MULTINATIONAL CORPORATIONS AND THE PHILIPPINES AS HOST COUNTRY: A LEGAL ASSESSMENT*

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What is a Multinational Corporation?

Few fields have generated as much heated controversy on the international level as the multinational corporation. Some nations consider it a "blessing"; to some underdeveloped countries it is a "necessary evil"; to the ultra-nationalists it is a "curse". What is the nature of this entity that has aroused this world-wide debate? There is no generally accepted legal definition of a "multinational corporation". It is a business rather than a legal term, and is in itself misleading. It is not a single corporation endowed with several nationalities. Rather, it is a cluster of several corporations, each a separate entity, existing and spread out in two or more countries, controlled by one headquarter, also a separate corporation in itself. It would perhaps be more accurate to describe this set-up thus: a parent corporation based in one country called the home country, with a multinational group of subsidiary corporations, organized under and subject to the laws of different countries, called the host countries. The terms "international", "pluri-national", "transnational", "supernational" and "global" have also been used, but "multinational" has been the more generally accepted term. These multinational corporations are not organized under international or supernational law, like a treaty or act of an international organization. They are organized under, and governed by, each host country's national laws.

Clive M. Schmitthoff, Professor in the University of Kent, gives what he believes are the three requirements for a corporation to be truly multinational: "First, two or more companies of different nationality are combined, and here it should be noted that a company has the nationality of the country in which it is incorporated. Secondly, there must be a connection between these companies by means of shareholdings, contract, or managerial control, such as the right of one company to appoint the directors of another, or simply the identity of directors in the connected companies. Thirdly, the multinational enterprise must form an economic

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unit in world trade, *i.e.*, it must have a single controlling brain and act throughout the world as if it were one company."[1]

Richard Robinson, in his work "International Business Policy", describes the basis of management decisions of multinational corporations thus:

> "A truly international firm... will sell out of, and into, any national market, taking full advantage of more rapid delivery, lower shipping charges, orders against softer currency, internatoinal exchange transactions, bilateral trade agreements, and triangular trade deals. It may manufacture part A in one country, part B in another, part C in another, exchange all three and assemble the final product in all three countries. The firm thereby gains the competitive advantage derived from official support and a larger market — indeed, a common market for the product, involved but not for competing products. It may move depreciated machinery, which is obsolete in relation to the size and nature of demand in Country X, out of that country and into Country Y, where the machinery may have many years of productive competitive life left."[2]

Thus, a television set produced by a multinational enterprise may be equipped with U.S. made components, and Japanese transistors, assembled in Taiwan and encased in a cabinet of Philippine mahogany.

The typical multinational corporation is large, with sales running into hundreds of millions of dollars, and affiliates and subsidiaries scattered over several countries. Most multinationals are based in developed countries. The United States, which accounts for more than half of the world's largest multinationals with sales of more than $1 billion, together with the United Kingdom, France and the Federal Republic of Germany, accounts 80% of foreign activities of multinationals. Those based in Japan, United States and Germany have grown dramatically in the last twenty years.[3]

In the 1960's, operations of multinational corporations grew much faster in developed host countries than in developing ones, and the latter have received only half as much of the total direct investment as the developed countries. However, the presence of multinational corporations in developing countries is of relatively greater significance, since their combined economies account for much less than half of the total of developed market economies.[4]

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[1]C. M. Schmitthoff, *The Multinational Enterprise in the United Kingdom*, in NATIONALISM AND THE MULTINATIONAL ENTERPRISE: LEGAL, ECONOMIC AND MANAGERIAL ASPECTS 24 (1973).

[2]R. D. ROBINSON, INTERNATIONAL BUSINESS POLICY 220-221 (1964).

[3]See UNITED NATIONS, MULTINATIONAL CORPORATION IN WORLD DEVELOPMENT 24-25 (1973).

[4]*Ibid.*

Role of the Multinational Corporation — its advantages and disadvantages —

Although the role of multinational corporations in development is acknowledged by most countries, much controversy has recently arisen over some of its practices and effects. What the richer nations refer to as "economic development," some Third World countries label as "economic imperialism". These conflicts have arisen mostly from the divergence between the private objectives of a profit-making firm and the social welfare goals of a government. Widespread concern and anxiety over multi-nationals had so grown at the start of the decade that review of the *modus vivendi* had to be made at the international level. The United Nations Economic and Social Council on July 2, 1972, created a 20-man committee called the Group of Eminent Persons to study "the role of multinational corporations and their impact on the process of development, especially that of the developing countries, and also their implications for international relations, to formulate conclusions which may possibly be used by Governments in making their sovereign decisions regarding national policy in this respect, and to submit recommendations for appropriate international action."[5] This Group submitted its report last May and as a whole seemed to justify the fears and anxiety of the developing countries, who have been waging a campaign for the United Nations to take some action to protect them against the "onslaught" of multinational enterprises. This campaign has borne fruit with the approval by the United Nation General Assembly last December 12, 1975 of the "Charter of Economic Rights and Duties of States." It is interesting to note that the vote was 120 to 6 in favor of the Charter with the United States, Britain, West Germany, Belgium, Denmark and Luxemburg voting againts it. According to news reports, the strongest objections centered on the provision proclaiming the right of every state to nationalize and expropriate foreign property and to regulate foreign investment and the activities of multinational enterprises.[6]

The problem is indeed serious, since the multinational corporations' influence on the world's economic development has grown phenomenally since the end of World War II. Some observers ominously predict that in the near future, 70% of the world's industrial assets will be owned by only 300 companies. A table prepared by the U.S. Senate's Committee on Finance published in 1973 shows that some multinational corporations had a bigger gross annual sales in 1970 than the gross national product of some countries. The Philippines, for example, had a lower gross

[5]See UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS 3 (1974).

[6]Daily Express, January 13, 1975, p. 4.

national product in that year than the gross annual sales of General Motors, Standard Oil, Ford Motors and Royal Dutch Shell, the four largest multinational corporations in the world.[7] It has been estimated by experts that sales by multinational enterprises outside their home-countries constitute about 15% of a total non-Communist GNP of $2,000 billion; and at presently indicated growth rates, such "foreign owned" sales in 20 years, will be about 50% of a total non-Communist GNP of about ₱5,000 billion.[8]

The strongest argument that has been used in favor of multinationals is their role in the process of economic development. As one writer puts it: "The multinational corporation is beyond doubt the most powerful economic instrument available to the less developed countries of Asia in their struggle for industrial growth... It can provide capital and technology, as well as managerial and entrepreneurial skills all of which are essential to economic progress. It can have a catalytic effect on local business, thus stimulating the host country's economy beyond the limits of the actual physical inputs received."[9]

Other advantages cited include the increase in employment opportunities in the host countries, the generation of more taxes, a rise in exports and a reduction in imports. A more sweeping claim is made by some that the multinational corporation "offers a possibility of greater equalization between rich and poor countries."[10] Others take an even more optimistic view and see in the multinational corporations as the "means to transcend existing national political boundaries and to build one world."[11] Judging by these avowed advantages, what developing country would not welcome multinational corporations with open arms? The fact however is that many host countries specially the underdeveloped ones, who had originally indeed welcomed them, have regarded the multinational with increasing skepticism and concern, and in some instances, even with hostility.

The more serious charges against these multinational corporations are economic and political in nature. The more obvious complaints are of course economic in origin. A charge made by many, including some of our local businessmen, is that multinationals take out of the host country more wealth than they put in. Although they have indeed capabilities

[7]*The Multinational Corporation and the World Economy,* Washington, U.S. Government Printing Office, 8 (1973).

[8]See I. R. Feltham & W. R. Rauenbusch, *Canada and the Multinational Enterprise,* in NATIONAL AND THE MULTINATIONAL ENTERPRISE, *op. cit.,* p. 41.

[9]See R. B. Stauffer, *Nation-Building in a Global Economy: The Role of the Multinational Corporation,* 16 PHIL. J. PUB. AD. 15-16 (1972).

[10]*Ibid.,* p. 17.

[11]*Ibid.*

which can greatly contribute to development, their activities are however not necessarily geared to the goals of development, since profit is their main objective. Multinationals are said to drive unfair bargains with employees, customers, suppliers and fiscal authorities, and are thus accused of paying inadequate wages, charging excessively for products and services they provide, and depriving the host government of deserved revenue as a result of unfairly low royalties, tariff and tax agreements.[12] It is also claimed that the multinational corporations use up resources which would otherwise be used by local enterprises. It is feared that with their superior funding, technology and managerial ability, multinationals may drive national enterprise out of business.[13] Perhaps the most serious charge is that the multinationals frustrate the economic policy of the host government. By dominating or at least substantially affecting a host country's economy, multinational corporations are said to prevent innovative and independent planning by the local government. The host country is seen as being in the precarious position of having to depend on the multinationals' success for its own economic stability.[14] The fear has been expressed that if the multinationals gain too great a role in a host country's economy, it will be subject to severe damage when the multinationals, operating on a basis of global factor markets, pull out when conditions in a particular country change in a manner making such a move rational.[15]

Other attacks on multinationals' activities center mainly on their influence on the host country's politics. The observation has been made that their financial power and easy access to the top hierarchy of government and business may be used, openly or covertly, to influence the domestic political process to their liking, and that the pressures for corruption are therefore great.[16] An oft-repeated episode evidencing this undesirable influence is ITT's alleged attempts to subvert the Allende regime in Chile. Although these attempts were far from successful, no less than the Chairman of ITT's Board admitted that ITT had offered to contribute a substantial sum of money to prevent the election of Allende.[17]

Some local observers have charged that a sector of the Philippine business community has become so closely identified with their foreign

[12]See D. F. Vagts, *The Host Country Faces the Multinational Enterprise*, 53 B. U. L. REV. 203 (1973).

[13]See Montelibano's speech before the 21st National Convention of Manufacturers and Producers Preconvention Symposium held on August 9, 1974 (unpublished).

[14]See Vagts, *op. cit. supra*, note 12 at 264.

[15]See Stauffer, *op. cit. supra*, note 9 at 17.

[16]*Ibid.*, p. 21. See also UNITED NATIONS, MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT, *op. cit. supra*, note 3 at 57.

[17]See Vagts, *op. cit. supra*, note 12 at 261.

corporate ties as to work against the interest of the nation. This observation is in consonance with that made by an American writer, who in assessing the influence of multinational corporations in Latin America, concludes that "because of the powerful presence of foreign corporations in Latin America, national political development is retarded, authoritarian and personalistic forms of political behavior supported, development of more open channels of political communication prevented, and the degree of political instability increased."[18]

Multinational corporations are also accused of being governed largely beyond the control of any government. Multinationals deny this charge and assert that they come under the supervision of several governments and have to observe as many rules as there are countries in which they operate. They claim to be under the full control of the host country and that they would welcome uniform rules and supervision by one international organization. They assert that it is not the multinational corporation that is preventing uniform rules but the conflicting interests of sovereign states.[19]

Charges of a socio-cultural nature have also been levelled at multinational corporations. As pointed out by a report prepared by the Department of Economic and Social Affairs of the U.N. Secretariat, "The ostentatious living styles of foreign personnel as compared with those of domestic employees are a source of envy and resentment. Styles of management directed towards efficiency but insensitive to local cultural values may appear to people in the host country as arrogant and dehumanizing."[20] A similar observation in more specific terms is made by A. O. Hirschman as follows:

> "When numbers of businessmen in an underdeveloped nation are drawn into close alliance with foreign corporations they are deflected from performing the multiple reform tasks that have to be completed in any nation before rapid change can take place. When energetic, talented enterpreneurial types are enticed into working for multinationals, there is less likelihood that these will be effective assertive leadership to move the economy forward along autonomous lines. A career in a multinational with its material ties of a good salary, liberal fringe benefits, and retirement provisions, and with its attitude-modifying influences created by a work environment dominated by foreign behavioral models, might be expected to produce in the careerist some degree of removal if not alienation from the life of his country. The further up in the hierarchy of the multinational he moves the more he will be forced to exert pressure within his own nation on behalf of the interests of the corporation."[21]

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[18]See Stauffer, *op. cit. supra*, note 9 at 21 and 37.
[19]See Bulletin Today, August 19, 1974, p. 19.
[20]UNITED NATIONS, THE MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT, *op. cit. supra*, note 3 at 57-58.
[21]Cited in Stauffer, *op. cit. supra*, note 9 at 20.

Methods of Entry —

In its evolution into a multinational corporation, a business firm would go through certain stages of organization. A manufacturing company which has heretofore catered only to the domestic market, may decide to export its products to other countries. To take care of these export operations, it might organize an export department as part of the domestic firm. This would be its first step toward multinationalization. As the volume of its sales abroad increases, the export department may prove inadequate for efficient handling of foreign operations, and the corporation may find it necessary to replace it with an international division. Distribution centers will have to be established abroad. Soon limited manufacturing operations may be initiated in the various areas of the world where the firm's products have found a market. And as the volume of foreign business continues to increase, these manufacturing operations abroad will likewise be broadened.

These operations abroad, whether merely marketing or including manufacturing, will have to be conducted through some sort of representative in each country of operation. For this purpose, a multinational may enter a host country in various ways. It may organize a subsidiary as a domestic corporation, either wholly owned by it or under its effective control. In such a case, the subsidiary would be a legally independent unit and will be governed by the host country's laws. Local examples would be Shell Philippines, Ford Philippines, and IBM Philippines. Under the Corporation Law, articles of incorporation would have to be filed with the Securities and Exchange Commission, and if the subsidiary qualifies, registration with the Board of Investments is necessary. Or a multinational may merely open a branch or agency in the host country, bringing in capital and managerial and technical know-how, without organizing a legally independent unit. In this case, a license to do business in the Philippines will be needed. As in the case of the domestic subsidiary, permission of both the Board of Investments and the Securities and Exchange Commission is necessary. Some of our banks are actually mere branches or agencies of American-based multinational banks. This method of entry is now less favored. The fact that a branch or agency does not have a legal personality distinct from its parent company makes it a foreign organization in the host country, and thus it may be subject to disadvantageous treatment. Besides, considerations of tax and other liabilities may make the use of a branch more burdensome.[22]

A third method is the joint venture, where the parent corporation may merely invest in either a new or a going domestic concern by pur-

[22] See for example Koppel (Phil.) Inc. v. Yatco, 77 Phil. 496 (1946).

chasing part of its stock and/or lending it money and technical know-how. This method is often resorted to where the business concerned is partially nationalized in that a definite percentage of the capital must be owned by citizens of the host country. It would also be the most convenient set up where the multinational does not possess a sales organization in the host country, and therefore, it has not had any previous experience in the place. In such matters as labor and public relations, knowledge of market conditions and the like, it would need assistance from local business. In this case, the multinational corporation would also need authority from the Board of Investments if its investment exceeds 30% of the capital of the business enterprise it invests in, unless the latter is already registered with said Board.

In other cases, multinationals seek entry into a host country by virtue of service contracts with domestic companies. This is an alternative method to the joint venture where the area of entry is nationalized.

Whichever method of entry is employed, the parent corporation would in many instances exercise effective control over the business it has invested in, since such control can be exercised even from a minority position.

Philippine Laws and Policies —

The present policy of the Philippine government towards foreign investment in general, and to multinational corporations in particular, is clearly one of "attraction". Congressional policy is eloquently evidenced by the Investment Incentives Act, the Export Incentives Act, and the Foreign Business Regulations Act (Republic Act 5455). As the declaration of policy of the Investment Incentives Act says in part: "... it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encouraged foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

The policy of the present administration is evident in the public statements of President Marcos. In his speech delivered on the occasion of the second anniversary of the proclamation of martial law, President Marcos said:

> "For us to accelerate economic growth on a broad front x x x, it is essential that net capital increases so as to meet the demands of national development. Our yearly capital requirement is projected in the vicinity of \$400-\$500 million. We have four sources of capital: foreign exchange earnings, external sources in the form of foreign loans and foreign investments; domestic investments; and national savings. x x x"[23]

In a U.S. News and World Report interview, he was quoted as saying:

> "We're interested in all forms of foreign capital, and I would like to emphasize two things: we will offer as much incentive as is possible, and foreign capital will be protected. There will be no confiscation while I'm President. Such things as the amortization of investment, retirement of capital and transmittal of profits are guaranteed."[24]

The holding of the Miss Universe Pageant here, the unprecedented boost which tourism has enjoyed these past two years, as well as the red carpet treatment being given visiting executives of top multinationals, are all parts of the national plan to show the world the favorable climate we have for foreign investment. We have even given incentives to the establishment here of regional headquarters of multinational corporations under very liberal conditions and with assured benefits,[25] in the hope that it would serve as an eye-opener to our national assets. This attraction policy attempts at several goals, including import substitution and export promotion to reduce our balance-of-payment deficit; to solve our serious unemployment problem by creating additional jobs and by importing technology and teaching it to our labor force; and to improve our level of living.

In 1971, a study of private foreign investments in the Philippines was conducted in 1971 by an interagency working group based on data gathered from 900 of the largest Philippine corporations (415 of which had foreign equity). According to this study, the ability of the Philippines to attract foreign investment is greatly influenced by the assessment of investors of the climate for investment in the country, relative to other Southeast Asian countries, specially where several alternative location exist. At that time, Singapore and Malaysia ranked first and second most attractive investment climates among ASEAN countries. The survey also showed that Hongkong, South Korea and Taiwan were

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[23]See PHIL. PROSPECT, October, 1974, p. 6.

[24]See "The Philippines: American Corporations, Martial Law and Underdevelopment", 57 IDOC, Corporate Information Center of the National Council of Churches of Christ in the U.S.A., November, 1973, p. 27.

[25]See Pres. Decree No. 218 (1973) as amended by Pres. Decree 348 (1973).

viewed more favorably than the Philippines. Although the Philippines was regarded by many of the interviewed companies as a country with considerable investment opportunities, it was felt that at the time, the investment climate was not attractive enough, specially to European companies. Some of the unfavorable factors quoted were the perceived uncertainty of the economic climate, the lack of a strong institutional framework in planning and implementation functions normally carried out by the government sector, the restrictions on foreign investments, land ownership, foreign exchange usage and imports, and the bad public image of the country overseas. Most of the companies interviewed however did comment favorably on the resource endowment, markets and well-educated and capable work force of the country. A number of the companies stated that if the unfavorable aspects would be overcome, the Philippines would have considerable attractions to foreign investors.[26]

The foregoing assessments were made four years ago. Based on available reports, the picture has markedly improved since, specially after the declaration of martial law. Securities and Exchange Commission figures show an increase of 380% in the amount of paid-up capital of foreigners in newly registered firms — from ₱4.6 million during the period just before martial law to ₱22 million from September 1972 to June 1973.[27] According to the National Economic and Development Authority, foreign investments rose by 169.5% during the first semester of 1974 to total ₱567.8 million, as compared to ₱210.7 million registered in the same period in 1973.[28] Board of Investments data show that European investment here is picking up substantially, accounting for 24% of total foreign investments proposed for the period from October, 1973 to August, 1974.[29] Although American investment still ranks number one, Japanese investment has increased rapidly the last three years and now ranks second. Canadian and Australian investment also showed an increase during said period. The recent visits here of top executives of the Chase Manhattan Bank, the third largest commercial bank in the world, culminated with an announcement by David Rockefeller, chairman of its board, that his bank has decided to exploit another investment here hinting that their decision for investment expansion was motivated by the wise investment policies of the administration and the satisfactory results of earlier investments.[30]

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[26]See STUDY OF PRIVATE FOREIGN INVESTMENTS IN THE PHILIPPINES, as of December 31, 1970, p. 4.

[27]See "The Philippines: American Corporations, Martial Law and Underdevelopment", *op. cit. supra*, note 24 at 29.

[28]See PHIL. PROSPECT, September, 1974, p. 1.

[29]See Bulletin Today, October 24, 1974.

[30]See Daily Express, November 5, 1974, Editorial

There seems to be no doubt therefore that as a result of the nation's all-out efforts to attract foreign investment, recent events tend to show an increasing interest on the part of multinationals in the Philippines. It becomes pertinent and important at this point therefore to inquire on the one hand, whether the legal climate is such as to sustain this attraction for as long as our needs last; and on the other, whether in our earnest desire to attract multinationals, we have provided sufficient safeguards against any serious adverse long-range effects, warnings of which have been sounded all over the world. For keeping the balance between these two factors will greatly affect the future of our economy.

In view of the complexity and the broadness of the subject matter, such an inquiry, if it is to be comprehensive and adequate, would need the combined efforts of economists, businessmen, social scientists, lawyers and those in government. Certainly, this multi-faceted problem cannot be adequately treated in one short lecture such as this nor by just one person who is neither an economist nor a businessman. As stated earlier, the United Nations Economic and Social Council, sometime in 1972, created a committee of 20 persons referred to as the Group of Eminent Persons and comprised precisely of such experts in different fields, to study the world-wide effects of the operations of multinational corporations and to submit its recommendations. Its report which was published during the latter part of last year, contains some 50 recommendations, many of which are particularly addressed to the less developed countries like the Philippines. This paper will limit itself to an assessment of how far existing provisions of Philippine law directly affecting Philippine subsidiaries and affiliates of multinatonal corporations, meet the more significant of these recommendations. In this connection, I would like to point out that the Group of Eminent Persons were not unanimous in all their opinions, and that there was quite a divergence on several points, as would be expected in any group of experts.

One of the first observations made by the U.N. Group is that in many host countries, there has been widespread concern over foreign control of key sectors of the economy. This is specially true in developing countries, where multinationals often dominate the mining and manufacturing sectors. The Group therefore recommended that each host country should decide, in the light of its own needs and aspirations, those areas of economic activities in which it will accept foreign investment and those which it wishes to reserve for indigenous companies, and specify clearly the conditions upon which such investments will be allowed in those sectors.[31] As host country, the Philippines has clearly delineated the areas of our

[31]See UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS, *op cit. supra*, at 59.

economy reserved for Filipino ownership. The Philippine Constitution and various statutes have reserved certain business activities to citizens or to corporations or associations a definite percentage of the capital stock of which is owned by Filipino citizens. This percentage ranges anywhere from a bare majority to 100% of either the entire subscribed capital stock or of the voting stocks of the corporation concerned. In these areas, except where 100% Filipino ownership is required, multinational corporations can at most be only joint venturers with Filipino capital, and can never, at least not legally, obtain complete control. In the retail trade, and the operation of rural banks and of mass media, for example, multinationals are completely out because the law governing these require 100% Filipino ownership. Although foreign investment was previously prohibited in the rice and corn industry, Presidential Decree No. 194 now allows foreigners, under certain conditions, to participate up to 40% in the culture, production, milling, processing and trading (except retailing) of rice and corn. In the interisland shipping industry, the requirement is that at least 75% of the capital be Filipino-owned. In banking institutions, the law allows only 30% foreign equity, and requires that at least 2/3 of the members of the Board of Directors be Filipinos. The Monetary Board may however increase the 30% maximum to 40% with the approval of the President.[32] The 70% requirement of Filipino capital applies also to pawnshops.[33] In financing companies, the required Filipino equity is 60%.[34] In investment houses, at least a majority of the voting stock must be owned by Filipinos.[35] However, Presidential Decree No. 590 allows the continued operation of foreign stock brokers in the guaranteed indemnity of securities of other corporations for five years from February 15, 1973 or until the end of their corporate life, whichever comes earlier. Our Constitution requires that the exploration, development, exploitation and utilization of natural resources be limited to citizens and to associations at least 60% of the capital of which is owned by Filipinos, but allows such Filipino-owned-or-controlled corporations to enter into service contracts with any foreign person or entity for financial, technical, management, or other forms of assistance.[36] In this connection, Presidential Decree No. 87 has encouraged oil exploration by foreign investors through service contracts with the government, under which 40% of the proceeds goes to the foreign investor, free from taxes. In case of public utilities, which must also be 60% Filipino, the new Constitution expressly allows foreign investors to participate in the gov-

[32]Sections 12 and 13, Rep. Act No. 337 (1948), as amended (General Banking Act).
[33]See Pres. Decree No. 114 (1973).
[34]Rep. Act No. 5980 (1969), sec. 6.
[35]Pres. Decree No. 129 (1973), sec. 5.
[36]PHIL. CONST., art. XIV, sec. 9.

erning bodies thereof proportionally to the amount of their holdings.[37] Previously, such corporations could not even employ a foreigner without violating the Anti-Dummy Law.[38] Thus, we see, that even the Constitution has relaxed some of the nationality requirements.

In the areas which are not nationalized, may a foreign company organize a domestic corporation and own all or at least the controlling interest therein? In other words, in the non-nationalized areas, may multinational corporations come in and exercise effective control over its investments? Taking into consideration the provisions of Republic Act 5186 otherwise known as the Investment Incentives Act and Republic Act 6135 referred to as the Export Incentives Act, not only may they come in — they are lured into coming in, provided their investment is made in an area considered as "pioneer".

The Investment Incentives Act directs the Board of Investments (BOI) to study and prepare an Investment Priorities Plan wherein it lists those specific areas of economic activity declared to be preferred and/or pioneer areas of investment. This Investment Priorities Plan may of course be amended whenever the need to do so arises. A preferred area may be pioneer or non-pioneer. If an enterprise wishes to enjoy the benefits granted by the Investment Incentives Act, it must register with the BOI. To be entitled to registration, a corporation must be domestic; its business must be in a preferred area of investment as specified in the Investment Priorities Plan; at least 60% of its outstanding voting stock must be owned by Philippine nationals; and at least 60% of the members of its board of directors must be Filipino citizens. However, under certain conditions, a domestic corporation, although wholly owned by aliens, may register and enjoy the benefits of the Investment Incentives Act where it proposed to engaged in a pioneer project, if, and only if, it can not be readily and adequately exploited by Philippine national[39] and subject of course to the nationalization laws. A pioneer project is one which manufactures, as much as possible out of a substantial amount of domestic raw materials, a product that is not being produced in the Philippines on a commercial scale or that employs a new and untried formula or process in the manufacture of the product.

It is also possible for a domestic alien-controlled corporation to be registered even in a preferred, *non-pioneer* area if the measured capacity of such non-pioneer area is not filled by qualified Philippine nationals

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[37]PHIL. CONST., art. XIV, sec. 5.

[38]See Section 2-A, Com. Act No. 108 (1936), as amended (Anti-Dummy Law); See also Luzon Stevedoring Co. v. Anti-Dummy Board, G.R. No. L-26094, August 18, 1972, 46 SCRA 474 (1972).

[39]Rep. Act No. 5186 (1967), as amended (Investment Incentives Act), sec. 19.

within three years from its declaration as a preferred area. Furthermore, the law has recently been amended granting the BOI the power to suspend, in appropriate cases, the nationality requirement imposed by statute, upon approval of the National Economic and Development Authority (NEDA) in big multinational projects pursuant to international complementation arrangements for the manufacture of a particular product on a regional basis.[40] Under this amendment, foreign investors may consider the Philippines as the base for serving the Southeast Asian market in cases of complementation schemes without being subject to the various statutes limiting ownership of the majority of the stockholdings to Filipinos in case the particular activity is subject to such limitation.[41] It goes without saying that where the nationality requirement is imposed by the Constitution, this power of the BOI to suspend cannot apply.

What benefits are granted by the law to multinational corporations to encourage their entry and registration with the BOI? All BOI registered enterprises are guaranteed certain basic rights. The Investment Incentives Act allows the repatriation of the entire proceeds of the liquidation of the foreign investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation, subject only to the right of the Monetary Board to impose foreign exchange restrictions in cases of emergency or national crisis. Earnings of such foreign investment may be remitted abroad in the currency in which the investment was originally made at the exchange rate prevailing at the time of remittance, subject again to the Monetary Board's right to impose foreign exchange restrictions in case of emergencies. These exchange restrictions have been relaxed, where the investments were made after March 15, 1973, provided such investment was registered with the Central Bank and the BOI. In this case, repatriation of capital in full may be made at any time, and 100% remittance of all earnings, dividends and capital gains on these new investments is now allowed.[42] Previous to this new rule, repatriation and remittance could be made only in installments at regulated intervals.

The law also gives assurance that the property represented by the foreign investment shall not be expropriated by the government except for public use or in the interest of national welfare and defense, and only upon payment of just compensation. In such cases, the domestic subsidiary may remit to its foreign parent the sum received as compensation for the expropriated property in the currency in which the investment was

[40] *Ibid.*, sec. 16(m).

[41] See *Liberalization of Foreign Investment Rules*, in INVESTMENT OPPORTUNITIES IN THE PHILIPPINES 11.

[42] See Central Bank Circular 365 (1973).

originally made at the exchange rate prevailing at the time of remittance.[43] The same law guarantees that no requisition of the property of a multinational corporation shall be made by the State, except in the event of war or national emergency and only for the duration thereof, and just compensation is to be paid therefor either at the time of requisition or immediately after the cessation of the state of war or national emergency. These payments may also be remitted to the foreign parent company in the currency in which the investment was made at the exchange rate prevailing at the time of remittance.[44]

Aside from the guarantee of the aforementioned rights, the law offers to the multinational corporation which decides to invest in a BOI Registered enterprise, tax incentives in the form of tax exemptions, allowable deductions and tax credits. Although a pioneer enterprise is offered greater incentives than a non-pioneer one, many of the incentives are common to both. All imported machinery equipment and spare parts are exempt from tariff duties and compensating tax.[45] If such machinery is purchased from a domestic manufacturer, a tax credit equivalent to 100% of the value of compensating tax and custom duties that would have been paid on such machinery if it had been imported will be given. Although the multinational corporation is not exempt from income tax, various deductions from income are allowable, such as organizational, pre-operational,[46] and labor training expenses.[47] It is also granted the privilege of accelerating depreciation of fixed assets,[48] and of carrying over the deduction for net operating loss for the first ten years of operation from 6 years immediately following such loss.[49] A pioneer enterprise is in addition promised exemption from all internal revenue taxes, except income tax, on a gradually diminishing basis, starting with 100% exemption for the first five years down to 10% for the thirteenth through the fifteenth year.[50]

The policy, requirements and incentives under the Export Incentives Act are similar to those under the Investment Incentives Act. Additional incentives are given to a BOI registered export producer which establishes its plant in an area designated by the BOI as necessary for the proper dispersal of industry, or in an area which the Board finds deficient in infrastructure, public utilities, and other facilities.[51]

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[43] Rep. Act No. 5186 (1967), as amended, sec. 4(d).
[44] *Ibid.*, sec. 4(e).
[45] *Ibid.*, sec. 7(a).
[46] *Ibid.*, sec. 7(e).
[47] *Ibid.*, sec. 7(k).
[48] *Ibid.*, sec. 7(b).
[49] *Ibid.*, sec. 7(c).
[50] *Ibid.*, sec. 8(a).
[51] Rep. Act No. 6135 (1970) hereinafter referred to as the Export Incentives Act, sec. 9(a).

There are also non-tax incentives, varied in nature, including post-operative tariff protection for pioneer enterprises, anti-dumping protection from government competition for all registered enterprises, pioneer or otherwise.[52] The President also ordered the creation of the Assistance for Foreign Investors in labor-intensive projects, which provides ready answers to inquiries of foreign investors and facilitates inter-agency action on any project authorized for assistance by the team.[53] Pioneer enterprises are allowed to employ foreign nationals for five years after the firms begin operating.[54] Non-pioneer registered enterprises may also employ a limited number of foreigners but only in supervisory, technical or advisory positions, also for a period of five years from the date of registration.[55] Immigration rules have also been relaxed so that a special non-immigrant visa may be issued to officers of foreign investment houses, foreign investors and stockbrokers investing in the Philippines upon proof that they have made or intend to make investments in the country in an amount not less that $100,000, provided that actual investment is made within three months.

Suppose that a multinational corporation wishes to enter an area not capable of registration under the Investment Incentives Act because it is not a preferred area of investment, may it be allowed to invest therein? Under Republic Act No. 5455 otherwise known as the Foreign Business Regulation Act, it may. Under the said law, where the foreign investment in a non-registered enterprise does not exceed 30% of the capital, prior authority from the BOI is not necessary. But where such investment exceeds 30%, then BOI permission is necessary which will be granted provided such area of economic activity is not adequately exploited by Philippine nationals and would contribute to the sound and balanced development of the national economy on a self-sustaining basis, and is not otherwise inconsistent with the Constitution and other laws.[56] Since the enterprises coming under this law cannot be registered under the Investment Incentives Act, they cannot enjoy the benefits granted by the latter.

In resumé therefore, in this country, multinational corporations can invest in:

(1) all preferred pioneer enterprises, with BOI authority, — as much as 100% of the capital of such enterprises, unless the area of industry or business concerned is nationalized, totally or partially and only

[52] Rep. Act No. 5186 (1967), as amended, secs. 8(c), 7(i) and (j).
[53] Letter of Instruction No. 5 (1972).
[54] Rep. Act No. 5186 (1967), as amended, sec. 8(b).
[55] *Ibid.*, sec. 7(g).
[56] See Section 3, Rep. Act No. 5455 (1968), (Foreign Business Regulation Act).

if such area is not adequately exploited by Filipino capital;

(2) in a preferred, non-pioneer enterprise with BOI authority, up to 40% of the capital and even in excess of that up to 100% if Filipino capital cannot adequately exploit the same within a period of three years from its declaration as a preferred enterprise, subject also to nationalization laws; and

(3) in non-preferred enterprises, without prior BOI authority, if the investment is not more than 30% of the outstanding capital; and if it exceeds 30%, with BOI authority and only if the area of investment is not adequately exploited by Filipino capital, would contribute to the sound and balanced development of the national economy and would not conflict with the provisions of the Constitution and other laws.

It is clear from all the foregoing that our policy makers have laid down in no uncertain terms, much in accord with the U.N. Group's recommendations: first, the specific areas where Filipino control must at all times be kept inviolate, and second, the areas where multinational corporations are welcome and encouraged to enter to help us on the road to economic development. It is significant that except where the investment in a non-registered enterprise, does not exceed 30% or 40% in a registered enterprise, in all areas where foreign investment is permitted, it is a condition precedent to its entry that Filipino capital cannot adequately exploit the area of business or industry concerned. First preference in all areas of investment is given to Filipino capital. It is hoped that this clear definition of areas and this preference given to Filipino capital would substantially reduce the risk that multinational corporations may drive national enterprise out of business, one of the charges levelled by the Filipino businessmen against multinationals. In this connection, however, one should keep in mind that under the Constitution, the Prime Minister or, by virtue of the transitory provisions, the President has the power to enter into international treaties or agreements waiving any or all nationality requirements, should the national welfare and interest so require.[57]

But the U.N. Group goes farther in its recommendations and suggests not only that the host country indicate the areas where foreign investment would be allowed, but also that it lay down as precisely as possible the conditions under which multinational corporations should operate and that such host country consider creating provisions for the review of such conditions at the request of either side, after suitable intervals. In exercising the rule-making power granted to it by law, the BOI may lay down the general conditions for the entry of multina-

[57] PHIL. CONST., art. XIV, sec. 15.

tionals in specific areas of investment. In addition, the Investment Incentives Act, in granting the BOI the power to approve applications for registration thereunder, gives it the authority to impose on the multinational corporation such terms and conditions as it may deem necessary to promote the objectives of the Act.[58] Thus, rather than laying down specifically all the conditions under which multinationals should operate, the law quite appropriately leaves to the BOI, the agency best equipped for the purpose, the important and delicate task of indicating to all multinational corporations taking advantage of our hospitality what is expected of them in their role in assisting in our economic development. The BOI can therefore assess the circumstances surrounding each application and lay down the conditions most appropriate to such circumstances, having in mind our own economic goals. This is essential for it would be folly for anyone to believe that a multinational corporation would have as its prime consideration in investing in any developing country, the economic welfare of the latter, committed as it is to the accumulation of profits for its stockholders. This power of the BOI to lay down terms and conditions is quite broad and extensive, since it is subject to no limitation save that they be to promote the objectives of the Investment Incentives Act. Conditions may therefore vary with each multinational corporation and may possibly cover matters such as the amount of required capitalization, the choice of products to be manufactured, even the training of Filipinos in specified technical skills, and other similar matters — all of which would insure the multinational corporations' contribution to the sound development of the economy. These terms and conditions must appear in the certificate of registration issued by the BOI, without which the multinational cannot start to operate. Violation of any of these conditions may result in either the cancellation of its registration or the suspension of its enjoyment of incentive benefits, and possibly the refund of incentives previously enjoyed by it.

Our lawmakers however did not have the foresight to provide for a review of the conditions originally imposed on multinationals prior to registration. Since what may have seemed adequate and fair at the time of entry may prove unsatisfactory to either the host country or to the multinational corporation after the lapse of some time, such a review at the request of either side, is essential and is strongly recommended by the U.N. Group. The host country can of course in effect change the terms and conditions of registration by legislation — but such an action may prove too costly in terms of the future flow of needed foreign investment. Sensing the possibility of a situation where the Philippines may be at the losing end of the bargain, the President just recently issued

[58] Rep. Act No. 5186 (1967), as amended, sec. 16(c).

a Presidential Decree amending the Investment Incentives Act by empowering the BOI to withdraw or cancel partially or totally, the incentives granted to a registered enterprise when it has a paid-up capital of at least ₱500,000 and has earned for at least two years profits in excess of 33-1/3% of equity even without the incentives given by the law.[59] The Ranis Report even goes farther and suggests that all incentives should be done away with as they result in an unneccessary cut on our revenues. According to this report, foreign investment would come in even without these incentives if the investment climate is otherwise favorable. Factors like economic stability, peace and order, marketing opportunities, availability of raw materials and the like are considered by multinational corporations much more important than tax exemptions and tax credits — since the latter would not mean much, considering the global operations of these corporations.[60]

One of the fears often expressed about the presence of multinational corporations in a developing country is that the latter's economy may become too dependent on the operations of these multinationals. The review of the conditions of entry would of course greatly help to minimize the possibility. But as previously stated, aside from possible amendatory legislation and the BOI's power to withdraw all incentive benefits when a multinational corporation has already become profitable, there is no provision allowing such review. A policy which would help toward this end is one providing for a gradual fade-out of foreign equity. Fortunately, our law does provide for this. In fact, one of the conditions for entry of even a full-foreign-owned domestic corporation in a pioneer area is that it must obligate itself to attain the status of a Philippine National within thirty years from the date of its registration by having its shares of stock listed with a Philippine stock exchange within 15 years and actually offering for sale the said shares to Philippine nationals immediately after said period. This means therefore that within thirty years, the multinational corporation which originally was more than 60%, or maybe even 100% foreign-owned, must reduce such foreign equity to not more than 40% of the outstanding voting stock of such corporation and have a Board of Directors, 2/3 of the members of which are Filipino citizens. At the end of said thirty years, therefore, the multinational corporation would be controlled by Filipino citizens and/or by corporations at least 60% of the capital of which is owned by Filipinos.[61] Prior to Presidential Decree No. 92 amending the Investment

[59] *Ibid.*, Section 16(p) as inserted by Pres. Decree No. 485.

[60] See INTERNATIONAL LABOR OFFICE, SHARING IN DEVELOPMENT: A PROGRAMME OF EMPLOYMENT, EQUITY AND GROWTH FOR THE PHILIPPINES, 285-286 (1974) (hereinafter referred to as the RANIS REPORT).

[61] Rep. Act No. 5186 (1967), as amended by Pres. Decree No. 92, sec. 19(a)(3).

Incentives Act, the fade-out period was only twenty years which, according to the Ranis Report:[62] is too short under international standards. Where the multinational corporations concerned is exporting at least 70% of its total production, the period for gradual fade-out is longer — 40 years, and listing in the domestic stock exchange is to be made within 25 years from registration. In any case, the BOI may extend the 30 or 40-year period for another 10 years if it is shown that the multinational corporation has exerted its best efforts to sell the required number of shares to Filipinos, or for such other cause as the Board may deem sufficient to justify the extension.[63] The Ranis Report however warns that this fade-out may give rise to the "make hay while the sun shines" attitude.[64]

As a matter of principle, multinational corporations should be encouraged to identify as closely as possible with the interests of host countries. The fact that they are subsidiaries of affiliates of a foreign company which is governed by the laws of the home or base country, they should not act in a way which would conflict with the national policy of the host country. Embodied in the U.N. Group's recommendations is a corollary to this principle, *i.e.*, that policies of the host country toward multinational corporations should be fair and as closely as possible similar to those which apply to indigenous companies. This principle holds true under our laws. On the other hand, a multinational corporation does not receive any greater benefits than an indigenous company. The basic rights granted and the requirements laid down by the Investment Incentives Act apply equally to all BOI registered enterprises, whether foreign owned or indigenous companies. And with the termination of the parity rights granted to citizens of the United States, all multinationals are now treated alike, with no special favors granted to any group based on nationality. Furthermore, a subsidiary of a multinational corporation is organized as a domestic corporation, and would therefore be governed by all the laws which govern domestic indigenous companies.

One of the main causes of concern which local businessmen have recently shown over the operations of multinationals is the allegation that the latter have brought in less capital than the amount they have sent out of the country, thus contributing to the deficit in the balance of payments. It is claimed that multinationals get much of their funding from domestic sources. A well-known Filipino economist has been quoted as stating: "Three years ago, total foreign investment inflow of $18

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[62] See RANIS REPORT, *op. cit. supra*, note 60 at 281.
[63] *Supra*, note 61.
[64] RANIS REPORT, *op. cit. supra*, note 62 at 290.

million generated earnings of $200 million. This indicates foreign capital bringing out more funds that it is putting here."[65] It may be that these figures are exaggerated, but the report of the Inter-Agency Working Group on Foreign Investment seems to support at least the conclusion that multinational corporations do get a big part of their funding from within the Philippines. Despite the provision prohibiting government financial institutions from giving priority to loan applications of corporations more than 40% of the voting capital of which belongs to aliens,[66] according to said report, at the end of 1970 the aggregate long-term borrowings of foreign firms amounted to ₱.14 billion from domestic sources and ₱.76 billion from foreign sources. Seventy percent (70%) of their short-term borrowings, however, were from domestic sources — ₱.87 billion, compared to ₱.24 billion from foreign sources. The total amount of borrowings, both long-term and short-term, was ₱1 billion from foreign, and ₱1.01 billion from domestic sources, showing that multi-national corporations obtained a little over one half of their working capital from within the Philippines, at least up to 1970.[67] Allowing the multinationals to tap domestic savings to fulfill their capital needs not only contributes to a possible deficit in the balance of payments but also deprives indigenous industry of the capital it needs to fulfill national goals. The same report supports the belief that the outflow of funds exceed the capital inflow. The study shows that for the period 1955-1970, the inflow of equity investments from nonresidents was estimated at ₱1.4 billion, and that the amount remitted overseas totalled ₱1.7 billion,[68] or a net outflow of ₱379 million. According to the Ranis Report, 1971 and 1972 saw net outflows of $4 million and $25 million, respectively.[69] More recent official data are not available. The recent Central Bank policy lifting all restrictions on the remittance of profits and dividends earned starting January 1, 1973, and the repatriation of cash investments made after March 15, 1973 provided said foreign investment has been registered with the Central Bank and the Board of Investments, will most certainly result in increased cash outflows and thus increases the probability of bringing about the situation which domestic business has been harping against — that the multinationals take out more money than the amount they bring in. On this point however, the U.N. Group of Eminent Persons is of the view that: "...in order for correct decisions to be made, the problem should be considered not simply in terms of the impact of identifiable inflows and out-

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[65]See Rodolfo V. Romero, "Overdue Assessment", quoting Sixto Roxas, Daily Express, September, 1974.

[66]Rep. Act No. 5186 (1967), as amended, sec. 10.

[67]See STUDY OF PRIVATE FOREIGN INVESTMENTS IN THE PHILIPPINES, *op. cit. supra*, note 26 at 4.

[68]*Ibid.*, p. 8.

[69]See RANIS REPORT, *op. cit. supra*, note 62 at 280.

flows attributable to the presence of multinational corporations, but in the wider perspective of the country's over-all development. The balance of payments is not an end in itself, and policies to deal with it must be part of an over-all economic policy. Except when imports are financed out of outright grants, any import must have an immediate negative effect in purely balance-of-payments terms. The more crucial question is that of ensuring that the totality of external finance available makes the maximum contribution towards the fulfillment of the country's primary goals, which may not be purely economic and may include concern over consumption patterns and income distribution."[70] The U.N. Group feels that, "in assessing the impact of multinational corporations, host countries should attach greater importance to the kind of contribution these enterprises can make to their over-all development, and should take into account their impact on the balance of payments primarily for the purpose of making a choice, where such exists, between alternative methods of financing a project."[71] It is this assessment of the total situation that our government has yet to make. If the fears of local business and industry are justified, remedies are available under existing laws. The BOI, in the exercise of its power to impose conditions on the entry of foreign investments, may require multinational corporations to bring in a specified percentage of the capital they need, thus keeping their domestic funding to a minimum. If necessary, they may even be required to bring in all their capital. This power of the BOI to impose conditions on each and every multinational corporation which wishes to invest here, coupled with its power to determine from time to time the permissible areas of foreign investment, if used judiciously and conscientiously, should go a long way in insuring our economy against foreign domination.

Although multinational corporations' influence in a developing country is in the main economic, it may extend to the political area. One reason why multinational corporations came to world-wide attention was the ITT incident in Chile. Although no incident as serious has arisen since, multinationals have been open to suspicion because of it. One does not have to tax the imagination to see that multinational subsidiaries can influence the host government's policies by using not only their own but also their parent company's resources to support a political party of their choice. The atmosphere in this country before the imposition of martial law was particularly favorable to such a situation. On the other hand, the right of multinationals to represent their views to local authorities with respect to policies which may affect them should be recognized. On this point, the U.N. Group has recommended that host

[70] UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS, *op. cit. supra*, note 63.
[71] *Ibid.*, p. 65.

countries should "clearly define the permissible public activities of the affiliates of multinational corporations and also prescribe sanctions against infringements. The financial contribution of multinational corporations as well as of others to interest groups, should be regulated and disclosed."[72]

Under the Election Code of 1971, such financial contribution in aid of anyone's election to a public office is prohibited. Section 60 provides:

> "No foreigner shall aid any candidate or political party, directly or indirectly, or take any part in or influence in any manner any election, nor shall he contribute or make any expenditure in connection with any election campaign."

Corollary to this is the provision of Section 36:

> "It shall be unlawful for any person, political party or public or private entity to solicit or receive, directly or indirectly, any aid or contribution of whatever form or nature from any foreigner or foreign government for political purposes."

Any foreigner who violates these provisions may be deported after serving a prison term of not less than one year but not more than six years.[73] It is of common knowledge that this prohibition against any foreigner's intervention in electoral campaigns is the result of unfavorable past experience. The crux of the problem however lies in the effective implementation of the prohibition.

One of the most important contributions which a multinational corporation can make to a host country is its technological resources, whether these be in the form of services of skilled and specialized manpower, of physical plant and equipment, or of technical or commercial information. The U.N. Group observes that sometimes the technology introduced by a multinational corporation into a host country is not suitable to its needs. It therefore recommends that in the screening of applications of multinational corporations, an evaluation should also be made of the appropriateness of the technology to be introduced.[74] This evaluation can be done by the BOI which can effectively implement this requirement by exercising its power of imposing as a condition of entry, the kind of technology acceptable, considering the nature of the business or industry in which entry is sought.

Another danger which accompanies importation of technology is the possibility of the host country's undue dependence on it. Although no

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[72] *Ibid.*, p. 46.
[73] ELECTION CODE, sec. 233.
[74] UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS, *op. cit. supra*, at 68.

country, no matter how advanced, can be totally self-sufficient in technology, every country must attempt to create and strengthen its own technological capability. In this matter again, the Board of Investments may use its power to prescribe conditions to the entry of multinational corporations, by requiring that such multinationals train Filipino labor in certain skills, so that when the time comes for the multinational to surrender control to Filipino equity at the end of the fade-out period provided by law, it shall be ready to take over not only financially and management-wise, but also technologically. In this connection however, the government must make sure that the skilled and specialized workers we have developed remain within our shores and are not lured into more lucrative pastures abroad.

On the matter of taxation, the U.N. Group discusses in its report the adverse overall effects which divergence of tax laws of the home and host countries can have on foreign investments. Many times a multinational corporation may be discouraged to enter a particular country because it may be subject to double taxation. On the other hand, a home country which postpones taxes on corporate profits abroad until repatriated may stand to lose by the channelling of such profits to other countries where the tax rates are lower. Although the United Nations is presently working on developing guidelines to facilitate bilateral treaties, between developing and developed countries for the avoidance of double taxation and the elimination of tax evasion, the U.N. Group of Eminent Persons strongly recommends that developed countries should immediately adopt a policy of entering into such tax treaties with developing countries, bearing in mind the importance of increasing the flow of capital to and strengthening the revenues of the latter.[75] Happily, the Philippines has been party to two such treaties as early as 1966. In that year, tax treaties aimed against double taxation and tax evasion, were concluded with Denmark and Sweden. Pending study and negotiations are similar tax treaties with Switzerland, Belgium, Italy, Spain, Norway, United States and Canada.[76]

On the other hand, developing countries have been competing for the favors of foreign investment by trying to outdo each other in offering incentives, taxwise and otherwise. With the world-wide problem of inflation and recession and the expected decrease in foreign investments by the developed countries, the urge to compete may become even more acute. Obviously, this situation can prove destructive and ruinous to the interests of the developing countries and can only benefit the foreign investor. The U.N. Group points out (confirming a similar observation

[75] *Ibid.*, p. 92.
[76] As per information furnished by Department of Foreign Affairs.

of the Ranis Report) that oftentimes, the concessions offered are not necessary to increase the inflow of investment, and results only in reducing the revenues much needed by the host country. The U.N. Group feels that regional cooperation with a view to the adoption of joint policies could help solve this problem.[77]

In the meeting held here last November of the representatives of countries within the Economic and Social Commission for Asia and the Pacific, BOI Chairman Vicente Paterno called on the developing countries to evolve a common structure in the grant of foreign investment incentives to avoid destructive competition among them in their efforts to attract the flow of overseas investments.[78] It is hoped that this meeting has marked the beginning of the regional cooperation envisioned by the U.N. Group of Eminent Persons, for, as its report so emphatically declares, regional cooperation "not only strengthens the bargaining position of developing countries but also helps them to evolve appropriate techniques for dealing with the problems to which the activities of multinational corporations often give rise."[79] For a host country's laws and regulations can only have force within its borders, and as long as it can have no voice in the formulation of the policies of the countries in the same region, so long will the fierce competition for attracting foreign investment continue, sometimes resulting in official neglect or failure to see its destructive effects on national dignity and the national interest as a whole. In the face of such competition, the legal safeguards which our Constitution and statutes have so painstakingly provided may well prove to be little more than illusory.

Let us hope therefore, that the call to regional cooperation sounded by our government does not fall on deaf ears, and that a regional arrangement will be pushed through in the very near future. For then, every underdeveloped country in this part of the globe can welcome foreign investment not only with open arms, but also and more importantly, with dignity and self respect.

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[77] UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS, *op. cit. supra*, at 42.

[78] See Bulletin Today, November 26, 1974, p. 14.

[79] UNITED NATIONS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS, *op. cit. supra*, at 42.