitudes of Part I countries towards it, multilateral consideration of expropriation, expropriation and bilateral aid, and the attitudes of Part I countries towards expropriation in the IBRD and other multilateral development financing agencies. There will certainly not be any earth-shaking conclusions, but I will, of course, send you a copy of the final version.

With best wishes for the New Year.

Sincerely yours,

A. Edward Elmendorf

Mr. George Wishart
Chief, Liaison Operations
European Office
International Bank for Reconstruction
and Development
66, Avenue d'Iena
Paris 16e, France

AEE:rfu


Mr. G.B. Votaw

December 30, 1971

J.-D. Roulet

Expropriation Policy

1. The Dosik Group's preliminary report on Expropriation is an extremely interesting document - which I very much enjoyed reading - the purpose of which is merely at this stage to outline the position taken in the past by multilateral institutions, some bilateral donors and Part I countries in the Bank about cases of expropriation. The paper is basically descriptive and constitutes only a fact-finding first step. I have at this stage only very few comments. Most of them are editorial and I have already passed them on orally to Mr. Dosik. However, I should like to draw the three following points to your attention:

- (a) The mention (page 18) that the oil expropriation dispute in Ceylon - the only case of expropriation listed in our Department - was the only case where aid was formally suspended by application of the Hickenlooper Amendment, is correct. The footnote (page 48) however, summarizing the Bank's posture in this case may be misleading insofar as legal minds might be tempted to see in the statement a requirement by the Bank for actual settlement of the dispute before lending could be resumed. As you know, this was not the case. Although the word "settled" was actually used in some internal Bank memoranda, what was meant was that should the Bank be in a position to resume lending on economic grounds, the compensation issue should be removed as an impediment. I would therefore suggest that the last two lines of the note be redrafted along the following lines"though several members indicated to Ceylonese officials that should ~~be~~ the Bank be in a position to lend, the dispute with the oil companies could be an impediment". Similarly, I believe that the reference to political difficulties the UK is reported to have had with Ceylon at the time (page 27) is incorrect, and suggest that it be replaced by a reference to the UK's dissatisfaction with the economic policy followed by the Bandaranaike Government.
- (b) The description of France's attitude about expropriations in Tunisia (page 42) contains only a one-line mention of the electricity companies' case. Since this was one of the very

few cases in which the Bank's President ended up acting as conciliator ~~in the dispute~~ after a dispute of several years, a more detailed presentation of the case might be warranted. To my mind this is also an interesting illustration of the position of the French Government which, if my recollection is correct, did not strongly (if at all) support the position of the expropriated companies.

- (c) Finally, the brief paragraph about Japan (page 44) seems to me fairly speculative. I understand that this is due to the fact that the Dosik Group was unable to find any specific information in our records. Unless our feelings are motivated by, say, conversations with the Executive Director or ^{other} Japanese officials, I would personally feel it preferable to merely state our lack of information rather than attempt to guess what Japan's position might be.

cc: Mr. Melmoth

JDRoulet:dp

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few cases in which the Bank's President ended up acting as
 conciliator in the ~~dispute~~ after a dispute of several years,
 a more detailed presentation of the case might be warranted.
 To my mind this is also an interesting illustration of the
 position of the French Government which, in my recollection
 is correct, did not strongly (if at all) support the position
 of the exportated companies.

(c) Finally, the brief paragraph about Japan (page 14) seems to
 me fairly speculative. I understand that this is due to the
 fact that the Bank Group was unable to find any specific
 information in our records. Unless our feelings are motivated
 by, say, conversations with the Executive Director or Japanese
 officials, I would personally feel it preferable to merely
 state our lack of information rather than attempt to guess what
 Japan's position might be.

cc: Mr. Weinstein

Through:dp

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Messrs. Alter, Benjenk, Cargill, Chaufournier,
Goodman, Gutierrez, Lejeune
Mr. S. R. Cope

December 21, 1971

Draft Report for Expropriation Study

Attached are copies of a preliminary report on "Part I Countries and Expropriation" drafted by a group which is working under Sir Denis Rickett to prepare the review of the Bank's policy on expropriation requested by Mr. McNamara. The report deals mainly with the impact of expropriation disputes on bilateral aid programs and on the Part I countries' positions on Bank lending to the expropriating countries. Reference is made in the report to cases involving countries in your department as noted on the attached table. Your views on the accuracy and appropriateness of these references, as well as any other comments and suggestions you may have, are requested so that a revised version of the report may be prepared for submission to Mr. McNamara.

Please let Mr. Dosik have your department's written comments by January 5.


RDosik/jb

DRAFT REPORT ON "PART I COUNTRIES AND EXPROPRIATIONS"

INVESTMENT DISPUTES MENTIONED

Eastern Africa

Somalia
Kenya, Tanzania, Uganda
Congo (K) - Zaire
Sudan

Western Africa

Central African Republic, Congo (B)
Guinea

East Asia and Pacific

Indonesia

South Asia

Ceylon

Europe, Middle East and North Africa

Algeria, Morocco
Tunisia

Central America and Caribbean

Guyana

South America

Argentina, Bolivia
Chile
Peru, Ecuador
Brazil

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DRAFT REPORT ON "PART I COUNTRIES AND EXPLOITATIONS"

INVESTMENT DISTRICTS MENTIONED

Eastern Africa

Somalia
Kenya, Tanzania, Uganda
Congo (K) - Zaire
Sudan

Western Africa

Central African Republic, Congo (B)
Guinea

East Asia and Pacific

Indonesia

South Asia

Ceylon

Europe, Middle East and North Africa

Algeria, Morocco
Tunisia

Central America and Caribbean

Guyana

South America

Argentina, Bolivia
Chile
Peru, Ecuador
Brazil

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Sir Denis Rickett

December 17, 1971

C.F. Amerasinghe, R.S. Dosik, A.E. Elmendorf

A.E.E.

Expropriation Study

Attached as Annex A is a preliminary report on "Part I Countries and Expropriation." It deals principally with the impact of expropriation disputes on bilateral aid programs and on the Part I countries' positions on Bank lending to the expropriating countries. It covers one of the three major subjects in the work program you outlined, the other two subjects being (1) a review of the Bank's policy towards expropriation disputes and recommendations for possible changes, and (2) a review of recent and current compensation disputes affecting Bank lending, including recommendations for dealing with them.

Part I Countries and Expropriation

Nature of the Report

Priority was given to Part II of the work program in response to Mr. McNamara's request. The report was prepared on the basis of Bank files, documentation from other sources, consultations with Bank staff members, and informal discussions with officials of the U.S. Government and the Inter-American Development Bank. There were no consultations with the Bank's Executive Directors, in the thought that they should only be approached on this sensitive subject following careful consideration by management and in the light of at least preliminary examination of the matter by the staff. Statements made by Executive Directors at Board meetings are reflected in the report, but it should be borne in mind that some of their observations may have been made without instructions from the governments they represent.

The report has not been cleared with area department and other staff members who have been concerned with various aspects of compensation disputes. Were this done, there could undoubtedly be some refinement of the factual presentations, though we doubt that staff members could reach final agreement, among themselves, on a number of the points in the third and fourth sections of the report. A number of the statements in the report are necessarily extrapolations based on the practice of individual countries, rather than statements of their policies.

For the reasons set out above, the report must be considered preliminary. A fuller understanding of the attitudes of individual Part I countries could probably only be gained from approaches to the Executive Directors concerned and discussions in capitals.

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Directors concerned and representatives of the
committee could properly only be derived from the executive
committee. A further understanding of the activities of the
for the reasons set out above, the report may be considered by

the committee, rather than statements of their bodies.
In the report the necessary explanations based on the basis of
the facts and other sections of the report. A number of the statements
concerning the committee, among themselves, on a number of the points in
of the executive committee, should be done that such members could
determine. These facts done, there could undoubtedly be some statements
members who have been concerned with various aspects of the committee
The report has not been checked with other departments and other

such matters instructions from the committee they represent.
It should be noted in that fact some of their organizations may have been
executive directors or would meetings are reflected in the report, the
financial examination of the matter by the staff. Statements made by
certainly consideration by management and in the light of it that the
they should only be approved on the committee's behalf following
consultations with the bank, a executive directors, in the light of the
committee and the inter-union relationship bank. There were no
staff members, and financial transactions with officials of the P.S.
bank there, documentation from other sources, consultations with bank
to the committee, a report. The report was prepared on the basis of
financial was given to Part II of the work program in response

minutes of the report

PART I COMMITTEE AND EXPLOITATION

bank lending, including recommendations for dealing with them.
(3) a leader of recent and current committee members affecting
exploitation practices and recommendations for board changes, and
other two aspects being (1) a leader of the bank, a body committee
one of the three major aspects in the work program for outlining the
board on bank lending to the exploitation committee. It could
exploitation practices on political and programs and on the Part I committee,
and exploitation. It deals principally with the subject of explo-
affecting as well as a practically report on "Part I Committee

Exploitation Study

C.F. Vukobratovic, B.S. Dostik, V.E. Eshenkov

333

STL Depto KSKKCC

December 17, 1971

Exploitation & Organization

The report is limited to disputes arising from nationalization, and does not consider problems arising from default on foreign debt or alleged breach of government contract. However, it should be recalled that the Bank's policy on expropriation derived from its approach to default on external debt, an issue which arose much earlier in the Bank's history.

Summary and Tentative Conclusions

The precise obligations of expropriating countries under international law are at best unclear, except at the most abstract level. While the basic obligation to pay compensation is generally accepted, the all-important questions of when, how and how much compensation to pay are not answered. Despite the tendency of claimants, both governments and individual enterprises, to allege violations of international law when expropriating powers act in a fashion to which they take exception, within fairly definable limits the international law on compensation appears to be rather flexible and to depend on the individual circumstances of the case.

The issue of expropriation has been discussed at the United Nations, but only at the level of generalities. The Pearson Commission recommended that aid policy and investment disputes should be kept separate. In the Development Assistance Committee of the OECD a United States initiative to consult and coordinate developed countries' views received a cool response, and is not likely, for the present at least, to be revived. (Instead, the U.S. is reportedly planning to inaugurate a series of bilateral consultations after issuing a public statement, currently in preparation, of its views on expropriation.) In connection with its work on foreign private investment, the DAC Secretariat is taking up various aspects of nationalization, but its study is not a high priority matter. The Secretariat has taken the initiative to propose that information on major cases of expropriation might be submitted by individual DAC countries in connection with the DAC system of reporting on the flow of resources to developing countries, and we suggest that the Bank endorse the proposal.^{1/}

A considerable number of the DAC countries, particularly the former colonial powers, have been seriously affected by the expropriation of assets owned by their nationals in the developing countries. The most intractable investment disputes have involved investments dating from

^{1/} Remarkably few data seem to be available at any central point which would make possible a comparative evaluation of compensation in individual cases. The State Department has considerable information on U.S. enterprises but to the best of our knowledge, has never attempted an evaluation of it. The DAC Secretariat is now trying to gather information on past cases, but will probably have great difficulty in doing so. Private firms and expropriating governments concerned appear to be unwilling to make available information on the terms of management contracts and other matters often associated with expropriation settlements which may seriously affect judgements on the adequacy of compensation.

before World War II and, in some cases, from colonial circumstances. The newer capital-exporting countries, such as Japan and Germany, have not been affected in the same way. The accession to independence of colonial territories and the mood of economic nationalism has been associated with an increased number of cases.^{2/} It seems likely that future cases will be concentrated in Africa and especially Latin America.

A legislative link between bilateral aid and the settlement of expropriation disputes exists only in the U.S. but France has, in practice, also on occasion suspended its assistance to countries with which its nationals have been involved in such disputes. The practices of other bilateral aid donors do not indicate any clear policy link with expropriation disputes, but there can be little doubt that in a number of cases such disputes have at least affected the level of these countries' aid programs. However, the aid-expropriation link has been a highly uncertain and variable one. Neither the U.S., France nor any other Part I country we are aware of has, in practice, consistently withheld or limited bilateral aid to countries with which its nationals have been involved in expropriation disputes. For example, France suspended aid to Tunisia in 1965 over the expropriation of agricultural lands but maintained a very large assistance program in Algeria during 1965-70 despite wide-spread expropriations. Indeed, experience indicates that the aid reaction of Part I countries to expropriation disputes seems on the whole to be much more a function of their overall political and commercial relationships with the expropriating power than of the merits of individual cases and considerations of international law and equity. Bilateral aid programs, and particularly the largest ones, serve a multiplicity of national purposes among which the protection of investment abroad is only one, and in particular cases, often a subordinate one.

In these circumstances, it is not surprising that the positions of Part I countries on Bank lending to countries where there are expropriation disputes have occasionally been inconsistent with their own bilateral aid stance, and that their positions in the Bank have varied considerably from dispute to dispute. Thus, although France cut off its own aid to Tunisia, it did not seriously seek to block Bank lending, while in the Algerian case, in which France maintained its aid, it did object vigorously to Bank operations in the country. The U.S. posture on bilateral aid has been broadly consistent with its position in the IBRD but the U.S. has not necessarily followed the same approach in the Inter-American Bank, where it permitted lending to Peru while withholding its own assistance and blocking Bank operations.

^{2/} A State Department study states that from January 1969 through June 1971 some 64 actions -- the number depending on the exact definition of expropriation -- have been initiated by foreign non-communist governments involving expropriation or negotiated sale of property in which U.S. corporations or nationals have a direct or indirect interest; in contrast, aside from Cuba, there were only 51 cases from 1961 to 1968.

December 17, 1971

The expropriation policy of the IBRD enjoys broad support among the Part I countries, although there are many nuances to their views. In addition, the Part I countries seem to have confidence in the way the Bank has, in practice, handled individual cases involving expropriation disputes. The Bank has been increasingly involved in such cases although, in the light of the growing number of disputes, it appears remarkable that even more cases have not been brought to the attention of the Bank at Part I country initiative. Most of the information on individual disputes in the Bank's files appears to derive from consultations initiated by staff members rather than from the approaches of the Part I countries to the Bank. There have been relatively few cases in which the Part I countries views on Bank lending in cases of expropriation disputes have differed with those of Bank's management.^{3/} The most important such cases of differences in view principally involve the U.S. in Latin America. They seem to indicate that the U.S., which has traditionally supported the Bank's policy and practice giving the borrowing country the benefit of the doubt, may now be shifting to a harder line.

Future Work

In continuing our study, subject to your views on the preliminary report, we believe we should now give priority to the first element in the work program, and consider the problems of policy and practice that have arisen for the Bank in dealing with compensation disputes. We believe the best way to do this is to examine cases. We would not propose to engage in historical research, but to use cases to illustrate the types of issues compensation disputes have raised for the Bank. We would plan to investigate the positions the Bank has taken on the merits of individual disputes, when it has been forced to do so. To gain a full understanding of the matter, we propose to interview a number of Bank officials and perhaps retired staff members, who were involved in the application of the Bank's policy in these cases. Attached as Annex B is a set of questions we would propose to use to assist in drawing people out.

^{3/} The attached table (Annex C) gives tentative summary indications of cases where there have been objections.

cc - Mr. Broches
Mr. Demuth
Mr. Cope
Mr. Nurick

AEE:RHD:CFA:jg

The expropriation policy of the IBRD enjoys broad support among the Part I countries, although there are many nuances to their views. In addition, the Part I countries seem to have confidence in the way the Bank has, in practice, handled individual cases involving expropriation disputes. The Bank has been increasingly involved in such cases although, in the light of the growing number of disputes, it appears remarkable that even more cases have not been brought to the attention of the Bank at Part I country initiative. Most of the information on individual disputes in the Bank's files appears to derive from consultations initiated by staff members rather than from the approaches of the Part I countries to the Bank. There have been relatively few cases in which the Part I countries views on Bank lending in cases of expropriation disputes have differed with those of Bank's management. The most important such cases of differences in view principally involve the U.S. in Latin America. They seem to indicate that the U.S., which has traditionally supported the Bank's policy and practice giving the borrowing country the benefit of the doubt, may now be shifting to a harder line.

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3/ The attached table (Annex C) gives tentative summary indications of cases where there have been objections.

cc - Mr. Rickert
 Mr. DeLoach
 Mr. Mohr
 Mr. Bishop
 Mr. Casper
 Mr. Callahan
 Mr. Conrad
 Mr. Felt
 Mr. Gale
 Mr. Rosen
 Mr. Sullivan
 Mr. Tavel
 Mr. Trotter
 Mr. Tele. Room
 Mr. Holmes
 Miss Gandy
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Sir Denis Rickett

December 10, 1971

C. F. Amerasinghe, R. S. Dosik, A. E. Elmendorf

AE

Expropriation Study

Before leaving for Japan you expressed the hope that we would have for you, on your return December 13, a paper on the attitudes of developed countries towards expropriation. This is to report that, unfortunately, the paper is not yet complete. We will get it to you during the week. It will cover the following subjects:

1. The international law of compensation and the attitudes of developed countries towards it;
2. Multi-lateral consideration of expropriation;
3. Policy and practice of developed countries towards expropriation, as reflected in their development assistance programs; and
4. Attitudes of developed countries towards the policy and practice of the World Bank and other multi-lateral development lending agencies.

bcc: Messrs. Amerasinghe and Dosik

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- 5. ... of ...

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 the below is not yet complete. We will see if we can ...
 ... on ...

...

C. E. umelstunbe, K. S. Dougk, V. E. Kuenzels

...

December 10, 1971

...

Headquarters:
Washington, D.C., U. S. A.



INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Cable Address - INTBAFRAD PARIS

INTERNATIONAL DEVELOPMENT ASSOCIATION

Cable Address - INDEVAS PARIS

EUROPEAN OFFICE:

66, AVENUE D'IÉNA, 75-PARIS 16^E - FRANCE

Telephone - 720.25.10



✓ Expropriation & Compensation
cc OECD/DAC
Central Files

File: expropriation
review

December 7, 1971

Dear Ed:

Thank you very much for your letter of November 30 regarding the staff work you are doing on the question of the aspects of Bank's work on investment disputes.

I had a talk today with Fenger of the DAC Secretariat who is in charge of the DAC work on such subjects as private investment, investment guarantee schemes and expropriation issues. He will look into the legislative history of the OECD draft convention on the protection of foreign property and let me know if he finds anything useful in his researches. He is not too hopeful about this, however, as he points out that the convention is now a good few years old and probably the statements made are now rather dated.

We had an interesting talk on the feelings of DAC countries other than the United States. It is the impression of both Fenger and myself that none of these countries has any legislation like the Hickenlooper Amendment. Fenger is going to check on this.

Fenger pointed out to me that DAC member countries, other than the United States, did not get very excited over nationalization issues. They have all nationalized various concerns within their own boundaries. For example, the United Kingdom nationalized the coal-mines and the railways and I can assure you that the previous shareholders of those concerns were only too delighted. In the United States, on the contrary, private enterprise is a religion and any nationalization is a sin against that religion!

Mr. A. Edward Elmendorf
Development Services Department
International Bank for
Reconstruction and Development
Washington, D.C.

./.

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International Bank for Reconstruction and Development
Washington, D.C.
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SECTION

The Committee is a very important part of the
the country's development and progress is a condition and will
concerns will only be achieved. In the United States, on
and I can assure you that the Board's representation of those
United Kingdom represented the country and the various
concerns will only be achieved. For example, the
international system. They will not be represented unless
other than the United States, and not be able to exist unless
they be required only to be that the Board's committee.

Going to check on this.
will be required like the international agreement. There is
of both sides and it is clear that none of these countries has
concerns other than the United States. It is the intention
we may be interested in the results of the

The agreement was also not signed.
that the committee is now a good deal less and probably
he is not too worried about this, however, as he wants only
and let us know if he finds anything useful in the meantime.
Good that committee on the progress of the Board's
issues. He will look into the technical details of the
investment, investment, investment, investment and investment
and is in contact of the Board work on other aspects in the
I had a talk today with the Board of the Board's committee

The interests of the Bank's work on investment matters.
Regarding the Board's work and the progress on the progress of
Bank and will also be for the Board of the Board's

Best of

December 10, 1971

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
WASHINGTON, D.C.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT



Anyway, I shall see what we can get for you and will keep this matter well in mind. I also enjoyed our talks together in Washington and it will always be pleasant to see you over here.

With best regards,

Yours sincerely,

G. C. Wishart



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D. C. MURPHY

Yours sincerely,

With best regards,

see you over here.
reference in memorandum and if you would like to
keep this matter with you. I also enclosed one copy
of the same. I am sure you will find it of interest.

Mr. Robert McPheeters

December 2, 1971

Richard S. Desik

Debt Information for Expropriation Policy Study

1. As I explained in our conversation this morning, we would like to obtain for the study being undertaken by Sir Denis Rickett information on lending to developing countries where there have been expropriation disputes by the developed countries whose nationals have been involved in these disputes. The attached table lists, in the first column, the developing countries where there have been disputes in which we are interested. We would like to know what loans were made to these countries by the developed countries listed in the second column during the periods of time given in the third column.

2. I would appreciate your letting me know as soon as possible when we may expect this information.

Attachment.

cc: Messrs. Amerasinghe
Elmendorf


RSD:skmts

<u>Loans To</u>	<u>Loans From</u>	<u>Period</u>
Algeria	France Canada Netherlands Sweden	1962-71
Central African Republic	France	1967-71
Ceylon	UK	1962-67
Congo (B)	France	1967-71
Congo (K)	Belgium	1960-69
Egypt	Belgium UK Germany Netherlands Sweden	1956-71
El Salvador	UK	1962-71
Guayana	UK Canada	1970-71
Guinea	France Canada Netherlands	1958-71 1964-68 1969-71
Indonesia	Netherlands UK	1955-66
Iran	UK France Germany	1951-54
Iraq	UK Germany France	1964-66
Morocco	Belgium France Switzerland	1963-71
Somalia	Italy	1970-71
Sudan	UK	1969-71
Tanzania	UK	1967-71

Tunisia	France	1962-68
Uganda	UK	1970-71
Yemen	UK	1969-71
Zambia	UK	1967-71

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November 30, 1971

Mr. George Wishart
European Office
International Bank for Reconstruction
and Development
66 Avenue d'Iena
Paris 16e, France

Dear George:

As you probably know, at Mr. McNamara's request Sir Denis Rickett is leading a re-examination of aspects of the Bank's work on investment disputes. Messrs. Amerasinghe (Legal) and Dosik (Area) and I are doing staff work on the subject.

In the current phase of this work we are concentrating on increasing our understanding of the attitudes of capital-exporting countries towards the expropriation of investments by their nationals in the developing countries. Aside from the US there is a remarkable dearth of statements of general policy on this matter. For the time being we are not approaching governments, but we would be most grateful for any help that you might be able to give us through informal consultation with DAC or OECD officials.

We are, of course, aware of the recent US initiative in DAC and of the responses to it. However, it seemed to us that there might have been occasions in the past when individual OECD members made statements on general policy towards expropriation in DAC or other OECD meetings. One conceivable source is the legislative history of the OECD draft convention on the protection of foreign property which, in Article 3, calls for "just compensation". Such compensation, in the words of the Article, "shall represent the genuine value of the property affected, shall be paid without undue delay, and shall be transferable to the extent necessary to make it effective for the national entitled thereto."

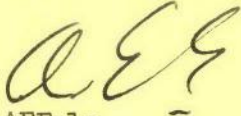
As you might imagine, one topic in which we are particularly interested is the impact of disputes over compensation on the development assistance and export credit operations of the capital-exporting countries. This issue, of course, has quite a history in the United States in connection with the Hickenlooper Amendment to the aid legislation in 1962. If there is any information on comparable policies or legislation in other DAC countries, this would be most helpful.

Many thanks in advance for any help that you or Fritz can give us.

Warm regards.

Sincerely yours,

A. Edward Elmendorf



AEE:lp

cc: Mr. Amerasinghe
Mr. Dosik

Mr. C. F. Amerasinghe

November 26, 1971

Adi J. Davar

Analysis of Bank Expropriation Policy

I believe that Mr. DaCosta has already had some discussions with you regarding your memorandum of November 11.

I am afraid that the write-ups on Iraq, Egypt and Democratic Yemen do not appear to me to be quite in-line with my understanding of what these countries have been trying to do to settle expropriation issues. In this connection as far as Iraq is concerned, the attached memorandum of September 3 from Mr. Benjenk to Mr. Weed might be helpful. As regards Egypt, the Government has been settling nationalisation cases with the Governments of the foreign enterprises concerned. This has been in line with Government's expressed policy. The outstanding cases of Belgian, Dutch and UK enterprises were settled under such Government to Government agreements in December, 1970, July and September 1971. The Swedish and Austrian cases have been firmly negotiated on a similar basis and the agreements are expected to be signed very shortly. As regards Democratic Yemen, the auditors have completed their work, and the Government has apparently been contacting the nationalised enterprises concerned with a view to settling claims. With regard to both Egypt and Democratic Yemen, the attached note might summarise the latest position.

Should there be any other way in which I can be of help, please do not hesitate. Mr. Elmendorf of the Development Services Department, should also be able to provide you with some historical background on the subject.

Attachment

LPlesch/TDaCosta
ADavar/ac

cc: Messrs. Elmendorf, DaCosta/Plesch, Metherate (o/r)

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NOV 27 1971

Expropriation & Compensation

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November 26, 1971

A. Edward Elmendorf *A.E.E.*

United States Policy on Expropriation

CONFIDENTIAL

State Department officials concerned with the matter have told me that a U.S. national security memorandum concerning expropriation has recently been approved. The memorandum does not, however, cover U.S. policy on the issue in international financial institutions. The memorandum applies only to major cases and involves a criterion comparable to the Bank's "reasonable efforts"; both of these considerations are recognized to cause difficulties in applying the policy. Work is continuing under the leadership of Mr. Peter Peterson in the White House on a public statement of U.S. views on expropriation. The statement, to be released in the name of the President or Secretary of State Rogers, is expected to be issued in connection with the International Financial Institutions bill pending in the House, possibly by the middle of December. The U.S. is planning to inaugurate bilateral consultations with the principal developed country governments on their policies towards investment disputes following the issuance of the public statement. Thought is also being given to the identification of likely future expropriations and to counseling of U.S. firms to minimize the impact of expropriation.

The State Department has recently organized a seminar bringing together senior government, private sector and academic personnel concerned to discuss the impact of economic nationalism in key mineral resource industries. Materials prepared for the conference included a background paper by Raymond Mikesell, "Foreign Investor-Host Government Conflicts in the Extractive Industries of the Developing Countries." Mikesell is soon to begin a short period as a State Department consultant to explore various avenues for settlement of compensation disputes through international organizations. He is interested in looking at the issue more in terms of economic impact than legal norms but will, of course, be concerned with ICSID. U.S. officials will suggest he contact the Bank to discuss his ideas.

The State Department has collected detailed information on compensation disputes concerning U.S.-owned (and some European-owned) enterprises, and will soon be able to make summary information on these disputes available to us. However, the material does not include analyses of valuation principles applied, nor does it deal with the impact of individual disputes on the development assistance and export credit operations of the claimants' governments.

cc - Messrs. Amerasinghe, Broches, Demuth, Doek, Merriam, Nurick, Cope
Sir Denis Rickett

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AEE:jg

Mr. C. F. Amerasinghe

November 22, 1971

Hans Wyss

Analysis of Bank Expropriation Policy

1. I refer to your memorandum of November 11 on the subject. We have no comment on the statement on Venezuela attached to your memorandum.
2. In connection with your work on the above subject, I attach two documents. A memorandum from Mr. Gutierrez to Mr. Williams dated November 5, 1971 on the new hydrocarbons legislation in Venezuela, brings you up-to-date on a pending matter in that country. The Country Program Note on Guyana dated November 17, 1971 which will be discussed in a meeting with Mr. Knapp on November 29, outlines the nationalization issues in that country. You will recall that the memorandum entitled "Policy on Expropriation" circulated on July 26, 1971 to the Executive Directors (SecM71-376), included a statement made in the President's Report on the second sea defense project in Guyana (R 71-138 of June 4, 1971).

Attachments: (2)

cc: Messrs. Feldman/Michaelcheck
Schloss

HWyss/fas

Mr. Amerasinghe

November 22, 1971

A. Edward Elmendorf *A.E.E.*

Analysis of Cases of Expropriation

I am returning herewith your draft paper analysing disputes arising from the expropriation of foreign-owned property by Bank borrowing countries. You hoped that I might help be able to add to the facts. I have tried to do so where possible, but unfortunately find myself in the position of asking more questions than providing answers.

As you will observe, I have some doubts about the categories which you use to classify the disputes. My preference would be to divide them into two broad groups: (a) cases which had an impact on Bank lending and (b) cases which had no such impact. I would hope the paper would concentrate more on the reasons for the Bank's action or inaction, thus contributing materially to the chart which Mr. Dosik has agreed to prepare. More broadly, I think the three of us need to discuss in some detail how your extensive and important work on this subject can be utilized in connection with the review being directed by Sir Denis Rickett.

AEE:lp

cc: Mr. Dosik

Messrs. C.F. Amerasinghe and R.S. Dosik

November 18, 1971

A. Edward Elmendorf

A.E.E.

Expropriation Review

This is to confirm that, at our meeting this morning, it was decided that our historical study should encompass a detailed examination of the following cases which appear to have affected Bank lending operations: ^{1/}

<u>Country</u>	<u>Sector</u>	<u>Responsible for Study</u>
Ceylon	Petroleum	Amerasinghe
Tunisia	Power	Amerasinghe
Zaire (Congo-K)	Mining	Elmendorf

We agreed that consideration would also be given to the following cases in which Bank lending operations appear not to have been affected:

<u>Country</u>	<u>Sector</u>	<u>Responsible for Study</u>
Brazil	Railways	Dosik
India	Insurance	Elmendorf
Guinea	Mining, Land	Elmendorf
Bolivia	Mining	Dosik
Colombia	Power	Dosik

We identified, in a preliminary fashion, the following countries currently involved in disputes for examination in some depth at a subsequent stage in our work: Peru; Chile; Algeria; Zambia; Guyana; Venezuela.

It was also agreed that Mr. Dosik would (a) assume responsibility for the first draft of a tabular presentation, which would endeavor to be as complete as possible, of compensation disputes that have come to the attention of the Bank; (b) prepare a revised set of the questions on expropriation that I circulated a few days ago.

^{1/} We also agreed that I would consider whether a detailed study of the compensation disputes affecting Bank operations in Egypt would be useful. I have since had an opportunity to discuss the matter with Mr. Graves who has done work on a crucial period in the Bank's relations with Egypt in connection with the history of the Bank being prepared under the auspices of the Brookings Institution. I conclude that it would not be worth taking up the nationalization of the Suez Canal but that the sequestration of foreign properties subsequently should be given close study.

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Expropriation and Compensation

November 18, 1971

Messrs. C.F. Amerasinghe and R.S. Dosik

R.S.D.

A. Edward Rimbord
Expropriation Review

This is to confirm that, at our meeting this morning, it was decided that our historical study should encompass a detailed examination of the following cases which appear to have affected Bank lending operations:

Country	Sector	Responsible for Study
Ceylon	Petroleum	Amerasinghe
Tunisia	Power	Amerasinghe
Zaire (Congo-K)	Mining	Rimbord

We agreed that consideration would also be given to the following cases in which Bank lending operations appear not to have been affected:

Country	Sector	Responsible for Study
Colombia	Power	Dosik
Bolivia	Mining	Dosik
Guinea	Mining, Land	Rimbord
India	Insurance	Rimbord
Brazil	Railways	Dosik

We identified, in a preliminary fashion, the following countries currently involved in disputes for expropriation in some degree at a subsequent stage in our work: Peru; Chile; Algeria; Zambia; Guyana; Venezuela.

It was also agreed that Mr. Dosik would (a) assume responsibility for the first draft of a tabular presentation, which would endeavor to be as complete as possible, of compensation disputes that have come to the attention of the Bank; (b) prepare a revised set of the questions on expropriation that I circulated a few days ago.

I We also agreed that I would consider whether a detailed study of the compensation disputes affecting Bank operations in Egypt would be useful. I have since had an opportunity to discuss the matter with Mr. Graves who has done work on a crucial period in the Bank's relations with Egypt in connection with the history of the Bank being prepared under the auspices of the Brookings Institution. I conclude that it would not be worth taking up the nationalization of the Suez Canal but that the separation of foreign properties subsequently should be given close study.

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Mr. C. F. Amerasinghe

November 18, 1971

Joseph Fajans *JF*

Argentina and Bolivia - Past Expropriations

1. Mr. van der Heijden has asked me to respond to your memorandum of November 11 to him. I understand from it that you have been assigned to analyze the expropriations of foreign properties in certain member countries as they affected the Bank's lending posture. I further understand that this analysis should enable a Committee formed by the Bank to carry out "a thorough investigation of the Bank's expropriation policy".

2. I have revised your section on Bolivia and ^{attached} attach a new draft. I would suggest that you review it with your principals and, possibly, with Messrs. J. A. King and Elmendorf before presenting a final version to the Committee.

3. As to Argentina, I have three observations to make. First, your review of expropriations is limited to the 'sixties. It omits the dispute between the Government and American and Foreign Power Company, which caused Mr. Broches to visit Argentina in the late 'fifties. It also omits the transfer to the Government of the ownership of the Belgian-owned Compañía Argentina de Electricidad, S.A. which led, in 1958, to the establishment of SEGBA and, subsequently, to its reorganization as a condition of our 1962 loan.

4. Second, your review of the Argentine situation implies that the Bank stopped lending to Argentina in 1963 - the year in which contracts with the foreign oil companies were annulled - and resumed operations in 1967 after the oil disputes were settled. This is not my understanding of the Bank's position and I doubt whether, on these grounds, Argentina needs to be included in your paper to the Committee. The five-and-a-half year hiatus between the SEGBA loan of January 1962 and the livestock loan of July 1967 resulted from a poor economic situation and performance, and from grave difficulties with the two Bank loans made to Argentina in 1961/62. On this subject, you may wish to read paragraph 2 of the President's Report of June 29, 1967 on the livestock loan. Evidently, if economic policy and project execution had raised no problems, the dispute with the oil companies in itself might have influenced the Bank's lending posture.

5. Third, with a view to the future, you may be interested in the recent difficulties of the foreign-owned meat packing company Swift de la Plata, S.A. Mr. Cabezas would be able to point to the relevant documentation.

Attachment

cc: Messrs. van der Heijden
Scott/Cabezas
Cancio/Cabezas
J. A. King
Elmendorf

DRAFT

C. F. Amerasinghe/JFajans:cf
November 18, 1971

BOLIVIA

Mining

1. In 1952, the Bolivian Government nationalized a number of mining enterprises belonging to the Patiffo and Aramayo families and to the Hochschild group. The expropriation decree provided for compensation and set a provisional valuation for the properties. In 1953, an arrangement was made whereby the former owners received a percentage of the sale proceeds from the output of the nationalized mines. Payments under this arrangement continued until August 1961, at which time about \$20.2 million, or slightly less than the amount of the provisional valuation, had been paid. A final settlement was never reached despite stipulations to this effect in the 1961 triangular lending operation concluded by IDB, USAID and the German Government with COMIBOL.

2. It appears that this subject was not mentioned in the 1964 IDA credit documents relative to the ENDE and BPC power projects. While the economic report on Bolivia, dated January 5, 1967, referred to the fact that "a final settlement with the former owners of the expropriated mines is still to be negotiated", the President's Report of May 4, 1967 on the first livestock credit remained silent on the subject, even though persons representing the Hochschild interests have meanwhile drawn the Bank's attention to it.

3. The position of the Bank was defined only on the occasion of the presentation to the Executive Directors of the second ENDE power project

and is reflected in the following passages of the President's Report of April 8, 1969:

"A problem which has still not been entirely resolved stems from the nationalization of the Bolivian mining properties in 1952. Substantial compensation payments, based on a provisional valuation of assets, were made to the former owners between 1953 and 1961, but no payments have been made since. The situation regarding the beneficial ownership of the various companies involved, the nationality of their owners, and the extent to which claims are still being asserted, is complicated and obscure. I do not consider that this matter should deter action by the Association on the present proposal."

These passages were referred to in the President's Report of June 19, 1969 on the loan for the gas pipeline project.

Railways

4. The British-owned Bolivian Railway Company and Antofagasta/Bolivia Railway Company were taken over by the Bolivian Government in the late 'fifties. The operation deteriorated rapidly and, in 1962, the British were brought back for two years to run the western system. In 1965, an agreement on compensation was reached between a commission set up by the Government and the representatives of the Antofagasta/Bolivia Railway Company. However, the military regime decided in 1966 that the agreement should await approval by Congress. After further protracted negotiations in 1967, the railways dispute was settled in 1968.

5. It is not clear whether the U.K. Government drew the Bank's attention in 1964 to the British claims. Throughout 1967, however, the U.K. Executive Director was making representations to the Management and staff, while IDA considered its first livestock credit and entertained the Bolivian request for a second ENDE credit. Asked to renew our efforts to persuade the Bolivian authorities to reach a settlement, we expressed the Bank's concern to the Bolivian Government on several occasions. We did not, however, mention the railway controversy in the

President's Report on the livestock credit. Only after the settlement had been reached, we referred to this fact in the President's Report of April 8, 1969 on the second ENDE credit.

Bolivian Gulf

6. Three weeks after the nationalization in October 1968 of the assets of the Bolivian Gulf Oil Company, we informed the Executive Directors that the Bank was studying the effect of the nationalization on the gas pipeline project, for which a loan had been made on July 22, 1969, and had, meanwhile, postponed by three months the terminal date for effectiveness. Shortly thereafter, the position of the Bank on this issue was described to the Executive Directors in the President's Report of December 4, 1969 on the second IDA credit for livestock, as follows:

"....the nationalization in October of the assets of the Bolivian Gulf Oil Company introduced new uncertainties as to Bolivia's treatment of its international obligations. In view of representations made to the Bank by the Bolivian Government that it intends to pay adequate compensation for the nationalized properties, I do not consider that this matter should deter action by IDA on the proposed credit. I shall, however, follow the developments in this respect closely. I shall present to the Executive Directors further proposals for lending to Bolivia only if satisfactory progress can be observed towards a settlement of the compensation issue."

The last sentence of the above statement was duly noted in the Board discussion.

7. For the following eighteen months, several parties worked diligently on the reconstitution of the gas pipeline project. From the start, the Bank took the position that arrangements necessary to ensure that Gulf receives adequate compensation for the expropriated property were fundamental to the Bank maintaining its interest in the project. The Bank also insisted that it would be difficult to reconstitute the project without Gulf's cooperation. In these circumstances, Bolivia's

vital interest in the construction of the pipeline resulted in September 1970 in a settlement of Gulf's claim which both parties considered satisfactory. Subject, inter-alia, to the Bank's loan for the project becoming effective, Bolivia agreed to pay compensation to Gulf by channeling through a trustee a percentage of export proceeds from gas and oil produced in the fields formerly operated by Bolivian Gulf. The trust arrangements covering the distribution of total export proceeds from these fields among the various parties involved in the gas pipeline project were worked out simultaneously with the renegotiation of the loan documents, and a default under these arrangements is an event of default for the purposes of the Loan Agreement.

8. No lending operations in Bolivia were presented to the Board between December 1969 and June 1971, when approval by the Executive Directors was sought for the third IDA livestock credit. While the slow processing of this credit was due mainly to other reasons, the staff made a conscious effort to speed up its consideration only after the Gulf dispute had been settled.

IMPC and Mina Matilde

9. The most recent expropriation disputes arose from the nationalization in January 1971 of the U.S.-owned International Metals Processing Company and the annulment in April 1971 of the concession of Mina Matilde Corporation also owned by U.S. interests. These expropriation measures brought about a considerable stiffening of the position of the U.S. Government towards Bolivia. At the end of May, the U.S. Executive Director asked for a postponement of Board consideration of the third IDA livestock credit and, when the credit was presented at the beginning of June, abstained from voting. He also abstained when the renegotiated

Bank loan for the gas pipeline project was presented to the Executive Directors on July 1, although the compensation, which the Bolivian Government agreed to pay to Gulf, was very much larger than the investments of IMPC and MMC.

10. The position of the Bank on the 1971 expropriations is reflected in the following statement contained in the President's Report of May 14, 1971 and referred to in the President's Report of June 16, 1971:

"In the first part of 1971, Bolivia nationalized the assets of two U.S.-owned mining concerns, the International Metals Processing Company and the Matilde Mine Corporation. In both cases, the nationalization decrees provided for compensation to the former owners, and steps for arriving at the evaluation of the assets are being taken."

11. Compensation arrangements with IMPC and MMC are now being worked out in a forthcoming atmosphere by the Bolivian Government, which took power in August 1971.

Mr. Amerasinghe, Mr. Dosik

November 16, 1971

A. Edward Elmendorf *A. E. E.*

Expropriation

In accordance with our discussion yesterday, I have prepared the attached set of questions on expropriation for use in our consultations with area departments and in preparation of the historical portion of our report. The list is long and suggests that before we undertake interviews we should isolate those cases, perhaps no more than five or six, which we will use to illustrate the problems that have arisen for the Bank in regard to compensation disputes.

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VEE:jb

that make sense for the Bank in regard to compensation matters.
More than that of any other man who has to illustrate the problems
we understand the problems we would solve those cases, because no
policy of our bank. The fact is that we understand that before
any action is taken we would be in violation of the standards
the various set of standards on employment for us in our con-
In accordance with our classification system, I have prepared

Employment

V. Edward E. [unclear]

Mr. [unclear], Mr. [unclear]

November 10, 1971

[Handwritten signature]

OECD/DAC

✓ a Expropriation and Compensation

Messrs. Amerasinghe, Broches, Cope, Dosik,
Nurick, Sir Denis Rickett
A. Edward Elmendorf

November 16, 1971

all
Work of OECD and DAC on Expropriation

Attached is a letter from Mr. Steuber to Mr. Demuth concerning the work of OECD and DAC on expropriation. I am inquiring about the study to be undertaken at the Brookings Institution mentioned in the final paragraph.

AEE:lp

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Mr. C.F. Amerasinghe

November 15, 1971

David Loos

Analysis of Bank Expropriation

1. Reference your memo dated November 11, 1971 to Eschenberg, the following extracts from the last Economic Report on Iran dated May 18, 1971, regarding the nationalization of the oil industry, may be of interest.

"Up to 1951 the Anglo-Iranian Oil Company accounted for practically all production. Following unsuccessful negotiations between the Government and the Anglo-Iranian Oil Company on revisions in the 1933 agreement, the oil industry was nationalized in 1951. The Anglo-Iranian (sic) ceased all operations in 1951

On October 29, 1954 an agreement was concluded between the Iran Government and a group of eight international oil companies, known as the Consortium. Under the agreement (B.P. (the successor to the Anglo-Iranian Oil Company) was compensated for the loss of property and concession rights; Government payments totalled \$57 million, of which the last installment fell due in 1966. Participating oil companies also made compensation payments to B.P. these payments will terminate in 1971".

2. In January 1957 the Bank made a "Seven Year Plan Loan" (160-IRN) in an amount of \$75 million. According to the recital in this Agreement, a substantial part of the total revenues derived by Iran from the production, refining and sale of oil to be produced pursuant to the Agreement of October 29, 1954 with the oil companies, was to be allocated for the carrying out of Iran's second seven year program. However, as the amount of such revenues so allocated would, during the early years of the program, have been insufficient to cover the expenditure contemplated under the program, the Bank agreed to make the loan of \$75 million.

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Mr. C.F. Amerasinghe

November 15, 1971

John M. Malone, Jr. *JM*

Analysis of Bank Expropriation Policy

Please refer to your memo of November 11 on the above subject.

The information you wanted on the Sudan was set out in detail in Mr. Lejeune's memo to Sir Denis Rickett dated November 9, 1971.

A copy of this memo is attached herewith.

OSW
CVRPankkar:jl

File: Sudan (General)

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FILE: 21021 (GENERAL)

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A copy of this memo is attached herewith.

In Mr. Gessner's memo to Mr. Deane dated November 8, 1971.

The information you wanted on the subject was set out in detail

please refer to your memo of November 11 on the above subject.

UNITED STATES OF AMERICA

John M. Malone, Jr.

Mr. C. E. Amersbach

November 12, 1971

Mr. C.F. Amerasinghe

November 15, 1971

Carl Rosenblad

Analysis of Bank Expropriation Policy

Pursuant to your memorandum of November 11, 1971 on the above-mentioned subject, I wish to inform you that, in addition to the expropriations of the Guinean Government mentioned in your memo, a French/British diamond mining company, SOGUINEX, was nationalized in 1961. The Bank was approached by the company in 1968 to use its influence in obtaining a settlement with the Guinean Government. There was no follow-up and this matter has not been taken up since.

CRosenblad:jd



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Mr. Tolson

was no follow-up and this matter has not been in process.
influence in organizing a settlement with the Cuban Government. There
1961. The bank was disclosed by the company in 1968 to use the
Fleming/William Graham Smith's account. SOCOMEX was nationalized in
expropriation of the Cuban Government mentioned in your memo, a
wrote-mentioned aspect. I want to inform you that in addition to the
payment to your memorandum of November 11, 1961 on the

Director of Bank Expropriation Policy

Very Respectfully

Mr. C. F. Williams

November 13, 1971

Exhibits and Correspondence

Mr. S. R. Cope

November 12, 1971

Dieter Hartwich *DK*

Current Expropriation Cases

committee.

Please find attached two copies of descriptions of current expropriation cases in the EMENA area for use by Sir Denis Rickett's committee.

Attachment

cc: Mr. Benjenk

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cc: Mr. Benjamin

Attachment

committee.

exploitation cases in the MEMA area for use by Mr. Denis Hickey's

Please find attached two copies of descriptions of current

committee.

Current Exploitation Cases

Director, FBI

Mr. S. B. Cobb

November 15, 1971

Exploitation & Counterintelligence



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 11 November, 1971	Document Type Memorandum with attachment			
Correspondents / Participants To: Rene H. Springuel, Chief, Division C, EMENA Department From: C. F. Amerasinghe				
Subject / Title Analysis of Bank Expropriation Policy				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 11 November, 1971	Document Type Memorandum			
Correspondents / Participants C. F. Amerasinghe				
Subject / Title Analysis of Bank Expropriation Policy				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			

Expropriation & Comp.

Mr. Jean-David Roulet

November 10, 1971

David Loos

Committee on Expropriation

As I informed you earlier this afternoon, there have been no cases of expropriation in Iran or Afghanistan. There has, however, been a problem regarding the settlement of Iran's surplus property debt to the U.S. Copies of the relevant memos are attached.

Attachment
DLoos:kvj

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The U.S. copies of the relevant memoranda are attached.
A Bureau regarding the settlement of the above property debt to
cases of exploitation in the U.S. Department. There has been
as I informed you earlier this afternoon, there have been no

Committee on Exploitation

Bureau Files

M. Jean-Baptiste Bolyer

November 10, 1971

Handwritten signature

Headquarters:
Washington, D.C., U.S.A.



INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Cable Address - INTBAFRAD PARIS

INTERNATIONAL DEVELOPMENT ASSOCIATION

Cable Address - INDEVAS PARIS

EUROPEAN OFFICE:

66, AVENUE D'ÉNA, 75-PARIS 16^E - FRANCE

Telephone - 720.25.10



OECD/OAC
✓ Expropriation & Compensation

November 9, 1971

Dear Dick,

This is in reply to your telex 1349 concerning current work and possible policy conclusions regarding expropriation issues. Both the DAC Secretariat and the Development Center are only just beginning to work on the subject.

You are probably aware that the U.S. concern voiced in the DAC about expropriation and compensation issues has not met with very great enthusiasm on the part of other delegations. The Nordic countries are frankly hostile, and all the others lukewarm, to say the least. At the DAC high-level meeting, an attempt by the U.S. to have the issue referred to in the press release - in language similar to that of the Hickenlooper amendment - was defeated. You will also recall that only a passing mention of expropriation is made in the DAC work program for 1972 [DAC(71)30(3rd Rev.)], in section III(c) under sub-item (ii), which reads "in cooperation with the BIAC and other interested organizations, to continue to follow events in developing countries - including expropriations - which may influence the opportunities for active participation of foreign capital in the development process".

Kroeller and Fenger of the DAC Secretariat do not have the impression that for the time being this issue is on top of the DAC priority list. But of course Fenger is preparing a paper on various existing institutional arrangements for settling investment disputes, including ICSID, of course (we have provided him with all the background information, including the series of "black books"), the International Chamber of Commerce and possibly others. At present Fenger does not even have a precise deadline for this paper, but he thinks that it will be part of the background information to be submitted to the next DAC meeting on private investment of which, as you know, there is one every year, the last having taken place in late June

Mr. Richard H. Demuth
Director
Development Services Department
International Bank for Reconstruction and Development
Washington, D.C. 20433

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Mr. Richard H. Demuth

- 2 -

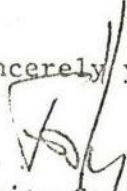
November 9, 1971

1971. In the meantime, expropriation will be discussed at the November 22/23 DAC meeting on public development finance corporations (agenda item 3), but there will be no Secretariat paper. The Ad Hoc Group on Investment Guarantees, meeting again in the Spring of 1972, will probably also touch on the subject.

Almost the same story came out of the OECD Development Center, where Kahnert confirmed that they had just begun work on a list of expropriation actions and other related measures having to do with restrictions on the freedom of action and control of foreign investors. No conclusions of any kind, of course. This study was started by a Mr. Richards, whom I could not reach and who, as Kahnert told me, is likely to leave the Development Center shortly. Finally, Kahnert also mentioned that AID had seconded one of their staff members to the Brookings Institution to undertake more or less the same kind of study.

Best regards,

Sincerely yours,


Fritz Steuber

Expropriation & Compensation

Messrs. Eschenberg, Kraske & Shibusawa

November 9, 1971

J.-D. Roulet

Committee on Expropriation

Please refer to our conversation of today. This is to confirm that I would appreciate getting your views on cases of expropriation - (or similar action) in the countries in your divisions by close of business on Thursday, November 11.

cc: Mr. Melmoth

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cc: Mr. Melton

on 11/10/71, November 11,
at 11:00 AM (approx) in the conference room with the following persons:
I would appreciate your letting me know on what date of the following - (or
Please refer to the correspondence of record. This is for your information.

Committee on Expenditures

J. D. [unclear]

Message: [unclear] [unclear] & [unclear]

November 8, 1971

Exhibitions Conference

Sir Denis Rickett

November 9, 1971

Michael L. Lejeune

Eastern Africa - Nationalization of Foreign Properties

1. The following are cases of nationalization of foreign properties in Eastern Africa which we know of:

SOMALIA:

2. On May 7, 1970, the Somali Government nationalized the assets of the following enterprises:

Mogadishu Electric Power Company (Italian)

Jowhar Sugar Company (Italian/Somali)

Four Banks: Banco di Roma (Italian)
Banco di Napoli (Italian)
National and Grindlays Bank (British)
Bank of Port Said (Egyptian)

Three Oil Companies (mainly retail outlets): Agip (Italian)
Caltex (American)
Shell (British/Dutch)

The nationalization announcement promised fair compensation for all concerned and asked the affected enterprises to submit their claims.

3. All claims, totalling about So Sh 60-65 million or about US\$9 million, have since been submitted, and negotiations started in mid-1971. The Government would prefer to pay compensation from the profits of the nationalized enterprises but remains flexible and willing to negotiate the means of compensation.

4. During the Annual Meeting, the Somali delegation informed us that final agreement had not been reached with any of the claimants, but that the negotiations were proceeding slowly but smoothly, and are expected to be completed by the end of 1971. The majority of the claims are from Italians and, at the invitation of the Government, a representative of the Italian Embassy is attending the negotiations as an observer.

SUDAN:

5. In May and June 1970, Major-General Nimeiri, President of the Revolutionary Command Council and Prime Minister, announced a series of nationalization and confiscation measures which included all commercial

GENERAL REPLY
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Proprietor's Copy

November 9, 1971

Sir Denis Rickett

Michael J. LaJeune

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Caltex (American)

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The nationalization announcement promised fair compensation for all concerned and asked the affected enterprises to submit their claims.

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5. In May and June 1970, Major-General Nimeiri, President of the Revolutionary Command Council and Prime Minister, announced a series of nationalization and confiscation measures which had all commercial

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November 9, 1971

banks operating in the Sudan, several foreign companies, commercial firms, as well as small individually owned trading concerns.

6. We have no detailed information on the actual compensation given to the previous owners of the nationalized banks and firms. Negotiations are said to be still progressing on a case-by-case basis. We have informally learned, however, that the Barclays Bank, for example, was reasonably certain that satisfactory arrangements for compensation are being considered by the Sudanese authorities.

7. The following is a partial list of nationalized enterprises:

Sudan

1. State Bank for Foreign Trade
(previously Barclays Bank D.C.O.) (British)
2. Omdurman National Bank
(previously National and Grindlays Bank) (British)
3. People's Co-operative Bank
(previously Bank Misr) (Egyptian)
4. Juba Commercial Bank
(previously Commercial Bank of Ethiopia) (Ethiopian)
5. Red Sea Commercial Bank
(previously Arab Bank) (Jordanian)
6. El Nilein Bank will retain the same name. (Sudanese/French)
7. Sudan Commercial Bank will retain the same name. (Sudanese)
8. Blue Nile Packing Co. (Swiss)
9. Blue Nile Brewery (U.K.)
10. Bata (Canadian)
11. AYBEE Distilling Factory (Greek)
12. Seferian and Co. (Sudanese)
13. National Cash Register Co. (American)
14. Red Sea Shipping Co. (Greek)
15. Sudanese Storage and Shipping Co. ?

November 9, 1971

- 16. Automobiles Co. ?
- 17. Kattan Company (Jordanian)
- 18. Gelatly, Hankey & Co.)
- 19. Mitchell Cotts)
- 20. Sudan Mercantile) (U.K.)
- 21. Portland Cement Co.)
- 22. Sudan Tractor Co.)

TANZANIA:

8. Last April, legislation was enacted in Tanzania (the Acquisition of Buildings Act, 1971), empowering the President, on behalf of the state, to acquire any building (residential or commercial) which is not wholly occupied by the owner and the construction cost of which is over TSh 100,000 (\$14,000). Mr. Critchley, the UK Alternate Director, recently advised us that he had been informed that there was concern in London regarding the provision of the Act which specifies that, except in certain limited cases, compensation shall be paid only where the property concerned is less than ten years old or where the present owner has owned the property for less than ten years. According to his information, British property worth £2 million Sterling would be affected by this provision. We are not aware that any decisions on actual compensation have yet been taken under the Act or that any specific complaints by property owners have yet been registered (the legislation provides for an appeals procedure). We are, however, taking steps to inform ourselves fully on the Act and its implementation.

UGANDA:

9. In early 1971, the Uganda Government announced its intention to acquire a 49 percent participation in 11 major companies. This modified a declaration of the previous Government to acquire a 60 percent interest in over 70 companies. It also announced its willingness to limit its participation to 49 percent in 8 other companies in which the previous Government had acquired a 60 percent interest. We understand that negotiations with these companies have either been amicably completed or are proceeding satisfactorily, though the exact status of agreements is not known.

10. During the next few months, we shall try to find out more about the above-mentioned cases. In the meantime, I would appreciate hearing from you as to what type of information you would consider relevant for this study to be undertaken by you.

cc: Mr. Cope

Messrs. Husain, Hornstein, Tolley, Malone

SSHusain:ck

Expropriation & Comp.

Mr. Bruce M. Cheek

November 5, 1971

Carl Rosenblad

Expropriations

In response to Mr. Lenfant's query of November 1 on expropriations cases in our countries, this is to inform you that in 1968 the Bank was requested by SOGUINEX, a private French/British diamond mining company which was nationalized in 1961, to use its influence in obtaining a settlement with the Guinean Government. We know further that French propriety was nationalized at independence, but we have never officially been approached by the French on this matter..

CRosenblad,jd



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С. В. Спек

been approved by the Director on this matter...
proposed was not intended as independence, but as a new order of things
a settlement with the other countries. We know further that Director
completely with was not intended in 1967, to use the influence in order to
was intended by SOCOMEX, a private Director/Secretary of State
cases in only countries, this is to include both that in 1968 the Bank
in relation to Mr. Galtier, a Director of Director J on expenditures

Expenditures

С. В. Спек

Mr. Vance M. Speck

Director J, 1971

Handwritten signature or note at the bottom right.

Expropriation & Comp.

Mr. Bruce M. Cheek

November 5, 1971

Heinz Bachmann

Expropriations in Guinea

In response to your query of November 1 on expropriations cases in our countries, this is to inform you that in 1968 the Bank was requested by SOGUINEX, a private French/British diamond mining company which was nationalized in 1961, to use its influence in obtaining a settlement with the Guinean Government. There was no follow-up and this matter has not been taken up since.

Some French assets were nationalized at independence, but we have never officially been approached by the French on this matter.

HBBachmann



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Expropriation & Comp.

November 5, 1971

Mr. Bruce M. Giesek

Heinz Bachmann

Expropriations in Guinea

In response to your query of November 1 on expropriation cases in our countries, this is to inform you that in 1968 the Bank was requested by SOGIMEX, a private French/British diamond mining company which was nationalized in 1961, to use its influence in obtaining a settlement with the Guinean Government. There was no follow-up and this matter has not been taken up since.

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HBachmann


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Mr. John H. Williams

November 5, 1971

Bruce M. Cheek




Western Africa - Expropriations

In reply to your request, I am attaching notes on expropriations in Central African Republic, Congo Brazzaville and Guinea, the only countries where we have encountered problems.

Attachments (3)

cc: Messrs. Huber
Steckhan



JLenfant:mo'h

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cc: Messrs. Huber
Steckman

Attachments: (3)

Programs:

and others, the only countries where we have encountered
exploitation in Central African Republic, Congo Brazzaville

In reply to your request, I am attaching notes on

Messrs Africa - Exploitation

Bruce M. Speck



Mr. John H. Williams

November 2, 1971

Handwritten note at bottom right:
The following are attached for your information

Expropriation and Compensation

Form No. 27
(3-70)

INTERNATIONAL DEVELOPMENT
ASSOCIATION

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE
CORPORATION

OUTGOING WIRE

TO: STEUBER
INTBAFRAD
PARIS

DATE: NOVEMBER 5, 1971

CLASS OF
SERVICE: TELEX

WLM

COUNTRY: FRANCE

TEXT:
Cable No.: 1349

WOULD APPRECIATE LETTER CONTAINING WHATEVER INFORMATION IS EASILY
OBTAINABLE FROM FENGER OF DAC AND KAHNERTS OF DEVELOPMENT CENTRE
ON CURRENT WORK AND ANY POLICY CONCLUSIONS EMERGING ON EXPROPRIATION.
REGARDS

DEMUTH

SECTION
COMMUNICATIONS
NOV 2 2 1971
DISPATCHED

NOT TO BE TRANSMITTED

AUTHORIZED BY:

[Handwritten Signature]

NAME Richard H. Demuth

DEPT. Development Services

SIGNATURE
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

REFERENCE:

AEE:RHD:tf

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

CLEARANCES AND COPY DISTRIBUTION:

For Use By Communications Section

Checked for Dispatch: *[Handwritten Signature]*

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ORIGINATOR (File Copy)
SEE: BHD: 47

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Nov 8 4 01 PM 1971

REFERENCE	SIGNATURE OF INDIVIDUAL AUTHORITY	CLASSIFICATION BY COMMUNICATIONS SECTION
ORIGINATOR	DEVELOPMENT RELATES	
NAME	REGISTRATION, DEPT	
APPROVED BY	<i>[Signature]</i>	STANDARD AND COPY DISTRIBUTION

NOT TO BE RETURNED

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Nov 5 9 16 PM 1971
COMMUNICATIONS SECTION

DEVELOP

RECORDS

ON CURRENT WORK AND THE LOGICAL CONSEQUENCES EMERGING ON EXPLOITATION
ORIGINATOR FROM LENSES OF PVC AND KUNNELS OF DEVELOPMENT CENTER
WOULD APPROPRIATE FURTHER CONSIDERING AVAILABLE INFORMATION IS FURTHER

COPY NO: 1343
TEXT
COLLIER: REFUSE
BANKS
INDIVIDUAL
TO: STEVEN

SERVICE: TELETYPE
CLASS OF
DATE: NOVEMBER 2 1971

ONGOING WIRE

ASSOCIATION INTERNATIONAL DEVELOPMENT	REGISTRATION AND DEVELOPMENT INTERNATIONAL BANK FOR	REGISTRATION INTERNATIONAL BANK
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*Expropriations and
Compensation*

Mr. Bruce M. Cheek

November 2, 1971

André Maillard

Expropriations

There is at present no expropriation case in the Entente countries which might be expected to cause problems.

dm
AMaillard:sjb

Expropriation and Compensation
GF

Sir Denis Rickett, Messrs. S.R. Cope,
Richard H. Demuth, and A. Edward Elmendorf

November 5, 1971

C. F. Amerasinghe

Bank's Expropriation Policy

Attached is a copy of the Franks memorandum on the Bank's expropriation policy which Mr. Nurick received from Mr. Monroe confidentially.

Attachment

NOV 8 1971

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Attachment

CONFIDENTIAL

Exhibition Board report re: matter received from Mr. Monroe
attached is a copy of the Board memorandum on the matter

Board, Exhibition Board

C. E. Anderson

Richard H. Dennis, and A. Frank Henson
211 State Street, Newark, N.J. 07102

November 2, 1971

Handwritten signature and initials

November 2, 1971

Professor Norman N. Mintz
Department of Economics
Columbia University
New York, N. Y. 10027

Dear Professor Mintz:

Thank you for your letter of October 20. We will see what we can get together in the way of data on expropriations, and when I have a better idea of how we are likely to come out I will write you promptly with the results. I imagine that it will take us 10 days or two weeks, or perhaps a little longer.

You understand, of course, that the information available to us covers only funded debt arising from nationalization (expropriation). This means, among other things, that it refers only to those cases in which a settlement has been reached on a basis satisfactory to all parties. In addition, our data cover only such funded debt serviceable in foreign currency, and thus will exclude those portions denominated in local currencies such as provided for in reinvestment clauses.

I am not at all sure that data of the sort that we collect will get you very far, although I agree that this angle merits exploration. The immediate external financial effects of such transactions are usually rather narrow. Frequently they involve little more than a net reduction in capital account cash flows (reduced new direct investment being offset to some extent by reduced repatriation of profits), along with some delays in aid and other foreign loan disbursements. Far more important, I suspect, are the longer run internal effects on employment, income distribution, savings and investment, and industrial efficiency. I am not aware of any satisfactory treatment of this phenomenon, I would welcome a chance to have a look at your completed study.

Sincerely,



Robert A. McPheeters, Jr.
Chief,
Economic and Social Data Division
Economic Program Department

cc: Mrs. Paulson
Miss Yudin

RMcPheeters:pr

Mr. S.R. Cope

November 1, 1971

Gunter K. Wiese *W*

CHILE, ECUADOR & PERU - Expropriation Issues

In accordance with your instructions, I am attaching herewith memos concerning the recent status of the expropriation issues in Chile, Ecuador and Peru.

Attachments.

D
BAhmad:mts

Division Chiefs


November 1, 1971

Joseph H. Lenfant

Expropriations

Would you please prepare a short note intended for Sir Denis Rickett but addressed to Mr. Cheek on any expropriation case in any of your countries which might be causing problems.

Please let me have your note by Wednesday November 3rd, at Noon.


JLenfant:mo'h

Sir Denis Rickett

October 29, 1971

C. F. Amerasinghe

Files on Nationalizations

1. Mr. Broches has requested me to send you some of our files on nationalization, as you are interested in seeing what has been happening in this area recently.

2. I am sending you as samples the following files:

- i) Nationalization (General) - 2 Volumes
- ii) Nationalization (Chile) - Volumes 1 and 2
- iii) Nationalization (Guyana) - 1 Volume
- iv) The International Petroleum Dispute (Peru) - Volumes 2 and 3

3. We have several more files on nationalizations with country titles and I shall certainly let you have them if you are interested in seeing them. There is a file on nationalization for each country in which nationalizations have taken place.

4. Please do not hesitate to get in touch with me if you require any more information on the subject.

Attachments

CFAmerasinghe/as

cc: Mr. Broches
Mr. Nurick





Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 22 October, 1971	Document Type Memorandum			
Correspondents / Participants To: L. Nurick From: C. F. Amerasinghe				
Subject / Title Briefing for Mr. McNamara - Expropriation Policy and East Asian Members				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 14 October, 1971	Document Type Memorandum			
Correspondents / Participants To: Lester Nurick From: C. F. Amerasinghe				
Subject / Title Nationalization - Attitude of Part I Members				
Exception(s) Attorney-Client Privilege				
Additional Comments		<p>The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.</p> <table border="1"> <tr> <td>Withdrawn by Sherrine M. Thompson</td> <td>Date February 11, 2022</td> </tr> </table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			

Expropriation & Compensation

INCOMING CABLE

DATE AND TIME
OF CABLE:

SEPTEMBER 3, 1971

LOG NO.:

ITT TELEX/3

TO:

INTBAFRAD

FROM:

PARIS

ROUTING	
ACTION COPY:	MR. SELLA
INFORMATION COPY:	
DECODED BY:	

TEXT:

1119 - FOR SELLA.

JOURNAL LE MONDE OF PARIS HAS REQUESTED ASSISTANCE IN PREPARING A LIST OF MAJOR EXPROPRIATIONS OF INVESTMENTS AND COMPANIES IN THIRD WORLD, WITH BRIEF DESCRIPTION OF EACH OPERATION. LE MONDE HAS DATA ON ALGERIA. WE CAN PROVIDE FROM HERE INFORMATION ON TUNISIA ELECTRIC COMPANY TRANSFER. COULD YOU SUPPLY DATA ON SOME LARGE EXPROPRIATIONS LIKE CHILE, PERU AND KATANGA. THANKS REGARDS.

MASONI

INBAFRAD 62164F

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FROM: WASH
TO: NEW YORK
INFO: NEW YORK
SUBJECT: URGENT CABLE
DATE AND TIME: 9/3/71 9:22 AM

FROM:	WASH
TO:	NEW YORK
INFO:	NEW YORK
SUBJECT:	URGENT CABLE
DATE AND TIME:	9/3/71 9:22 AM

URGENT CABLE



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 30 July, 1971	Document Type Memorandum			
Correspondents / Participants To: Robert E. Wiczorowski From: Gerald Alter				
Subject / Title lending to Nationalized Enterprises				
Exception(s)				
Additional Comments Declassification review of this record may be initiated upon request.		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group. <table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 28 July, 1971	Document Type Memorandum			
Correspondents / Participants To: Mr. R. Kanchuger From: C. F. Amerasinghe				
Subject / Title Expropriation Disputes in South America				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			

Settlement of Investment Disputes
✓ a Expropriation and Compensation

Mr. Amerasinghe

July 22, 1971

R. Kanchuger - South America Department

Investment Dispute Settlements.

We thought it would be of value to collect some information relating to the manner in which a number of the investment dispute cases have been settled in our area. To that purpose, Mr. Dosik wrote the attached outline setting out, in a very preliminary way, some of the questions that might be analyzed in such a process and the recent cases that might be included.

One of the items we would add to the points listed by Mr. Dosik would be the time factor in the compensation process. This could be included in the second paragraph - "Compensation Procedures." Here, one would ask what were the various stages that were traversed to reach the settlement and how long did each take? Also, what interim payment procedures were utilized, if any?

We would like to have your thoughts and comments on the attached outline. We believe, as our review of the material progresses other points may come to mind and the outline accordingly revised.

Encl:

cc: Messrs. Alter, Quijano and Dosik.

RK:mm

(R.C. 128-091)

Return to J. McCall
MK
EXPROPRIATION & R.H.
COMPENSATION
S/R

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

RETURN TO

ARCHIVES/RECORDS CENTER
ROOM HB1-001

BOX 128-09

LOCATION _____

N. U. S. LOCATION 48-2-3

FROM: The Secretary

DECLASSIFIED

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WBG ARCHIVES

CONFIDENTIAL

SecM71-376

July 26, 1971

Policy on Expropriation

1. In response to the request made by several Executive Directors for information regarding the Bank's policy on expropriation, there is attached hereto (Annex A) a copy of Operational Policy Memorandum No. 1.01 entitled "Disputes over Defaults on External Debt, Expropriation and Breach of Contract".
2. The Bank's policy as stated in this Operational Policy Memorandum has evolved on a case by case basis. It was first considered by the Bank in connection with defaults on external public debt. A statement of the Bank's policy in this respect was contained in the Bank's Fifth Annual Report for the fiscal year ended June 30, 1950 (Annex B).
3. The Bank's policy in expropriation cases flowed from its policy on external debt cases. Since the policy has evolved on a case by case basis, a review has been made of the cases in which the Bank's policy has been referred to in President's reports recommending loans or credits and in discussions which have taken place at meetings of the Executive Directors. There is set forth below a list (which may not be exhaustive) of President's reports and other documents which deal with this matter and of meetings of Executive Directors for which records have been kept where there was significant discussion of the Bank's policy. Annex C contains extracts from those of the President's reports which are particularly illustrative. Transcripts of the Executive Directors' discussions are available, in accordance with Bank procedures, in the Executive Directors' Library (Room D-1356).

Distribution:

- Executive Directors and Alternates
- President
- President's Council
- Executive Vice President, IFC
- Vice President, IFC
- Department Heads, Bank and IFC

<u>Country Concerned</u>	<u>Document Number and Date</u>		<u>Discussion of Policy at Executive Directors Meeting</u>
Mexico*	R 202	January 3, 1949	November 17, 1949
Colombia	R 244	August 16, 1949	
Iran			March 22, 1951
Italy	R 518	October 5, 1951	
Norway*	R 783	April 1, 1954	
	R 957	April 26, 1956	
El Salvador	R 830	October 6, 1954	
Austria	R 881/1	June 6, 1955	
Costa Rica*	R 1001	September 6, 1956	September 13, 1956
Yugoslavia*	R 61-14	February 14, 1961	February 21, 1961
→ Morocco*	R 62-105	December 10, 1962	December 20, 1962
Spain*	R 63-121	October 17, 1963	
Algeria	R 64-48	April 29, 1964	May 7, 1964
Tunisia*	Statement by President; SecM64-130	June 10, 1964	
→ Morocco	R 64-111	August 17, 1964	August 25, 1964
Guinea	R 66-36	March 15, 1966	
Iraq*	R 66-83	June 23, 1966	July 7, 1966
Brazil*	R 66-158	December 5, 1966	December 13, 1966
Guatemala*	R 67-4	January 12, 1967	January 19, 1967
Greece*	R 67-170	November 21, 1967	March 14, 1968
Democratic Republic of the Congo			May 6, 1969
El Salvador	R 69-98	May 22, 1969	
UAR*	IDA/R69-66	November 6, 1969	March 24, 1970
Israel*	Statement by Chairman and Gen. Counsel	June 2, 1970	May 26, 1970 June 2, 1970
Uganda*	IDA/R70-55	July 9, 1970	July 21, 1970
Peru*	R 70-168	August 26, 1970	
Yemen, People's Dem. Rep.	IDA/R71-13	April 1, 1971	
Bolivia*	IDA/R71-32	May 17, 1971	June 1, 1971
Guyana*	R 71-138	June 4, 1971	June 17, 1971
Uganda*	IDA/R71-40	June 7, 1971	June 17, 1971

*Extracts from these documents appear in Annex C.

4. A statement of the Bank's policy in regard to defaults on foreign obligations first appeared in the first edition (1953) of the book setting out the Bank Group's policies and procedures (the so-called "Blue Book") and has appeared in all editions since then. The statement was revised in the 1968 edition to cover expropriation cases as well as external debt cases. An extract from the June 1969 edition, the latest edition outstanding, is attached hereto as Annex D. The 1953 and 1968 editions were circulated to the Executive Directors for their information and comment; our records show that no comment was received from any Executive Director on these statements.



Operational Policy Memorandum

DISPUTES OVER DEFAULTS ON EXTERNAL DEBT, EXPROPRIATION AND BREACH OF CONTRACT

Introduction

1. Except where the context requires otherwise, reference in this memorandum to the Bank applies to IDA and references to loans apply to development credits. The Bank Group has always taken an interest in disputes between a member country or a public body within it and nationals of other member countries arising out of certain international financial transactions. This interest has centered principally on three types of disputes:

(a) A dispute over the failure to service external debt in accordance with its terms. The Bank has been concerned primarily with external debt held by the general public, but on occasion with inter-governmental debt and external debt privately placed or held. It is concerned primarily with indebtedness of or guaranteed by governments and their political subdivisions and agencies.

(b) A dispute over compensation to aliens for property owned by them which has been expropriated (hereinafter referred to as a "dispute over expropriation"). Property may include direct and portfolio investment in real or personal property as well as concessions and franchises. Expropriation may be by direct transfer of ownership or by the state or other public body concerned taking effective possession or control without a transfer of ownership.

(c) A dispute over the breach of a governmental contract with aliens for goods or services.

2. Any of these disputes is a cause of concern to the Bank, but its reaction to each of them is

somewhat different. There can be no detailed rules and each case calls for an exercise of judgment. The Bank's reaction will depend on such factors as the character of the dispute, its expected consequences, and the extent to which the Bank can help resolve the dispute or mitigate its consequences. The fact that the dispute has not been formally brought to the attention of the Bank does not necessarily mean that the Bank does not take note of it.

3. The Bank's interest in disputes over defaults and expropriations is based on various considerations. First, the existence of such a dispute suggests that the debtor or expropriating country may be faced with problems, such as unfavorable economic conditions, unsound economic or fiscal policies or administration, or a lack of discipline or of a will to pay even at some sacrifice or unwillingness to make politically difficult decisions. Any of these may well interfere with the economic progress of that country quite apart from the effects of the default or expropriation itself. As a development institution concerned with the interests of both the capital-exporting and the capital-importing countries, the Bank is interested in identifying the difficulty and seeing that it is removed.

4. Second, since the Bank is not intended to supply all the external capital requirements of its member countries, they must seek funds from public sources, the private capital market or direct private investment. A record of unsettled disputes over defaults or expropriations may deny these funds to the country and therefore interfere with its economic progress.

5. Third, the Bank (but not IDA) must also rely on the capital markets of the world to replenish its own resources. If it were to make new loans to

Operational Policy Memorandum



countries which fail to make reasonable efforts to resolve disputes over defaults and expropriations, its market standing might suffer.

6. Fourth, IDA depends on the governments of the capital-exporting countries for most of its resources, and their willingness to contribute funds to it may be affected by the records of the countries seeking credits from IDA in settling disputes with nationals of the donor countries over defaults and expropriations.

7. Somewhat similar considerations apply to some disputes arising out of a failure of the government or other public body to perform under a contract with non-nationals. Disputes may make it more difficult and more expensive for the country to obtain goods and services in the future and they may interfere with the effectiveness of international competitive bidding. However, they generally do not affect the credit standing of the country as directly as disputes over defaults and expropriations.

8. Because of these considerations, the Bank seeks to promote settlements of these disputes through a variety of actions, some of which are discussed in paragraphs 14 and 15. When it is dissatisfied with the progress toward resolution of a dispute the Bank determines its own position with respect to lending and other activities in the country involved and, in doing so, it seeks to make a response graduated to suit the character and seriousness of the dispute and the progress toward its resolution. In some cases of disputes over defaults and expropriations, the Bank has gone the full distance of refusing to lend for projects in the country involved, but it has not hitherto refused to do so in cases of disputes over breach of a governmental contract.

Policy on Defaults on External Debt

9. The Bank's policy can be described in the following terms:

(a) The Bank will not lend for projects in a country if it is dissatisfied with the position taken by that country with respect to external debt which is in default. Nor will it appraise projects in such a country unless it has good grounds for believing that the obstacles to lending will soon be removed. Grounds for dissatisfaction include:

(1) A refusal to negotiate in good faith with the bondholders coupled with a refusal to submit the dispute to judicial or quasi-judicial determination.

(2) A refusal to negotiate except on the basis of an offer by the debtor which, in the judgment of the Bank, is unreasonable and has been justifiably refused by the bondholders. Grounds for justifiable refusal may include an offer which appears substantially less than the country's economic situation and balance of payments position would warrant.

(3) A failure to make what the Bank deems reasonable efforts to settle. In some cases, the Bank has accepted the offer of a temporary settlement instead of a permanent one as a reasonable effort.

(4) A failure to resume debt service in accordance with the terms of an agreed settlement, a judicial decree or an arbitral award.

(b) If the defaulting debtor is a political entity or a public body for whose debts the government is not legally responsible, the Bank usually limits its refusal to lend to the defaulting body only and continues to lend to the government or other borrowers in the country. Among the factors influencing a decision of this sort are the nature of the defaulting debtor, the reason for the default, and the amount involved.



Operational Policy Memorandum

(c) If service is maintained only through payments by a guarantor, the Bank would normally refuse to lend to the original obligor who is in default. Among the factors influencing a decision of this sort are the nature of the original obligor, the reason for its failure to service the debt, its relationship to the guarantor, and the position taken by the guarantor.

(d) While lending is totally or partially suspended for these reasons, other Bank activities with respect to the member country or the defaulting body respectively will be determined in the light of the circumstances. In some cases, these activities can encourage settlement by indicating the Bank's willingness to proceed with lending as soon as it is satisfied with the country's efforts.

Policy on Expropriation

10. While the broad outlines of the policy with respect to disputes over defaults and expropriations are similar, a number of factors combine to make cases of expropriation less clear-cut than those involving defaults. These factors include more possibilities for differences over (i) the amounts involved and how payment is to be made, (ii) the respective obligations of the parties, and (iii) the responsibility for opening and carrying on negotiations. The Bank's policy with respect to disputes over expropriations can be described in the following terms:

(a) The Bank will not lend for projects in a country if it considers that the position taken by that country with respect to alien owners of expropriated property is substantially affecting its international credit standing. Nor

will it appraise projects in such a country unless it has good grounds for believing that the obstacles to lending will soon be removed. Reasons for not proceeding with lending operations include:

(1) A denial of liability for compensation coupled with a refusal to submit the dispute to judicial or quasi-judicial determination.

(2) An admission of liability for compensation in general terms coupled with either an offer of compensation obviously inadequate in amount or terms of payment and not subject to negotiation, or else a failure to negotiate in good faith over such matters or to submit them to judicial or quasi-judicial determination.

(3) A failure, in the Bank's judgment, to make reasonable efforts to arrive at settlements.

(4) A failure to pay and, if required, to transfer abroad compensation in accordance with the terms of an agreed settlement, a judicial decree or an arbitral award.

(b) In the absence of special circumstances, the fact that the expropriated alien may have received adequate compensation through an investment guarantee or insurance scheme or in some other way does not eliminate the Bank's concern with an expropriation, and the Bank's position with respect to the expropriating country may be determined as if such compensation had not been paid. In determining its position, the Bank will take into

Operational Policy Memorandum



account whether or not the expropriated alien's government seeks redress from the expropriating country. Normally the Bank will consider a dispute resolved if a settlement is reached between the expropriating and claimant countries.

Policy on Breach of Governmental Contracts

11. In principle the Bank wishes to see disputes over breach of governmental contracts settled expeditiously and fairly. In the Bank's experience, the typical dispute over breaches of governmental contract with aliens has involved questions of the quality of the work done or equipment provided, the prices to be paid, the time of performance, changes in the scope or nature of the project while work is in progress and the like. In such cases, many of the considerations which combine to make disputes over expropriations more difficult to resolve than those over defaults, such as uncertainty as to where the fault lies and as to the amounts involved, apply with even greater force. Furthermore, the number of these disputes is likely to be greater than in the case of default or expropriation, the amounts involved are likely to be smaller, and frequently the contracts in question provide for the settlement of disputes. In the normal case, therefore, the Bank, when faced with disputes of this sort not involving a project for which the Bank has made a loan, does not refuse to lend for projects in the country, does not lend its good offices for the settlement of these disputes, and seeks to avoid any involvement in the merits of the dispute. In cases where no steps are being taken toward resolution of this dispute, and where the existence of the dispute may impair the country's general reputation for behaving in a business-like way, however, the Bank does urge prompt action by both parties to resolve such disputes.

12. Where the dispute arises because the Government has made a significant retroactive change, by legislation or governmental decree, in the

terms under which a contractor or contractors have undertaken to work in the country, the Bank can be expected to take a more serious view of the matter.

13. Where the dispute arises in connection with a project for which the Bank has made a loan, however, additional considerations are involved. The Bank's interest in having the project completed promptly and satisfactorily calls for a prompt and equitable settlement of the dispute, and the Bank may intervene to achieve this result. Normally, such intervention occurs through the ordinary processes of project supervision, but in exceptional cases the Bank may take additional steps.

The Bank's Practice with Respect to Disputes over Defaults and Expropriations

14. In carrying out the policy set forth in paragraphs 9 and 10, the Bank seeks to promote prompt and adequate settlements, either negotiated between the parties on a mutually satisfactory basis or arrived at through conciliation, arbitration or judicial determination. Although it may eventually have to do so for the purpose of determining its own position, it initially tries to avoid passing on the merits of the dispute and to limit its role to improving communications between parties and impressing them with the desirability of a settlement. The Bank does not take the position that all the demands of the claimants must necessarily be met. At the same time it will be concerned to see that its desire to get on with its main task of lending for development does not unfairly reduce the claimant's chance of reaching a satisfactory settlement.

15. In a few cases, the Bank or its President, acting at the request of both parties, has taken a more active role in resolving a dispute. In such cases the Bank has preferred to arrange for arbitration or conciliation rather than to serve as arbitrator or conciliator itself. While the President of the Bank



Operational Policy Memorandum

has on occasion accepted the role of conciliator where both parties have requested this, neither the Bank nor its President has ever accepted that of arbitrator. In addition, the Bank has avoided taking any public position on the rights and wrongs of such a case and has sought to find a settlement in financial, rather than juridical terms which are acceptable to the parties. With the creation of the International Centre for Settlement of Investment Disputes, it seems likely that many of these cases may be handled by the Centre rather than by the Bank.

16. Where a dispute over default or expropriation exists but the Bank decides to lend on the grounds that reasonable efforts to resolve the dispute are being made, the Bank will be concerned to see that

(a) progress toward a settlement or, if the dispute has been submitted to judicial or quasi-judicial determination, progress toward a decision continues after the loan commitment is made, and

(b) if there are different groups of claimants, progress is made with all of them, to the extent that the nature of the claims so permits, so that the Bank does not discriminate between them.

17. In most cases of default, the various bondholders' groups perform functions such as pressing for settlements, acting as a channel of communications, conducting negotiations and evaluating the adequacy of an offer of adjusted

service. The Bank takes these initiatives and evaluations into account in determining its own position with respect to the defaulting country. It does not, however, accept their evaluations as final and if it considers their refusal of an offer of settlement unreasonable, it will feel free to lend in the country in question.

18. Inevitably, disputes over defaults and expropriations involve many different factors, requiring the Bank to deal with them on a case-by-case basis. In doing so the Bank seeks to treat its member countries consistently, but from time to time the case-by-case approach may give decisions in particular cases an appearance of inconsistency. The risk of inconsistency is enhanced by the fact that the Bank's position may be affected by the position taken by the claimant's country with respect to the dispute. Since the country's reasons for its position may differ from those which arouse the Bank's concern over these disputes, the Bank will examine these reasons and take them into account in determining its position.

19. The Bank does not lend for the purpose of permitting a country to expropriate an enterprise by providing the funds needed for compensation, but if the question of compensation is satisfactorily settled, the fact of nationalization does not, of itself, prevent the Bank from lending, in appropriate cases, to enlarge or improve the properties after they have been nationalized.

THE CHARACTER OF BANK INVESTIGATIONS

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These lending procedures are subject to an important qualification. It happens not infrequently that the Bank's examination of general economic conditions in the borrowing country reveals the existence of economic or financial practices or policies which so adversely affect the financial and monetary stability of the country that, if continued, they would endanger both the productive purposes and the repayment prospects of any Bank loan. In such cases, it is the policy of the Bank to require, as a condition precedent to Bank financing, that the borrowing country institute measures designed to restore stability to its economy. The Bank does not, of course, insist that all remedial measures which may appear necessary in the case of any given country be completed before that country may qualify for a loan. On the other hand, the Bank is not normally willing to rely simply on a representation by the government that such remedial measures will in due course be taken. The Bank's position is midway between these extremes; it requires concrete evidence that the government is actually taking appropriate steps to establish stability, but, once given such evidence, it is usually willing to make a loan concurrently with the execution of the measures adopted.

A similar qualification applies in the case of those few remaining member countries of the Bank whose credit is impaired by the existence

of a still unsettled default on their outstanding foreign obligations. The Bank is obligated, under its Articles of Agreement, to encourage international investment for the development of the productive resources of its members. It has, therefore, a direct interest in the creation and maintenance of satisfactory relations between its member countries and their external creditors. The mere existence of a default will not deter the Bank from granting a loan if the Bank is convinced that there are no reasonable grounds for regarding the debtor's attitude as unsatisfactory. On the other hand, the Bank does consider it important that the countries concerned should give clear evidence of their willingness to reach a fair and equitable settlement of their debts. In the absence of such evidence, the granting of a Bank loan might properly be regarded as, in the long run, hindering rather than promoting the flow of international capital.

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REPORT AND RECOMMENDATIONS OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS CONCERNING PROPOSED LOANS (1) TO NACIONAL FINANCIERA, S A., AND COMISION FEDERAL DE ELECTRICIDAD (COMISION PROJECT), AND (2) TO NACIONAL FINANCIERA, S.A., AND COMISION FEDERAL DE ELECTRICIDAD (MEXLIGHT PROJECT), BOTH LOANS TO BE GUARANTEED BY THE UNITED MEXICAN STATES

REMARKS RE: EXTERNAL OBLIGATIONS -- THE UNITED MEXICAN STATES

Excerpt from President's Report and Recommendation R-202 of January 3, 1949

32. "...The repayment of the loans will ultimately depend on the willingness and the ability of Mexico to shoulder the general burden of her foreign debt.

33. "Mexico has a checkered debt record. She defaulted on her national foreign debt in 1914, and the debt settlements, reached after much delay, did not always prove to be final. The friction created by the expropriation of foreign investments and the protracted subsequent negotiations, impaired her credit standing further. However, in the course of the past few years, Mexico has made efforts to re-establish her credit. A settlement with foreign holders of the national debt was reached in 1942 and payments have been maintained since that time. An agreement reached in 1946 on the debt of the expropriated railroads is likely to be accepted by the requisite majority of bondholders in 1949. Payments of compensation for expropriated investments in oil and land have also begun.

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REPORT AND RECOMMENDATIONS OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON
A LOAN TO THE KINGDOM OF NORWAY

REMARKS RE: EXTERNAL OBLIGATIONS -- NORWAY

Excerpt from President's Report and Recommendation R783 of April 1, 1954

32. Norway has a good debt record and she has always paid her obligations promptly. There is, however, a longstanding dispute between the Norwegian Government and the Association Nationale des Porteurs Francais de Valeurs Mobilieres, representing holders of certain Norwegian bonds issued between 1885 and 1909. The French complaint appears to be twofold: first that since 1931, the debtors have paid the bonds on the basis of the various currencies in which they were expressed (francs, sterling, and crowns) and not on the basis of gold; secondly, that the debtors have discriminated against French holders by paying Swedish holders in Swedish crowns without offering equivalent treatment to French holders. The Association has put forward certain proposals and has suggested that failing agreement, the dispute should be submitted to the Arbitral Tribunal of the International Chamber of Commerce.

33. There have been discussions on the subject between French and Norwegian representatives over many years and I am informed that the Norwegian debtors have not accepted the French case. They have stated, however, that they will abide by the decision of any court having jurisdiction of the dispute, including the Norwegian Supreme Court and the International Court of Justice at The Hague.

34. In view of the complicated legal position and the nature of the issues involved, I feel that the Bank should not attempt to judge the merits of the case.

Secretary's Department (KSV)
July 7, 1971

FEB 11 2022

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IBRD REPORT AND RECOMMENDATIONS OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS ON
A PROPOSED LOAN TO THE BANCO CENTRAL DE COSTA RICAREMARKS RE: EXTERNAL OBLIGATIONS -- COSTA RICAExcerpt from President's Report and Recommendations R-1001 of September 6, 1956

2. "...Previously, Costa Rica's defaulted external debt had been an obstacle to Bank Operations in that country. The Costa Rican Government had acted to remedy this situation and by 1954 the dollar debt had been settled; the sterling debt was settled later and a settlement of the French franc debt, which amounted to the equivalent of some \$905,000, was offered on terms understood to be acceptable to the French Bondholders. (A law authorizing this settlement is now before the Costa Rican Legislature). Under these circumstances, the Bank considered that debt settlement had reached a stage where it no longer presented an obstacle to Bank operations in Costa Rica and since the program was deemed suitable for Bank assistance, the Bank in July, 1955 invited negotiators to come to Washington. However, the beginning of negotiations was considerably delayed awaiting passage of legislation by the Costa Rican Legislature to authorize the undertaking of such a loan and to empower the Central Bank to negotiate. Although the program was suspended for a short period early in 1956, it has since been continued on a reduced scale. ..."

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REPORT AND RECOMMENDATIONS OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON A PROPOSED LOAN
TO THE YUGOSLAV INVESTMENT BANK

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REMARKS RE: EXTERNAL OBLIGATIONS -- YUGOSLAVIA

Excerpt from President's Report and Recommendation R61-14 of February 14, 1961

27. In 1953, when the Bank's most recent loan was made, the Yugoslav Government was negotiating with creditors' representatives for a settlement of Yugoslavia's prewar debts. Contrary to expectation, these negotiations did not result in a settlement and the question remained in abeyance for some time. In 1958, however, an agreement was reached between Yugoslavia and the French Government for the settlement of bonds issued in France. This was followed in 1959 and 1960 by agreements with bondholders' representatives in the United States, the United Kingdom, Switzerland and the Benelux countries. Finally, in the autumn of 1960, there was an agreement with the Caisse Commune on the settlement of debts inherited from the Austro-Hungarian Empire. The remaining outstanding debt of a similar character is Yugoslavia's share of the debts of the former Danube-Save-Adriatic Railway. The Governments of Austria and Italy are also debtors in respect of this railway and in the past few years various attempts have been made to reach a settlement. The situation with regard to the Danube-Save-Adriatic Railway debt is complicated partly because it involves a number of countries, but I believe that all the parties are anxious to reach agreement and that there are good prospects of a settlement. I have been assured by the Yugoslav Government that they will make every endeavor to reach an agreement at an early date.

Secretary's Department (KSV)
July 7, 1971

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REMARKS RE: EXTERNAL OBLIGATIONS -- MOROCCO

Excerpt from President's Report and Recommendations R62-105 and IFC/R62-50
of December 10, 1962

Creditworthiness

31. The difficult political atmosphere surrounding the events of Algeria led the Moroccan authorities to suspend, since December 1958, the payment of principal and interest due to the French Government on loans amounting in the aggregate to the equivalent of \$219 million, made between 1949 and 1957 through the "Fonds de Développement Economique et Social" (FDES). Negotiations leading to a general agreement on the economic and financial relations between France and Morocco are expected to include an agreement on the outstanding debt issue. In anticipation of such an agreement France has in fact resumed financial help to Morocco. Morocco's debt to other French institutions and private investors has apparently continued to be serviced.

32. Expenditures which Spain had made in the former Spanish Zone before reunification gave rise in 1957 to a debt to the Spanish Government which has remained unsettled pending the settlement of other claims and counter-claims between the two Governments. Other Spanish creditors of Morocco have apparently continued to receive payment.

33. In view of the complicated and special political circumstances surrounding the Moroccan Government's debts to the French and Spanish Governments, I do not believe that Morocco's non-payment should be considered a bar to Bank lending.

34. Including the debts to the French Government, the present external debt of Morocco amounts to the equivalent of \$356 million. Service payments of \$9 million a year are being made currently on \$133 million of debt. If the settlement with France should result in payments on the FDES debt being resumed according to the original amortization schedules, total service would be \$21 million a year. This is 6% of Morocco's 1961 exports of \$345 million. This burden would not be excessive, taking into account the resources and potentialities of the Moroccan economy, and leaves some margin for borrowing on conventional terms. The repayment of the proposed \$15 million Bank loan should be within the capacity of the Moroccan economy.

Secretary's Department (KSV)
July 7, 1971

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REPORT AND RECOMMENDATIONS OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON A
PROPOSED LOAN TO SPAIN

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REMARKS RE: EXTERNAL OBLIGATIONS -- SPAIN

Excerpt from President's Report and Recommendations R63-121 of October 17, 1963

5. In conjunction with this first loan to Spain, discussions have been held with the Government concerning two disputes that involve the interests of foreign investors in Spain--the cases of Barcelona Traction and Porto Pi. The first arises out of the bankruptcy and liquidation in 1948 of a large public utility holding company, of which Belgian interests owned a majority of the shares. The Belgian Government has taken up the case of its nationals and has started proceedings before the International Court of Justice. The Spanish Government has contested the Court's jurisdiction, but since this issue is now sub-judice, the dispute should not in my judgement present an obstacle to the initiation of Bank lending.

6. The Porto Pi case concerns a Spanish petroleum importing and distribution company, half of which was owned originally by French interests, that was expropriated by the Spanish Government in 1927. The indemnity has been the subject of considerable litigation in judicial and administrative tribunals in Spain and has not yet been settled. The case was recently remanded to the appropriate court for assessment of the amount of compensation payable. Meanwhile, negotiations are under way between the national petroleum monopoly (CAMPSA), which took over the assets of Porto Pi, and representatives of the former shareholders. If a negotiated settlement is not reached, the case will revert to the Court, and CAMPSA has agreed not to appeal the Court's decision. A solution of this long-standing controversy may therefore be expected in the near future.



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 10 June, 1964	Document Type Board Record			
Correspondents / Participants				
Subject / Title Annex C page 7 Loan to Tunisia Statement by President to Executive Directors' Meeting, June 4, 1964				
Exception(s)				
Additional Comments Declassification review of this record may be initiated upon request.		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group. <table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
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FEB 11 2022

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REPORT AND RECOMMENDATION OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS
ON A PROPOSED LOAN TO IRAQ FOR A ROAD PROJECTREMARKS RE: EXTERNAL OBLIGATIONS -- IRAQExcerpt from President's Report and Recommendation R66-83 of June 23, 1966

5. "Immediately before the August 1964 negotiations, the Government had nationalized the banking and insurance industry and about 30 leading commercial and industrial firms, including the bulk of foreign investment in Iraq apart from the oil industry. Following the nationalization measures the Bank informed the Government that, while it was prepared to negotiate the terms and conditions of the proposed loan, it would not present it to the Executive Directors until it was satisfied with the progress made in paying compensation for foreign-owned property affected by the nationalization laws. The valuation and payment of claims took longer than expected. By September 1965, however, most foreign owners had been compensated and the Bank informed the Government that it was prepared to resume consideration of the proposed loan.

6. "The project was re-appraised in October/November 1965 and a number of changes were made in the works to be financed under the proposed loan. The resulting changes in the draft loan documents were negotiated with the Government through an exchange of letters.

7. Another matter of concern to the Bank is the long-standing dispute between the Government and foreign contractors who have claims for works or services contracted or performed under preceding regimes. Though the Bank has not passed judgment on the merits of these claims, it has, on several occasions, urged the Government to settle these disputes which could have an adverse effect on the willingness of foreign contractors to work in Iraq. Following a recent inquiry by the Bank, the Government has reiterated its determination to settle the disputes with contractors and indicated the steps it has taken toward the examination and settlement of claims. I shall continue to follow closely the progress made in reaching a settlement. ..."

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FEB 11 2022

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IBRD REPORT AND RECOMMENDATIONS OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS

REMARKS RE: EXTERNAL OBLIGATIONS -- BRAZILIAN POWER PROJECT

Excerpt from President's Report and Recommendations R66-158 of December 5, 1966

26."In this connection it should be noted that during the last two years Brazil has made significant progress in the settlement of foreign investment disputes. Two claims were settled in 1964 and in the last few months agreement was reached on two other long standing disputes. The Government has assured the Bank that in the cases in which it does not recognize a claim, legal redress remains available to the claimants."

Secretary's Department (KSV)
July 7, 1971

CONFIDENTIAL

I B R D

REPORT AND RECOMMENDATION OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS
ON A PROPOSED LOAN TO THE INSTITUTO NACIONAL DE ELECTRIFICACION, GUATEMALA

REMARKS RE: EXTERNAL OBLIGATIONS -- GUATEMALA

Excerpt from President's Report and Recommendation R67-4 of January 12, 1967

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FEB 11 2022
WBG ARCHIVES

2. The Bank has had only one lending operation in Guatemala in the form of a \$18.2 million loan, made in 1955, for highway construction and maintenance. Since that time, lending has been blocked for more than 11 years as a result of the failure of successive Guatemalan governments to take steps towards the settlement of a dispute regarding three outstanding sterling bond issues, even after the Guatemalan courts had ruled in favor of the bondholders.

3. In early March 1965, a request for the financing of the power project was presented to the Bank by the military Government then in office. The project was appraised in May-June 1965 on the understanding that although the Bank was willing to proceed with steps preliminary to a resumption of Bank lending, it would stop short of signing a loan agreement until the debt issue was resolved satisfactorily. In March 1966, the outlook for a final settlement appeared reasonably good and the Bank invited negotiators to come to Washington on the condition that the Government would first recognize the debt, in accordance with the findings of the Guatemalan courts. In late March, the Bank was informed that the Government could not do this, and the Government withdrew its loan request.

4. On July 1, 1966, a new civilian Government took office as a result of the elections for both the Presidency and the Congress which had taken place in early March 1966. Shortly afterwards, the Government decided to recognize by an "acuerdo gubernativo" the validity of the outstanding balance of the sterling debt. The Bank of Guatemala was instructed to act as the Government's fiscal agent for the implementation of the debt settlement. Subsequently, final arrangements for the debt settlement were worked out in Europe between representatives of the Bank of Guatemala and of the bondholders and various European banks.

5. At the time the new Government took steps to settle the sterling debt it re-submitted the request for the financing of the proposed power project. The project was reappraised and the information on it updated in August 1966. Negotiations commenced in Washington on November 14, 1966. INDE was represented by Mr. Rolando Castillo Contoux, General Manager and Mr. Ramon Lopez Rivera, Technical Adviser. Representing the Government of Guatemala as Guarantor were Dr. Alberto Fuentes Mohr, Minister of Finance and Public Credit and Mr. Gert Rosenthal, Adviser to the Finance Minister.

CONFIDENTIAL

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FEB 11 2022

WBG ARCHIVES

I B R D

REPORT AND RECOMMENDATION OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON A
PROPOSED LOAN TO THE NATIONAL INVESTMENT
BANK FOR INDUSTRIAL DEVELOPMENT IN GREECE

REMARKS RE: EXTERNAL OBLIGATIONS -- GREECE

Excerpt from President's Report and Recommendation
R67-170 of November 21, 1967

2. "The war and the disturbed conditions which followed it left Greece with the whole of her prewar external debt in default. Negotiations for settling these defaults were started in the 'fifties and the sterling debt, which constituted over one-half of the total, was wettled in 1964. In view of the progress in this and other settlements and in the expectation that the remaining debts would be settled promptly, I decided that the Bank would be justified in starting an active relationship with Greece."

Secretary's Department (KSV)
July 7, 1971

FEB 11 2022

CONFIDENTIAL

ANNEX C

Page 12

WBG ARCHIVES

IDA REPORT AND RECOMMENDATION OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS
ON A PROPOSED CREDIT TO THE UNITED ARAB REPUBLIC FOR THE NILE DELTA DRAINAGE PROJECTREMARKS RE: EXTERNAL OBLIGATIONS -- UNITED ARAB REPUBLICExcerpt from President's Report and Recommendation IDA/R69-66 of November 6, 1969

4. "...The nationalization in the early 1960's of almost all industrial, commercial and financial enterprises in the country, both Egyptian and foreign, and the protracted negotiations concerning the payment of compensation for these properties have been a serious obstacle to Bank Group lending. In addition, the U.A.R. began in 1965/66 to fall into arrears in debt payments, mostly for suppliers' credits. By early 1967, however, progress was being made in the rescheduling of some debts, in agreeing on compensation for nationalized properties and in making arrangements for the payment of arrears to the International Monetary Fund. The June war temporarily interrupted these developments. Negotiations with the Fund resumed and led to the repayment of outstanding arrears in March 1968, followed by drawings on the Fund. A Bank economic mission visited the UAR in March 1968. ...

5. "The arrears on external debt repayments have now been rescheduled through agreements with all of the countries concerned, with the exception of the United States, and repayments have been proceeding in accordance with the new schedules. In the case of the United States, discussions between representatives of the two governments have been underway during the past months. Both sides have made considerable efforts towards reaching agreement, and the discussions are now at a stage where the positions of both sides are very close, so that final agreement should soon be achieved. In all of the rescheduling arrangements the U.A.R. has tried to avoid or minimize a net capital outflow by seeking new credit facilities from its creditors at the same time. However, since the new credit facilities are mostly on suppliers' credits terms, they have not provided significant relief from the rather heavy debt service burden which is discussed in Part V of this report.

6. "Most of the claims against the U.A.R. which arose out of the nationalization of foreign properties in the early 1960's have been settled. Discussions have been taking place between the governments concerned in the few outstanding cases, which involve complicated questions of asset valuation, and progress has been made recently. The representatives of the U.A.R. Government have stated their willingness and intention to find a solution in these cases. Representatives of countries whose citizens have been affected have confirmed that active negotiations are in process in this respect. ..."



Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 02 June, 1970	Document Type Board Record			
Correspondents / Participants				
Subject / Title Annex C page 13 Meeting of Executive Directors, June 2, 1970 Statements by Chairman and General Counsel Regarding Proposed Loan to Industrial Development Bank of Israel				
Exception(s)				
Additional Comments Declassification review of this record may be initiated upon request.		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group. <table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
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REPORT AND RECOMMENDATION OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON A
PROPOSED CREDIT TO THE REPUBLIC OF UGANDA
FOR A SMALLHOLDER TOBACCO PROJECT

REMARKS RE: EXTERNAL OBLIGATIONS -- UGANDA

Excerpt from President's Report and Recommendation IDA/R70-55 of July 9, 1970

23. In May this year the Government announced its intention to acquire up to 60 percent shareholding in all banks, insurance, oil, bus, and major manufacturing companies, and in agricultural estates. Representatives of the Bank and IFC who visited Uganda recently to discuss this new policy report that the Government desires to settle the question of compensation as amicably and as speedily as possible, largely by negotiating with each company on an individual basis, and has already started consultations with some of them. In view of this, I do not consider that the recent measures in Uganda should deter action on the proposed credit. I shall, however, follow the developments in this respect closely and shall present to the Executive Directors further proposals for lending to Uganda only if satisfactory progress can be observed in making arrangements for compensating those affected by the recent measures.

Secretary's Department (SKV)
July 7, 1971

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REPORT AND RECOMMENDATION OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS ON A
PROPOSED LOAN TO THE REPUBLIC OF PERU
FOR A ROAD RECONSTRUCTION PROJECT

REMARKS RE: EXTERNAL OBLIGATIONS -- PERU

Excerpt from President's Report and Recommendation R70-168 of
August 26, 1970

4. The request raised again the question of the economic and financial performance of the Peruvian Government and the existence of the unresolved dispute with the International Petroleum Company (IPC). On the latter, the position is that efforts are still being made on the diplomatic level to find a solution but that the prospects for an early settlement do not appear to be good. The Bank has not determined what position it would take on the question of the resumption of normal lending. It does appear, however, that without prejudicing this issue, the Bank could give some assistance to Peru to help meet some of the consequences of the earthquake disaster.

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IDA REPORT AND RECOMMENDATION OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS ON A
PROPOSED DEVELOPMENT CREDIT TO THE REPUBLIC OF BOLIVIA FOR A THIRD LIVESTOCK PROJECTREMARKS RE: EXTERNAL OBLIGATIONS -- BOLIVIAExcerpt from President's Report and Recommendation IDA/R71-32 of May 17, 1971

5. "...Conditions of effectiveness for the July 22, 1969 pipeline loan had not been fully met by October 17, 1969 when the Government nationalized the Bolivian Gulf Oil Company. In late 1969, after the Government assured the Bank that it intended to pay reasonable compensation to Gulf, discussions began among the several parties with a view to reconstituting the project. The compensation issue was settled by decree to the satisfaction of Gulf in September 1970, and over the past three months, the agreements for the pipeline loan and related matters have been renegotiated. The revised loan is expected to be presented to the Executive Directors for approval in the next few weeks. The reconstitution of the pipeline project should lead to a substantial improvement in the investment climate in Bolivia, as well as in its export earnings. ...

19. "...Bolivia reached agreement in 1969 with the holders of its external dollar bonds on a new schedule of debt service. After certain delays, funds have now been transferred for bringing payments up-to-date under this agreement. The settlement following the nationalization of the assets of the Bolivian Gulf Oil Company has been referred to in paragraph 5 above. In the first part of 1971, Bolivia nationalized the assets of two U.S.-owned mining concerns, the International Metals Processing Company, and the Matilde Mine Corporation. In both cases, the nationalization decrees provided for compensation to the former owners, and steps for arriving at the valuation of the assets are being taken. ..."

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ANNEX C

Page 19

IBRD REPORT AND RECOMMENDATION OF THE PRESIDENT TO THE EXECUTIVE DIRECTORS
ON A PROPOSED LOAN TO GUYANA FOR SECOND SEA DEFENSE PROJECT

REMARKS RE: EXTERNAL OBLIGATIONS -- GUYANA

Excerpt from President's Report and Recommendation R71-138 of June 4, 1971

8. In recent months the political and economic scene has been overshadowed by the Government's decision to nationalize the Demerara Bauxite Co. Ltd. (DEMBA), the largest bauxite mining company in Guyana, a wholly owned subsidiary of the Aluminum Company of Canada, Ltd. (ALCAN). The Government started negotiations with DEMBA at the end of 1970 with a view to obtaining at least 51 percent of the equity of the company through the purchase of shares out of future profits. On Cooperative Public Day, February 23, Prime Minister Burnham announced that, as the negotiations had not reached a successful conclusion, the Government would nationalize DEMBA "with reasonable compensation". Legislation was presented to Parliament relating to any bauxite "undertaking" in the country which set forth the following: if the Government entered into negotiations with a company to achieve government participation "on just and equitable terms" and these broke down, the Minister of Mines would have the option to certify the breakdown of said negotiations, at which point ownership would automatically vest in the Government; the Government would then pay compensation. The Parliament approved the legislation virtually unanimously; for the first time since independence, the two main political parties were in accord on a major policy issue.

9. The Government is presently negotiating with ALCAN regarding the terms of the nationalization, with particular attention to the compensation arrangements and future sales to ALCAN. It has indicated that, following completion of its negotiations with ALCAN, it will try to reach agreement with the other bauxite producer in Guyana, Reynolds Aluminum Company, on a majority participation by the Government in the local Reynolds enterprise.

10. With the negotiations between the Government and ALCAN still going on, it is impossible to judge what effect nationalization of the company might have on Guyana's economy. In 1970, production of bauxite and alumina contributed 46 percent of Guyana's earnings from exports of goods and non-factor services and 19 percent of its GDP. During this period DEMBA was responsible for 75 percent of the bauxite and 100 percent of the alumina production. The gross value of DEMBA's sales abroad was US\$62 million. With the exception of calcined bauxite, all of which is exported to Western Europe, all bauxite and alumina exports go to North America. If this market were to be lost, Guyana would have to seek alternative outlets. There is the further question of how far the Government will be able to fulfill its expectations that it can handle the technical and managerial aspects of bauxite production. The possible effects of nationalization on other foreign investments in Guyana have also to be considered. The country's future economic development, and consequently its creditworthiness, must depend to an important extent on the further exploitation of its mineral and forest resources, for which foreign partners will be needed to provide assistance in production

and marketing. If this exploitation does not take place, the rate of economic growth is likely to fall below the 5 percent a year assumed in the economic report, since the prospects for Guyana's two staple crops, sugar and rice, are not particularly promising.

11. The flow of bilateral external assistance has not yet been interrupted by these developments, and Canada recently signed a C\$2.3 million loan for a water supply project. Meanwhile, preparations for new projects and programs are continuing. Assistance from bilateral sources is provided by the United States (at a level of authorization of close to US\$10 million a year), by the United Kingdom (about US\$5 million) and by Canada (about US\$4 million). U.S. assistance is concentrated on the agricultural sector (mainly to improve rice production), certain roads and water supply; the U.K. has helped in financing sea defenses and certain social services; CIDA has concentrated its capital assistance efforts mainly on air transportation. Considerable technical assistance is provided by all the three countries, as well as by the UNDP and Germany. Guyana organized meetings of an Aid Coordination Group in 1967, 1968 and 1969, and is planning another meeting in early 1972 after completion of the new development plan. Coordination between the Government, the bilateral aid donors, UNDP and the Bank Group has been satisfactory.

12. The Bank has discussed with the Government of Guyana possible Bank/IDA operations in selected priority fields where significant institution building is involved or where bilateral lenders have not shown an interest in participating on their own. The sea defense program had not attracted financing from bilateral sources until the Bank helped to work out a project for the first phase, in which the United Kingdom is now also participating. The second project, now under consideration, is likely in due course to be followed by a third. In addition, preparatory work is proceeding on power and highway projects, and the possibility of a fisheries credit project is being investigated with the help of the FAO/IBRD Cooperative Program.

13. Guyana's creditworthiness for borrowing on conventional terms is severely limited by its narrow resource base and weak balance of payments, which is heavily dependent on the continuance of official aid. However, external public debt service is quite low (less than 4 percent of export earnings net of foreign companies' profits), and most of the aid which Guyana receives from bilateral sources is on highly concessional terms. I consider, therefore, that Guyana is creditworthy for the loan now under consideration. However before recommending any further Bank lending, I shall review the economic situation very carefully in the light of developments in the bauxite sector. An economic mission will visit Guyana when the outcome of the Government's negotiations with ALCAN can be better evaluated.

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REPORT AND RECOMMENDATION OF THE PRESIDENT
TO THE EXECUTIVE DIRECTORS
ON A PROPOSED DEVELOPMENT CREDIT
TO THE REPUBLIC OF UGANDA
FOR A SECOND EDUCATION PROJECT

REMARKS RE: EXTERNAL OBLIGATIONS -- UGANDA

Excerpt from President's Report and Recommendation IDA/R71-40 of June 7, 1971

7. The major action so far taken by the new Government in the economic field has been to modify substantially the program of nationalization announced by President Obote in May 1970. Under the May 1970 pronouncement a 60 percent Government participation was to be acquired in all banks, insurance, oil, bus and major manufacturing companies, and in industrial estates; about 80 companies were expected to be affected by this decision. Agreements for compensation have already been reached with eight major concerns on that basis. The new Government has announced that it is willing to renegotiate these agreements on the basis of a Government participation of 49 percent if the companies concerned so wish and that it also intends to limit its participation to 49 percent in another 11 major companies with whom agreements have not yet been completed. The other companies covered by the May 1970 pronouncement will now be left entirely in private hands.

8. The Government has announced its intention to honor all existing obligations. No legislation of significance to the consummation of the proposed credit or to any existing agreement between the Bank/IDA and Uganda has been suspended or altered. Work on Bank Group financed projects has not been affected by the change in Government. I find no reason why the Bank Group should withhold assistance for projects that are, as in this case, essential to the country's long-run progress and should not be postponed.

Secretary's Department (KSV)

July 7, 1971

Creditworthiness

.....

The evaluation of the economic position of a country asking for finance sometimes reveals practices or policies which could seriously affect the economic outlook of the country and its ability to make effective use of financial resources. In such instances, it is the policy to require in advance of a Bank loan or IDA credit that the borrowing country institute measures designed to improve the performance of its economy. The Bank and IDA do not insist that all remedial measures which appear necessary be completed before that country may qualify for finance. On the other hand, they are not normally willing to rely simply on a representation that such remedial measures will in due course be taken. Their position is midway between these extremes; concrete evidence must be forthcoming that the government is actually taking appropriate steps to remedy deficiencies in its policies. Once given such evidence, the Bank or IDA are usually willing to provide finance concurrently with the execution of the measures adopted.

The Bank has taken a similar position in the case of those member countries whose credit is impaired by the existence of a dispute over a default on their foreign debt or over compensation for expropriated property formerly owned by foreigners. The Bank is charged, under its Articles of Agreement, to encourage international investment. It has, therefore, a direct interest in the creation and maintenance of satisfactory relations between member countries and their external creditors. Accordingly, the normal practice is to inform governments who are involved in such disputes that the Bank or IDA will not assist them unless and until they make appropriate efforts to reach a fair and equitable settlement.

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Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 16 July, 1971	Document Type Memorandum			
Correspondents / Participants To: Lester Nurick From: C. F. Amerasinghe				
Subject / Title Bank Policy on Defaults on External Debts and Expropriations - Case Review - Very Preliminary Survey				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			

Expropriation and Compensation

INTERNATIONAL DEVELOPMENT
ASSOCIATION

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE
CORPORATION

OFFICE MEMORANDUM

TO: Files

DATE: July 2, 1971

FROM: J. Burke Knapp

SUBJECT:



During the course of a conversation this morning with Dr. Stedtfeld he told me that he had been approached by Mr. Wieczorowski to ask whether the German Government was satisfied with the policy which the Bank had been following in the case of expropriated properties in the developing countries. Dr. Stedtfeld told me that he had consulted Bonn on this matter and that he had reported back to Mr. Wieczorowski that the German Government was "completely satisfied" with the Bank's "pragmatic" approach to these matters.

cc: Messrs. McNamara
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CC: [illegible]

[illegible] approach to these matters.
that the German government was "completely satisfied" with the bank's
role on this matter and that he had reported back to Dr. Mieszkowski
the following committee. Dr. Steinhilber told me that he had contacted
the bank had been following in the case of exploited properties in
to ask whether the German government was satisfied with the policy which
Dr. Steinhilber told me that he had been approached by Dr. Mieszkowski
during the course of a conversation this morning with

FROM: [illegible]

TO: [illegible]

DATE: [illegible]

DATE: [illegible]

OFFICE MEMORANDUM

Mr. Votaw

July 1, 1971

A. Edward Elmendorf *A. E. E.*

India: Investment Disputes

At the suggestion of David Dunn, whom I called about Mr. Knapp's recent memorandum on the matter, I am sending you the attached articles from the Economist and the Wall Street Journal on the expropriation by India of the insurance sector. You will note that the US companies involved are mentioned in the Wall Street Journal article. These articles provide little evidence that there is a serious dispute over compensation.

AEE:lp

cc: Messrs. Demuth, Kirk, Scott

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cc: Messrs. Dennis, Kirk, Scott

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compensation.

articles provide little evidence that there is a serious dispute over
involved are mentioned in the Wall Street Journal article. These
links of the insurance sector. You will note that the US companies
from the Economist and the Wall Street Journal on the exploration of
recent memorandum on the matter. I am sending you the attached articles
of the suggestion of David Dinn, whom I called about Mr. Knapp's

Index: Investment Disputes

A. Edward Emswiler

Mr. Dorn

Handwritten initials: E.E.

JUN 1 1971

Handwritten note at bottom right: - Mr. Knapp's has working copy

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June 29, 1971

J. Burke Knapp

Expropriation Cases

Mr. Wiczorowski telephoned me today to say that he had received word from the U.S. Treasury that there were six countries in which there were problems of compensation claims affecting U.S. interests, namely, Bolivia, Chile, Ecuador, Peru, Guyana and India.

This is a familiar list, except for India. Mr. Wiczorowski was not able to give me any details on India, but I have asked Mr. Votav to check our own records and then to pursue the matter with Mr. Wiczorowski.

I took the occasion to ask him whether he had received his instructions regarding the Bolivian Pipeline loan which is to come before our Executive Directors on Thursday. He said that he had not yet received instructions but that he expected the same instructions as had been given to the U.S. Director in the Inter-American Bank, who was going to abstain on the corresponding loan in that Bank.

cc: Mr. McManara
Mr. Alderwald
Mr. Broches
Mr. Demuth
Mr. Alter
Mr. Cargill
Mr. Gutierrez

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Expropriation and Compensation

OFFICE MEMORANDUM

TO: Files

DATE: June 23, 1971

FROM: Gerald Alter *GA*

SUBJECT: Discussion with Mr. Nathaniel Samuels on Compensation Problems

Mr. Samuels, Deputy Under Secretary for Economic Affairs, Department of State, took advantage of an opening I offered to him at the Brazilian Embassy luncheon yesterday to discuss with me at some length the thinking now going on in the U.S. Government on the compensation problem in expropriation cases and its relationship to bilateral and multilateral lending practices.

Partly to stimulate the discussion, Mr. Samuels asked why shouldn't the U.S. insist that a compensation agreement should be consummated simultaneously with expropriation, or that there should be an agreement in advance on the arbitration tribunal that will establish compensation. Recognizing that this went much further than the present practice, he asked what is wrong with it. Why shouldn't the U.S. insist on countries meeting these tests as a condition for official assistance? They had no right to such assistance. We recommended conditions favoring the flow of foreign private investment as essential to development. The present practice did not give sufficient protection to foreign private investment.

In the exchange that followed, I pointed out that we also attached importance to the establishment of an environment conducive to the flow of private foreign investment. It was not feasible, however, in the present international political environment, to insist on a pat formula. Foreign investors recognized the risks of expropriation. In going forward with their investment, they did not expect to receive the "ideal" protection which Mr. Samuels had assumed. We felt in the Bank that we must try to facilitate a settlement in each individual case by taking positions which permitted a reasonable compromise. We did not feel we could invoke the sanction of "no loans" simply because in one aspect of development performance a country was less than perfect in its behavior. We had to view the total picture. Mr. Samuels then made a distinction between the response that was appropriate for multilateral agencies and the response that was appropriate for the U.S. in its bilateral program. He seemed to be implying that the U.S. in its bilateral program was not achieving anything positive in other aspects of development performance, and therefore it was justified in insisting on a higher standard of performance with respect to expropriation matters!

cc: Mr. McNamara
Mr. Knapp
Mr. Nurick

GAlter:pa.

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Record Removal Notice

File Title Bank Administration and Policy - Expropriation and Compensation - 1969 / 1971 Correspondence		Barcode No. 1056931		
Document Date 30 March, 1971	Document Type Memorandum			
Correspondents / Participants To: Mr. A. Broches From: Christopher R. Poncia				
Subject / Title Expropriation as a Ground for Exclusion of Guarantee Liability				
Exception(s) Attorney-Client Privilege				
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"><tr><td>Withdrawn by Sherrine M. Thompson</td><td>Date February 11, 2022</td></tr></table>	Withdrawn by Sherrine M. Thompson	Date February 11, 2022
Withdrawn by Sherrine M. Thompson	Date February 11, 2022			

OFFICE MEMORANDUM

*Expropriation +
Compensation*

TO: Files

FROM: John A. King *JAK*

SUBJECT: Telephone Call from Monroe Leigh

DATE: June 10, 1970

1. On June 8, I had a telephone call from Monroe Leigh*, a partner in Steptoe and Johnson, inquiring about how the concept of an enclave project related to or affected the Bank's policy with respect to disputes over expropriation without compensation, with particular reference to Algeria. He did not identify his client, but I gathered it was an oil company.
2. I explained that the Bank sometimes found it possible to lend for an enclave project, which by its nature generated by itself sufficient foreign exchange to service the Bank loan from sources outside the control of the host country, when the general creditworthiness of the host country or its economic performance were such as to make it very difficult or impossible to lend for other sorts of projects. I added, however, that I believed that if the Bank concluded that the country in question was not making reasonable efforts to resolve a dispute over compensation, the Bank would not lend even for an enclave project.
3. I also explained that the decision to lend for CAMEL was made, in principle, before it was clear what Algeria's policy and practice in connection with expropriation would be.
4. Mr. Leigh expressed concern over rumors that the Bank might help finance the Sonatrach-El Paso deal. He suggested that if it did there might be some kind of Congressional retaliation against the Bank and IDA.

* Mr. Leigh played an important part in drafting and securing the adoption of the Hickenlooper Amendment.

JAK:asg

cc: Messrs. Springuel
Delaune
Suratgar