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THE DEMISE OF EXPROPRIATION AS AN INSTRUMENT OF LDC POLICY, 1980-1992

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Abstract. This paper reports data collected on expropriation activity by developing countries from 1980-1992, extending previous work by Kobrin [1984]. Kobrin's assumption that expropriation activity would continue to decrease over time, and his reasons for this assumption, are supported. The paper introduces recent phenomena which further indicate that expropriation is unlikely to resurface in the near future as a source of multinational corporation-developing country contention. Many developing countries now protect foreign direct investors from expropriation. The broad-scale movement in developing countries to privatize state-owned enterprises also indicates that governments will not be eager to replace private-sector activity with state ownership.

INTRODUCTION

The expropriation of foreign investments represents both a dramatic event to the general business community and a major loss to the expropriated company. It is important to keep abreast of whether, in general terms, the likelihood of expropriation is rising or falling for foreign investors.

In a well-known 1984 article, Stephen Kobrin published the results of a survey of expropriations in developing countries over the period from 1960-1979 (other studies include Hawkins et al. [1976]; Jodice [1980]; Kobrin [1980, 1982, 1985]). He reported data on the expropriation of affiliates of multinational corporations by seventy-nine developing countries.

This article reports on a continuation of that research, including an updating of the survey through 1992. Two issues are involved. First, Kobrin found that expropriations declined overall in the late 1970s and forecast that the

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rate of expropriations would continue to be low. This article answers the question of whether his forecast was accurate and, if so, why.

Second, Kobrin advanced four hypotheses to explain the decline in expropriation by developing countries. The validity of these hypotheses would be jeopardized to the extent that the downward trend of expropriations does not continue. I find that Kobrin appears to be correct. There is no evidence to contradict Kobrin's interpretation that expropriation has declined because developing countries have found other effective and efficient methods of dealing with multinational investors.

INFORMATION SOURCES

Expropriation is defined as the forced divestment of equity ownership of a foreign direct investor (see Kobrin [1980, 1984]). The divestment must be involuntary, against the will of owners and/or managers of the enterprise, and must involve the divestment of ownership. Finally, the investment must entail managerial control exercised through equity ownership across national borders.

The basic unit of analysis is an "act" of expropriation by a host government. An act is applicable to all of those firms taken in the same industry in the same country in the same year. Data were collected on a firm-by-firm basis and later aggregated into acts. Aggregating the expropriation of the affiliates of firms into acts results in a loss of information. However, firms are not comparable: "It would clearly distort analysis to consider 233 tea estates taken in Sri Lanka in 1975 and the International Petroleum Company (IPC) expropriated by Peru in 1968 as 234 forced divestments" [Kobrin 1984: 331].

The extension through 1992 suffers from the same limitations that affect data for 1960-1979.[1] Kobrin notes that the data for 1976-1979 may be less reliable than for previous years because it is more difficult to classify many acts as expropriations. In particular, a number of indigenization programs (in India, Indonesia and Nigeria) proved difficult to classify. This is also the case for the extension through 1992.[2] When particular instances required judgment, expropriation was broadly interpreted and the instances were included in the database.[3]

CHANGES OVER TIME

Kobrin found that expropriations of foreign affiliates generally rose through the 1960s. A sharp increase occurred in the early 1970s, which peaked in 1974 and 1975. This was followed by a marked decline during the latter 1970s. This extension shows that the declining trend extended through the 1980s. Expropriations maintained a fairly constant, but very low, level through 1986, but appear to have disappeared afterwards.

As a comparison, Kobrin's database contains an average of some twenty-eight acts per year for the period from 1960 to 1979. In this extension an average of between two and three acts per year is found during 1980-1985. In the late 1980s the average drops to less than one act per year.

Tables 1, 2 and 3 provide data on the timing of takeovers between 1960 and 1992. Both the number of takeovers, and the number of countries expropriating foreign direct investments, are concentrated in the early 1970s. The concentration is marked, with some 25% of all acts for the entire thirty-three-year period occurring in the two years from 1974 to 1975.

TRENDS IN GEOGRAPHIC AND ECONOMIC SECTORS

At the risk of overinterpreting a small number of cases, changes in expropriation activity during 1980-1992 should be noted. The regional concentration of takeovers shifted in 1980-1992. During the earlier 1960-1979 period, Africa was the region with the highest concentration of expropriation activity. Latin America and Asia became more active in the 1980s than Africa. This change in the 1980s is less significant than it may first appear, however, because only a few countries are involved (see Table 2). Africa remained the region of greatest expropriation activity for the 1960-1992 period.

A change also occurred in the sectoral distribution of forced divestments. Agricultural takings increased relative to other sectors in 1980-1985, although the small number of acts requires that one use care in comparing sectoral activity. The manufacturing and petroleum sectors were the most active in terms of expropriation activity from 1960-1992. Further, petroleum and manufacturing account for about the same percentage of all takeovers in each period, while other sectors have shown more variability.

Finally, there was a change in the character of expropriation. For 1960-1979 Kobrin distinguishes between "mass" and "selective" expropriators. While the distinction is somewhat difficult to make, mass expropriation involved expropriation of most or all foreign investment, indicated by fifteen or more acts of forced divestment, distribution over several industrial sectors, and evidence that ideological objections to foreign direct investment played a significant role.

In 1980-1992 the distinction between mass and selective expropriators cannot be made. In most cases an act actually represents an expropriation of only one firm. Only the expropriation of two petroleum companies in Zambia (1980) and of multiple U.S. landholders in El Salvador (1980) and Nicaragua (1982) involve the expropriation of more than one subsidiary. Each country would be classified as a selective expropriator in Kobrin's terminology.

EXAMINING CHANGES

The pattern of forced divestments in 1980-1992 strengthens Kobrin's tentative conclusion from the 1960-1979 data that forced divestment was limited to a particular historical era. The decline in expropriation activity is a stable trend, and not a temporary or cyclical phenomenon.

TABLE 1
Expropriation Acts by Year

Year	Number of Acts	Percentage of Total	Number of Countries Expropriating
1960	6	1.0	5
1961	8	1.4	5
1962	8	1.4	5
1963	11	1.9	7
1964	22	3.8	10
1965	14	2.4	11
1966	5	.9	3
1967	25	4.3	8
1968	13	2.3	8
1969	24	4.2	14
1970	48	8.3	18
1971	51	8.9	20
1972	56	9.7	30
1973	30	5.2	20
1974	68	11.8	29
1975	83	14.4	28
1976	40	6.9	14
1977	15	2.6	13
1978	15	2.6	8
1979	17	2.9	13
1980	5	.9	5
1981	4	.7	2
1982	1	.2	1
1983	3	.5	3
1984	1	.2	1
1985	1	.2	1
1986	1	.2	1
1987	0	.0	0
1988	0	.0	0
1989	0	.0	0
1990	0	.0	0
1991	0	.0	0
1992	0	.0	0
	575*	99.8**	

Source: 1960-1979 data are from Kobrin [1984: 333]. 1980-1992 data compiled by the author (see Note 1).
*date is missing for four acts
**error due to rounding

More specifically, Kobrin offered four hypotheses to explain the decline in expropriations during the late 1970s, which can be summarized as follows:

1. Nationalization of industries where ownership was of the essence (mining, petroleum) was virtually complete by 1976.
2. As time since independence passed, many developing countries (LDCs) experienced growing confidence in their identity and attitudes toward foreign firms became more pragmatic. Regimes

TABLE 2
Expropriation Acts by Country and Industry, 1980-1992

Year	Country	Industry
1980	Zambia	Petroleum
1980	Nicaragua	Agriculture
1980	El Salvador	Agriculture
1980	Indonesia	Services
1980	Mexico	Transportation
1981	Panama	Services
1981	Sri Lanka	Agriculture
1981	Trinidad-Tobago	Petroleum
1981	Trinidad-Tobago	Manufacturing
1982	Nicaragua	Agriculture
1983	Honduras	Agriculture
1983	Myanmar	Food
1983	Pakistan	Agriculture
1984	Nicaragua	Manufacturing
1985	Peru	Petroleum
1986	Peru	Food
1987	N/A	N/A
1988	N/A	N/A
1989	N/A	N/A
1990	N/A	N/A
1991	N/A	N/A
1992	N/A	N/A

began to view foreign direct investment (FDI) as a package of benefits and costs whose relation could be manipulated.

3. The administrative, managerial, and technical capabilities of host countries improved significantly. Regulatory control of behavior was perceived to be more effective and efficient than expropriation, and bargaining power was sufficient to give policy-makers confidence in their ability to enforce behavioral controls.
4. International economic conditions in the late 1970s increased the benefits of FDI on the one hand and limited the freedom of action of some LDCs on the other. The oil price increases in 1973 and 1979 and the resulting worldwide recessions exacerbated balance-of payments problems of non-oil LDCs and increased demand for inflows such as FDI. Sharp increases in foreign debt among many countries may also have limited freedom of action in this area.

Each of these hypothesized explanations for the decline in expropriations may help explain the continued decline since 1980. The fourth hypothesis

TABLE 3
Time Pattern of Expropriations
1960-1992

Period	Number of Acts	Percentage of Total	Average Number of Acts/Year
1960-64	55	9.6	11.0
1965-69	81	14.1	16.2
1970-75	336	58.4	56.0
1976-79	87	15.1	21.8
1980-85	15	2.6	2.5
1986-92	1	0.2	0.2
1960-92	575	100.0	17.9

is clearly supported by events since 1979. The need for new inflows to stimulate domestic resource mobilization, increase export-oriented industries, and improve their balance-of-payments situation is obvious [Moran 1988]. In many cases economic conditions worsened in LDCs in the 1980s compared to the 1970s. Measured as a percentage of GNP, external debt rose from 1980 to 1989 across low- and middle-income countries, increasing from 35% to 46% in Latin America and the Caribbean, and in Sub-Saharan Africa from 27% to a spectacular 97% [World Bank 1991]. Other economic conditions consistent with Kobrin's fourth hypothesis include a foreign exchange crisis in many LDCs, and the growing ability of the World Bank and the International Monetary Fund (IMF) to change national policies toward FDI and expropriation.

The second and third hypotheses are consistent with the fact that the relative bargaining power of MNCs declined in many industries due to the erosion of their market power (occasioned by increased foreign competition in their home country as well as in host countries), possibly reducing the symbolic power of MNCs and helping increase the perception that FDI costs and benefits were subject to manipulation. Further, portfolio investment in LDCs has grown rapidly in recent years, although its importance is still dwarfed by FDI flows [United Nations 1992]. This form of investment is likely to be less contentious than FDI because there is little fear of foreign control. Host country capabilities to regulate MNC behavior have also increased, a point discussed at greater length by Kobrin [1987] and Minor [1988, 1990]. Other indications that the symbolic elements of the LDC-MNC relationship have largely given way to instrumental elements include: (1) passage of laws making expropriation illegal; (2) the commitment of many LDCs to the principles of the Multilateral Investment Guarantee Agency (MIGA) and Overseas Private Investment Corporation (OPIC); and (3) privatization.

A current trend in many LDCs is to protect foreign investors, often by making such protection part of the law of the country. Examples include

TABLE 4
The Regional and Sectoral Distribution of Takeovers over Time (in percent)

Region	1960-64	1965-69	1970-75	1976-79	1980-85	1986-92	1960-92
Latin America	18.2	18.5	32.7	18.4	60.0	100	29.6
Asia	38.2	11.1	6.8	6.9	26.7	0	17.9
N. Africa/Mideast	27.3	27.2	17.3	12.6	6.7	0	18.2
Africa	16.3	43.2	43.2	62.1	6.7	0	34.3
	99.7*	100.0	100.0	100.0	100.1*	100.0	100.0

Sector	1960-64	1965-69	1970-75	1976-79	1980-85	1986-92
Agriculture	10.9	7.4	8.9	8.0	40.0	.0
Mining	7.3	14.8	11.9	14.3	.0	.0
Petroleum	14.5	17.2	19.6	19.5	20.0	.0
Manufacturing	25.5	25.9	28.6	23.8	20.0	.0
Finance	12.7	12.3	11.9	11.5	.0	.0
Other	29.1	22.4	19.1	22.9	20.0	100.0
	100.0	100.0	100.0	100.0	100.0	100.0

*error due to rounding

Egypt's new Investment Law 230 [Davies 1989], and guarantees by Vietnam [Fox 1989] and Laos [Brennan 1988] that investments will not be expropriated. Similarly, in 1990 the Chinese-Foreign Joint Venture Law was amended by adding a paragraph providing for no nationalization [Hu 1990; Robertson and Chen 1990]. Tanzania has adopted a National Investment Protection Policy Act (NIPP), designed to attract foreign capital into areas that generate foreign exchange or preserve exchange reserves. The NIPP offers, for the first time, legal protection against nationalization of private property [Corkran 1991]. These laws will not necessarily prevent expropriation: countries have disregarded these laws in the past, and in any case the laws can be changed at any time. Nonetheless, they are symbolically significant.

By the same token, the fact that many LDCs have committed themselves to the provisions of MIGA and OPIC on expropriations is of symbolic (and concrete) importance. Support of MIGA is widespread: fifty-eight LDCs were members by the end of 1991 [Wallace 1992]. A decision to join MIGA involves a substantial commitment. MIGA attributes measures to host governments not only for its direct actions, but also where it only authorizes, ratifies or directs an action or omission. It covers partial as well as total losses. All member countries must subscribe to shares of MIGA's capital, giving each member a financial stake in MIGA [Beyer 1988]. A decision to join MIGA involves a substantial commitment.

More particularly, interest by developing countries in expropriation has been replaced by disillusion with the typical result of expropriation, the state-owned enterprise (SOE). The about-face is relatively startling. Interest

TABLE 5
Comparison of Expropriation and Privatization Activity

Region	Expropriated Enterprises 1960-1979	Privatized Enterprises 1980-1992*
Asia/Mideast	601	550
Africa	910	813
Latin America	250	1,008
Total	1,761	2,371

Source: data on expropriated enterprises from Kobrin: data on privatized enterprises from Minor [1993]

*includes enterprises in the process of being privatized, or for which privatization plans have been announced

in privatizing state-owned enterprises is widespread [Candoy-Sekse 1988; Carlin and Mayr 1992; Glade 1991; Kent 1987; Kikeri et. al. 1992; Kornai 1991; *LatinFinance* 1991; Minor 1993; Ramamurti 1992; Ramamurti and Vernon 1991; *Vanderbilt Journal of Transnational Law* 1991; Vuylsteke 1988]. Table 5 compares the number of enterprises expropriated during 1960-1979 and the enterprises privatized between 1980-1992 for Asia and the Mideast, Africa, and Latin America. Over one-third (35%) more enterprises have been (or will be) privatized than were expropriated.

The possible development most likely to produce a future round of expropriation is suggested by Kobrin's first hypothesis: that substantial portions of LDC economies will revert to foreign hands, particularly in economic sectors where ownership is of the essence. Kennedy [1992] makes just this argument, and suggests that further expropriations are likely. His argument has merit and deserves careful consideration. Annual foreign direct investment flows to LDCs have increased significantly in recent years, from about $12 billion in 1985 to $64.5 billion in 1991 [International Monetary Fund 1992], and the visibility of foreign investors in LDC economies will increase as a result. In Zambia's new privatization initiative, multinationals that owned assets nationalized in the 1960s and 1970s will have the first opportunity to buy them back [Holman 1993]. Venezuela [Mann 1992; Tanner 1993] and, to a lesser extent, Mexico [Solis 1992] are allowing foreign companies to enter the sensitive petroleum sector. In June 1993 Argentina decided to sell 31% of the state-owned oil giant, YPF SA, on local and international markets [Kamm 1993; Loeb 1993]. Foreign investors have also bought significant portions of Argentina's privatized, state-owned gas industry, Gas del Estado [Fidler and Simonian 1992], as well as its telephone company, Entel [Kennedy 1992]. The fifty-two public-sector selloffs the Venezuelan Investment Fund has announced for 1993 include regional utility companies and an airline [Rodriguez 1993]. Thus, in many countries MNCs will again own significant portions of vital sectors of the economy. Furthermore, privatization seems to be linked to dependence on international agencies such as the

World Bank and the IMF in Africa and Latin America [Ramamurti 1992], and resentment toward these agencies might be displaced to multinational investors in the future.

Four counterarguments to Kennedy's suggestions can be made, three of which are of lasting significance, and one of short-term significance only. First, privatization is only partially due to external forces, such as pressure from international organizations. We can also assume that commitment to some variant of a market system has increased and correspondingly that the potential benefits of foreign capital are recognized (see, for example, Moffett [1993]). Nor are foreign investors necessarily allowed to purchase SOEs without any restraint: countries such as Mexico and Brazil limit foreign investors to minority positions when SOEs are sold off [Moffett 1993; *Legal Letter* (Brazil) 1991].

Second, and of great immediate importance although of less import in the long term, privatization activity is still increasing; while some 1,522 worldwide privatizations have been completed, 2,425 are planned or are in process [Minor 1993, 1994]. Additional privatizations can be expected; for example, Zambia announced in early 1993 its intention to privatize some 150 more companies than it had announced in 1992 [Holman 1993]. Reconsideration—and a possible reaction leading to expropriation—will not occur until privatization has run its course and the results have been analyzed. New rounds of large-scale expropriation are likely only after much of the current inventory of SOEs in developing countries has been privatized.

Third, in pragmatic terms the relative success or failure of the privatized enterprises matters a great deal. Future widespread expropriation is likely only if the privatized enterprises prove significantly worse than their state-owned predecessors at fostering economic growth. On balance, SOEs have been inefficient and have often sustained financial losses. For example, in 1989-1991 SOE losses reached 9% of GNP in Argentina, 8% in the former Yugoslavia, and an average of 5% in Sub-Saharan Africa [World Bank 1992].

Finally, as Kobrin [1985] and Kennedy [1992] observe, in an earlier era the "demonstration effect" of expropriation in a few countries led to widespread adoption of expropriation in others. Today the demonstration effect discourages expropriation, since privatization is being widely adopted, even by socialist regimes.

This does not mean that expropriation is an alternative no longer available to host countries. During the 1980s, Peru has been an exception to the general behavior of developing countries. In 1984 Peru adopted an Expropriation Law specifying the procedures for expropriation. Peru expropriated a natural resource investment (Belco Petroleum) in 1985. In 1986 the Peruvian government forced Nestle to sell a subsidiary, and in 1988 Nestle may have been forced to sell its other local subsidiary to Peruvian shareholders [*Business International* 1988]. Thus it is fair to say that selective expropriation remains a tool of control available to host country governments in their dealings with foreign investors.

In sum, nearly a decade ago Kobrin suggested four reasons to infer that expropriations were limited to a particular historical era. Events in the intervening period strongly support his prediction and largely support his explanation for that prediction.

The development of the last decade that Kobrin did not anticipate was the increase in sympathy for market systems, albeit in varying degrees and forms, and the concomitant commitment to privatization, among LDCs. Thus, he failed to anticipate that the expropriated foreign investors would be invited back in, in some cases to re-purchase their former investment. Not only has expropriation activity largely ended, but in some countries it is being reversed in very literal terms, by reversion to the former owners.

Future expropriation activity depends on at least three factors:

- the availability of foreign-owned firms that might be expropriated;
- the feasibility of expropriating;
- the benefits to the government of expropriation versus alternative policies.

Given the general increase in foreign direct investment in the late 1980s and early 1990s, the availability of targets for expropriation is not at issue. Nor is expropriation infeasible, notwithstanding increasing formal commitments not to expropriate. The key issue is government judgement of relative benefit. Nearly two decades have passed since the last significant wave of expropriation. Privatization is increasing, not decreasing. Significant expropriation activity is unlikely to occur until privatization has run its course and opportunity for assessment of the relative effects of privatization has taken place. Thus far, privatized enterprises are generally doing better than when they were state-owned [World Bank 1992]. For the foreseeable future, significant expropriation activity is unlikely.

NOTES

1. Sources used are those employed in previous versions of this survey [Kobrin 1980, 1984; Minor 1988, 1990], with the addition of electronic databases which facilitate the search. The databases consulted include *ABI/Inform; Business Dateline; CD Newsbank; Infotrac;* General Information Access Corporation's *Business Index*; and the Texas Tech University *Carl* system. Additional sources included *Barrons*; the *New York Times*; the *Wall Street Journal*; the *Washington Post*; the *Public Affairs Information Service*; and Business International's *Business Latin America*, and *Investing, Licensing and Trading Conditions Abroad.*

2. The data are also limited by the Iranian revolution. It is impossible to classify affiliates that were expropriated, as opposed to those abandoned, or otherwise having changed ownership for reasons that do not indicate a forced taking. The database therefore slightly underestimates expropriation in 1979-1980. Charles Kennedy has provided information on Iranian expropriations which show that including these data would only marginally change the results for 1979-1980.

3. The small number of divestments in 1980-1992 increases the potential for error from misclassifying an event. For example, Table 3 shows that a majority of expropriations in 1980-1985 occurred in Latin America. However, the reclassification of two or three acts would alter the regional distribution of

takeovers. An additional four claims were paid by the Overseas Private Investment Corporation in 1986-1991 to those investors expropriated in the four countries noted: Bernard Salvador, fishing investment, St. Kitts; Gillette Co., razor manufacturing, Iran; Ralph Mathieu, farming investment, Haiti; and Zachry/Dillingham, construction investment, Sri Lanka [OPIC 1992]. These incidents could not be confirmed and do not affect the essential findings.

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