THE LEGAL REGIME OF FOREIGN PRIVATE INVESTMENT IN SUDAN AND SAUDI ARABIA

SECOND EDITION

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Foreign investment in politico-economic perspective

The legal regime of foreign investment in Sudan and Saudi Arabia, as in other countries, cannot operate in isolation from politico-economic factors general to the international arena; nevertheless, such a legal regime also reflects national policy, and it is, accordingly, necessary at the outset to describe not only the general factors, but also Sudanese and Saudi national policies towards foreign investment.

1. The new trends in the international investment climate

There was much controversy surrounding the international law relating to foreign investment. Such controversy was at first due to the conflict among many forces released at the end of the Second World War. The ending of colonialism prompted forces of nationalism, which swept the Third World. Many developing countries were at one time colonies, mostly of industrialized Western powers from where foreign investment traditionally comes. Accordingly, developing countries chose to cling to their independence and were suspicious of any foreign relationships which might seem to endanger the newly obtained sovereignty. The newly independent states agitated not only for the ending of the economic dominance of the former colonial powers within their territories but also for a new world order which would permit them to regulate and control all economic activities in their own territories and to have access to world markets on an equitable basis.[1]

It was not possible at all for all nations to agree on international law rules governing foreign investment during the last decades of the twentieth century, due to ideological conflicts resulting from the Cold War between the two superpowers. The Non-aligned Movement, which arose in response to this rivalry, exerted pressures to ensure that each newly independent state had complete sovereignty over its economy. The emphasis of developing countries on their economic nationalism was articulated in several statements of principles in United Nations resolutions. These resolutions have tended to formulate new doctrines on establishing a new international economic order as spelled out in particular in the resolutions on the Declaration on the Establishment of a New International Economic Order,[2] and the Charter of Economic Rights and Duties of States, 1974.[3] The essence of this is the claim that every state has the right to full and permanent sovereignty over its natural resources and that every state has the right to exploit these natural resources. This comprehends the right of every state in accordance with its own legislation to exploit these natural resources by nationalization of enterprises in return for compensation and that foreign investment disputes should be settled in the national courts according to local law. These documents have also emphasized that transnational corporations should not interfere in the internal affairs of investee states.

The spirit of these declaratory principles was respected in the United Nations Report of Eminent Persons.[4] This report addressed itself to a number of problems relating to the activities of multinational corporations and foreign private investment. It stressed the need for a code to regulate the activities of multinational corporations through which a good portion of foreign private investment is channelled to developing countries. In accordance with the Group of Eminent Persons' recommendation,[5] the Economic and Social Council of the United Nations established the Commission on Transnational Corporations to deal with issues concerning multinational enterprises, and in particular to formulate their code of conduct.[6] Until the mid-1980s, many developing countries viewed multinational corporations with suspicion, and tended to curtail their freedom of action through outright prohibitions, limitations on the industries in which they were allowed to operate, restrictions on profit remittance and capital repatriation or the imposition of stringent performance requirements. This topic and other similar issues are also under extensive discussion in the United Nations Conference on Trade and Development (UNCTAD) and in the North–South dialogue and others like the WTO, in which fora the developing countries are seeking to restructure the whole world economy and the international financial institutions in a way that takes note of their concerns. This move has tended to encounter resistance from the industrialized countries, which have often favoured the status quo.[7]

But since the capital and technological needs of the developing countries are so great, and cannot at present be met from domestic funds, they have recognized the importance of foreign private capital in exploiting their natural resources so as to achieve their economic development goals through quick industrialization.[8] Accordingly, they invite and welcome foreign capital, provided that it is kept under control and does not dominate their economies and impinge on their sovereignty. This new pragmatic attitude towards foreign investment has been augmented by the recent developments in the international arena, the most important of which has been the disintegration of the Soviet Union. This development has resulted in the disappearance of the Cold War and the demise of the socialist and the communist doctrines, which are antagonistic to foreign investment. The debt crisis in the 1980s has added fuel to the needs of the developing countries for the inflow of foreign capital to their economies. There is now a perception of mutual need that has been accentuated by recent trends in the international economy, which has shifted towards compromising stances to accommodate mutual interests. The outcome of this swift change of attitude has been the replacement of the rhetoric of economic nationalism by a new regime based on adoption of free market philosophy in which the private sector plays an active role both in investment and development.

Most developing countries now welcome and invite foreign investments and have liberalized considerably their rules and regulations (investment codes) in this respect. Similarly, there is now a much more widespread acceptance of the principle of national treatment of foreign investment. The liberalization trend has also meant a dramatic decline – even virtual disappearance – of nationalization of foreign affiliates since the peak reached in the mid-1970s. On the contrary, there is now a widespread trend towards privatization. Finally, an increasing number of countries are revising their intellectual property regimes and adopting new competition laws.

It has been reported by UNCTAD that these numerous and diverse changes in policies at the national level in respect to all aspects related to foreign direct investment and transnational corporations' activities are a significant part of the context of discussions about a possible multilateral framework on investment. This is also the case because the liberalization trend is strong in all regions of the developing world and in the economies in transition, having gone further in Latin America, in part because policies in that region used to be very restrictive before the recent changes.[9]

The liberalization of foreign direct investment has been complemented by the signing of an increasing number of bilateral investments and avoidance of double taxation treaties. Increasingly, these treaties are no longer between developed and developing countries alone, but also between developing countries and between these countries and countries with economies in transition. At the regional and multilateral levels too, an increasing number of agreements deal with investment issues.[10]

Indeed, and more generally, the situation is now one of competition over foreign direct investment, with the incentives to attract such investment becoming more widespread and generous. Developing countries now perceive foreign direct investment as making a positive contribution to their development. Generally, changes in the investment climate have been part and parcel of a broader set of reforms that include the opening up of the economy to foreign trade and greater emphasis on development strategies in attaining international competitiveness, deregulation and globalization.[11] The establishment of the World Trade Organization (WTO) has symbolized the institutional framework of these developments, which has contributed towards the liberalization of the international investment climate. The WTO is no longer limited to the elimination or reduction of restrictions to international trade but extends henceforth to investments in the territories of its members.[12]

The swift changes in the world economy have in the last decade of the previous century engendered wide-ranging transformations in the developing world both on economic and political levels. Thus, a wave of multiparty democratic regimes have emerged in countries once ruled for decades by totalitarian regimes, especially in Latin America, Eastern Europe and Africa. The outcome of these transformations has been the creation of globalized norms based on respect for human rights and freedoms. These developments have encouraged political stability, which has helped in creating a favourable investment climate.

Undoubtedly, the revolution in computer information technology as displayed by the Internet has speeded up the globalization process, especially in the field of electronic commerce, which has helped considerably the movement of capital across borders.

At regional level, there have been certain events which have left a negative impact on the investment climate in the Middle East, the most important of which were the two Gulf wars, one between Iraq and Iran in the 1980s, and the other between Iraq and the allied forces resulting from the

Iraqi invasion of Kuwait in 1990. These two wars had negative effects on the investment climate in terms of instability and drainage of financial resources diverted to finance the wars, especially with respect to Saudi Arabia and Kuwait, which were compelled to spend most of their reserves in buying arms to liberate Kuwait from the Iraqi occupation and to defend their territories against future threats from Iraq.

However, despite the havoc wrought by the two Gulf wars, there have been some positive developments in the investment climate due to the joint efforts of the Arab League, the Federation of the Arab Chambers of Commerce and the Inter-Arab Investment Guarantee Corporation in convening since 1980 successive yearly conferences of Arab businessmen and investors. At these conferences the participants expressed their willingness to direct their efforts towards joint Arab action to promote investments in the Arab World. The outcome was the establishment of specialized multimillion joint venture companies in different economic sectors subscribed to by investors from all Arab countries. These efforts to promote investment were complemented by additional initiatives by the Inter-Arab Investment Guarantee Corporation (whose membership comprises at present all Arab countries), which in addition to encouraging joint ventures among Arab investors, has also embarked upon the activity of compiling collections of all business and investment laws of the Arab countries, publishing investment guides and furnishing investment and export credit guarantees to Arab investors and exporters against non-commercial and commercial risks respectively for the promotion of inter-Arab trade and investment in the Arab region.[13]

2. Investment patterns in the international investment climate

(a) Direct participation, joint ventures and production-sharing agreements

As a result of widespread deviation from the concepts of welfare state and economic nationalism to free market patterns, there has been a rapid increase in direct private investment participation replacing the involvement of the state, whose role has been reduced to that of a regulator and to undertaking the building of the basic infrastructure. At present, foreign direct investment can be admitted in many economic sectors without any mandatory local participation, especially in non-strategic activities. In some instances the pattern of joint ventures between foreign and local investors still prevails.

In the oil sector, the traditional concession agreements are gradually giving way to production-sharing agreements such as that concluded by Sudan with the Chevron Company (which has been replaced by another agreement which we shall discuss later[14]), which is modelled on the agreements concluded by Indonesia, the pioneer in this field. The advantage of this kind of arrangement is that it enables the co-operation of foreign capital in countries not willing to accept direct foreign capital in the traditional form. Similarly, foreign investment nowadays takes the pattern of licensing arrangements, co-operative agreements, investment contracts, whether self-liquidating or restricted to certain functions to be performed by the multinational company, contracting and service agreements, especially in the mining sector, and disinvestment patterns.[15]

(b) Triangular arrangements

This is the most recent feature of foreign investment patterns in developing countries. As in Sudan, it combines Western technology and expertise with OPEC capital for the development of the non-oil developing countries.[16]

Indeed, OPEC can participate in various ways with Western firms in investment in non-oil developing countries. They may purchase shares in parent companies or even in their subsidiaries. By so doing, they can influence the types and amounts of investments undertaken by the parent companies in non-oil developing countries. The acquisition by Kuwait and Iran, respectively, of shares in a British and a German firm, apparently assumed this form.[17]

OPEC may also acquire a dominant interest in developing countries jointly with Western firms whose contribution in the investment project will be in the form of supplying management, technology and trade names in return for equity shares.[18] At present, there are several investment projects of this type. Egypt, for instance, has succeeded in erecting a vehicle assembly plant which has been installed in a duty-free zone. The annual production capacity of the project was expected to be 10,000 Land-Rovers for Arab markets. This project combined OPEC capital of about US$50 million provided by Saudi Arabia with British technical know-how and Egyptian manpower.[19] A similar project for the construction of a 'float process glass' manufacturing plant, to supply the Egyptian and other Arab markets, was recently negotiated between the Kuwait Investment Company, Egypt and the United Kingdom company Pilkington.[20]

(c) Four-cornered arrangements

Again, more than three parties may be involved in an investment project one of them being an international institution such as the International Finance Corporation (IFC), which adds to the attractiveness of a project for potential Arab investors. The financing schedule envisaged for a proposed $62 million chemical fertilizer plant in Jordan is of this type. The American firm constructing it will take a 25 per cent share of the capital, Jordan 50 per cent, the IFC 5 per cent and remaining 20 per cent was allotted to the public and the rest of the Arab world.[21] This pattern has increased recently, especially in the Islamic world where the Islamic Development Bank (the membership of which comprises all Islamic countries) has established the Islamic Finance Corporation, a replica of the IFC.

3. The role of international organizations in improving the investment climate

Global and regional[22] organizations, governmental or non-governmental,[23] have to a great extent directly or indirectly contributed to improving the investment climate in developing countries, at least in the following respects.

(a) Drafting of investment conventions and codes

International organizations have made extensive studies of the drafting of conventions, and codes, for the encouragement and protection of foreign private investment. With the exception of the World Bank Convention on the Settlement of Investment Disputes between States and Nationals of other States, the convention establishing the Multilateral Investment Guarantee Agency (MIGA)[24] and the investment conventions sponsored by the Arab League,[25] the North American Free Trade Agreement (NAFTA) and the Islamic Development Bank, none of the proposed conventions or codes has yet been agreed upon. Nonetheless, these draft conventions and codes must have a persuasive effect on the drafting of national investment laws, as well as bringing to light discrepancies amongst legal instruments, thus spurring perhaps a movement towards a general consensus in the future on regarding the shaping of the law on foreign investment protection. The most important endeavour in this respect is the set of guidelines on foreign investment formulated by the World Bank. The guidelines, preceded by a study of the existing instruments on foreign investments, are designed to contribute to the evolution of acceptable principles of international law and indicate the need for reaching a consensus on the international rules on protection of foreign investment, and the weight of the World Bank would be instrumental in moving in this direction (see below, p. **183**).

(b) Rendering of technical advice and research

International organizations have played a direct role also in ameliorating the investment climate by rendering technical advice and conducting studies and researches in favour of developing countries, thus helping them to pursue properly thought-out economic policies and drafting of encouragement investment codes. This task is usually performed by the United Nations specialized agencies such as the UNCTAD, UNIDO, the World Bank, the United Nations Centre on Transnational Corporations (UNCTC), the Organization for Economic Co-operation and Development (OECD) and the European Economic Community (now the European Union).[26] These studies furnish potential foreign investors with sufficient data for feasibility studies. Furthermore, the very rendering of the study or the evaluating of the economic potentialities of a developing country by an international organization may add to its credibility in the eyes of foreign entrepreneurs.

(c) Sharing in investment with private investors

Certain international organizations, such as the World Bank and its affiliates, either finance investment projects fully or in participation with local or foreign investors.[27] The establishment of development banks and funds, especially the OPEC Special Fund and the development funds of the Arab oil-rich countries such as Kuwait, the United Arab Emirates and Saudi Arabia, have helped to finance major investment projects, particularly in the infrastructural sector. Also, the accumulation of surpluses of oil money in the hands of the Arab countries has led to the formation of many Arab financing institutions which provide on a commercial basis credit facilities and syndicated loans to potential investors.[28] These financing institutions are designed to recycle Arab money to poorer countries, a strategy which should work favourably for Sudan. This direct involvement in the investments process by these international organizations and financing institutions has a positive psychological effect on the participation of foreign investors and persuades others to follow suit. It also strengthens the investors' belief in the profitability of an investment.

The size of the impact of these international politico-economic factors on the investment climate and the legal regime of foreign investment in Sudan and Saudi Arabia will be examined below.

4. Sudanese and Saudi Arabian foreign investment policies

(a) Sudan[29]

(i) Foreign capital and socialism in Sudan

The flow of foreign private capital to Sudan was to a great extent adversely affected by the 21 October Revolution in 1964, which ended the Abboud military regime. Indeed, that revolution marked a turning-point in Sudan's economic and social development. Socialist slogans calling for a state-non-economy and the nationalization of foreign trade and property were publicly raised by the communists and in other local socialist quarters. Though this did not ripen into any hard state policy at that time, yet it had a negative effect on foreigners, who began to liquidate their businesses in Sudan. Accordingly, the flow of foreign private capital was at that time much discouraged.

In 1970 these socialist principles were actually implemented by the dissolved Revolutionary Command Council of the '25 May Revolution, 1969', which nationalized all commercial banks and more than seventy major companies.[30]

(ii) Openness policy

After an abortive left-wing coup in July 1971, it became necessary to attain political stability. This could only be achieved by the active participation of large numbers of people in the government's administration and the shaping of its policy. These measures were vital for the success of the development programme upon which the government embarked. The experience of the abortive left-wing coup produced far-reaching changes and triggered a significant reversal of direction. Theoretically, socialist-inspired plans for nationalization and socialization and close partnership with the Soviet bloc gave way to a reappraisal of the economic scene. After two years' consideration, the measures of confiscation and nationalization were reconsidered. Eventually, this new policy resulted in a partial return to the private sector.[31] This brought prospects of a return of foreign investment. Private enterprise became respectable and foreign investors were welcomed.[32] The Sudanese economy has ever since comprised the public, co-operative, private and mixed sectors, with the state as regulator in some sectors and entrepreneur in others.[33] This policy was reflected in constitutional provisions.[34]

The public sector was to be the pioneering sector and to lead progress in all fields of development and to be based on public ownership and subject to people's control.[35] The co-operative sector was to be based on the collective ownership of all members participating in co-operative societies. The state was to care for the co-operative societies and the law was to regulate their formation and management.[36]

On the other hand, the private sector was to be based on non-exploiting private ownership. The state was to protect and encourage it and organize its functions so as to enable it to play a positive and active role in the national economy.[37] The mixed sector is based on joint ownership by the state and the private sector.[38] It is within this constitutional framework that foreign investment legislation and policy in Sudan were considered in the 1970s and 1980s.

To restore the confidence of foreign investors and attract them, the investment legislation was improved in 1974, 1975, 1976, 1980, 1996 and, more recently, in 2000.[39] These laws provided for general tax holidays, protection of sales as well as complete freedom of transfer of profits and repatriation of capital. A number of financial institutions[40] sprang up to help investors and to channel funds to profitable and nationally desirable ventures. The government adopted an investment policy of 'openness' towards the whole world,[41] with the exception of Israel.

(iii) Arab–Sudanese joint ventures and Western technology

Luckily enough, these developments were precipitated by the accumulation of financial resources in the hands of traditional Arab oil-exporting nations, which have remained very conservative, anti-communist, anti-socialist and in favour of private enterprise. The scene was thus then set for Sudan to become a major target for private and government investment on the part of the oil-rich Arab world, notably that of the Gulf states, especially Saudi Arabia and Kuwait.[42] Numerous schemes were embarked upon to develop the country economically and socially. A high point of this movement was reached in August 1976, when a formal agreement was announced between the Sudan government and the Arab Authority for Agricultural Investment and Development (AAAID), which consisted of twenty Arab countries. The agreement was for an investment of about US$700 million, mainly in agricultural projects and allied industries, over the next decades. The overall plan covered a twenty-five-year period – until the year 2000 – by which time Sudan was expected to be producing the greater part of the Arab world's food.[43]

By the start of the 1980s, however, these plans had become a thing of the past, victims of Sudan's infrastructural bottlenecks and severe economic problems. By 1980 AAAID had succeeded in launching only four small projects.[44]

In 1976 President Gaafar Nimeiri visited the United States, one of the objectives of that visit being to invite American investors to Sudan.[45] A Sudanese–American Business Council was formed to encourage American investments to flow to the Sudan. This in turn led to a massive influx of different types of businessmen and financiers, mostly from Europe and the United States.[46] If the Arabs provide the money, and Sudan labour and natural resources, it will be Europe and the United States that will be expected to supply the tools, technology and expertise.[47] Consequently, foreign investment in Sudan, as in many countries, has assumed new forms of business institutions, in the form of multinational companies and joint ventures the government or its agencies[48] and foreign and local investors. Manufacturing, agro-industry[49] and exploitation of mineral resources have been some of the sectors involved. There have not been predetermined systematic formulae as regards the percentage of the shareholding of the government. However, government majority shareholding has usually been preferred, a practice which is indeed favoured even by some industrialized countries themselves,[50] because of the control on the investment that it affords. However, in the 1970s and 1980s this policy could no longer be pursued except in strategic industries in view of the ongoing privatization plans.

(iv) Effect of political stability and national unity on foreign investment

1. The Nimeiri regime The investment climate in the Sudan was improved to a great extent by the ratification of the Peace Settlement Agreement[51] on 27 March 1972, which solved the southern question and ended, for a while, the guerrilla war which had lasted for seventeen years in southern Sudan. This Settlement Agreement gave southern Sudan a regional autonomy. The Agreement also brought a new attitude of sympathy for Sudan from many countries. Huge development projects were executed by many foreign investors, friendly countries and international institutions. The most influential and attractive development project, which it was hoped might change the life of many southerners, was the Junglei Canal Project which had been entrusted to a joint venture between the governments of Sudan and Egypt. The Western technology of a French firm was to be utilized in digging the canal and preparing the land for cultivation. However, the project could not be executed because of the resumption of the civil war in southern Sudan.

President Nimeiri issued in July 1977 a general amnesty to all his conservative political opponents of the dissolved National Front. As a result, a relative national reconciliation was obtained, as some members of the opposition (National Front) returned to Sudan and stopped fighting the regime.

Undoubtedly, this positive step towards overall national unity was constructive. It achieved some political stability, which was the foremost requirement for the alleviation of the fears of foreign investors about a reversal of investment policy and laws, which might otherwise follow from changes of the political system; a turn of events not unlikely in a country like Sudan.

2. The third democratic regime But the short-lived investment boom which had been obtained during the 1970s and 1980s was not destined to prevail for long, for in 1983, succumbing to the pressure of the Islamic fundamentalists, Nimeiri imposed an Islamic code (Sharia). The application of the Islamic code was not welcomed by all political activists, as it was not a genuine initiative but rather a device originally designed to suppress the opposition. The application of Sharia ignited the dormant tension between the northerners and southerners, which at the end led to an outright civil war which has continued after the fall of Nimeiri following a popular uprising supported by the armed forces. A transitional government had subsequently been formed which handed over power after one year to a democratically elected government. The investment climate had not improved despite the change of government from a dictatorial military government to an elected democratic one. This was for several reasons. First and foremost, the newly elected government inherited a host of deeply rooted economic, security and social problems which it needed time to solve. Instead of directing its efforts towards solving the basic problems, which would address the needs of the people, the democratic government concentrated on trivial matters that led to more crises. Second, the structure of the transitional government was dominated by the high-ranking military officers who sided with the people and were in fact considered by the Sudan People's Liberation Army (SPLA), led by John Garang, as having their allegiance to the deposed Nimeiri. Such a belief was strengthened by the refusal of the Transitional Military Command Council to repeal the Islamic laws, which were known as September Laws as they were enacted in that month. The result was that the civil war was resumed and more towns and garrisons in southern Sudan fell into the hands of the SPLA. This added to the political instability. At last in 1989 a peace agreement was reached by the Sudanese government (through a leading Sudanese politician) with the SPLA which was about to end the civil war and achieve a lasting peace.

3. The NIF regime and the opposition By staging a coup d'état in June 1989, the National Islamic Front (NIF) overthrew the democratically elected government and imposed an Islamic fundamentalist regime known by the name 'the Salvation Regime'. It suspended the constitution, dissolved all other political parties and trade unions and suppressed all civil liberties except as regards the NIF and its organizations. The military government installed by the NIF, which ruled the country by decrees, had consistently continued its gross violations of human rights, including the confiscation of property, freezing of bank accounts and physical liquidation of political opponents during the early years of its reign. These repressive policies and practices were met with successive condemnations from the UN General Assembly, the UN Security Council, the Commission on Human Rights and non-governmental human rights organizations, including Amnesty International. Despite its local unpopularity, regional and international isolation and an undeclared international blockade resulting from these condemnations, the NIF government continued to defy the international community and had shown no signs of abandoning its repressive policies and practices.

With respect to the civil war in the south, the NIF government has transformed the conflict into a holy war aimed at the imposition of Islam by force on the southerners, who are mainly Christian, against their will. This has claimed the lives of more than one and a half million of the southern population and has displaced from their homes 4.4 million people, who have taken refuge in neighbouring countries. In addition it has hindered relief agencies from delivering food and medicines to the displaced civilian population.

More alarmingly, the NIF government, in its effort to export its Islamic model to neighbouring countries, has engaged in terrorist activities in these countries and worldwide which has led to its inclusion by the US administration on its list of countries sponsoring terrorism. And because of the involvement of the NIF government in an assassination attempt on President Hosni Mubarak of Egypt in June 1995 in Addis Ababa during the summit of the Organization of African Unity, the UN Security Council had imposed international sanctions against the Sudanese government under Chapter VII of the Charter of the United Nations. In 1998 the United States imposed unilateral economic sanctions against the Sudanese government, which have had devastating effects on the economy.

Determined to tighten its grip on all aspects of activity, the NIF not only manipulated political power to the exclusion of others, but also reserved for its members and supporters complete monopoly over trade, investment and all other economic activities. Thousands of army and police officers and government employees were laid off on grounds of disloyalty to the new regime. Many Sudanese had to migrate to different parts of the world.

It would be an illusion to speak of any sort of development and reform in the early period of such a disturbed system, which was suffering from insurmountable bottlenecks as have been explained above. The members of the NIF and its supporters have consistently engaged in corrupt practices on a massive scale, in the form of illicit commissions, hoarding of consumer goods, over-invoicing, bribes, tax evasion and all sorts of economic crimes and have transferred the proceeds outside Sudan to bank accounts in safe havens in many foreign jurisdictions. It is worth mentioning that the successive annual reports submitted by the Auditor General to the competent authorities confirmed stealing and embezzlement of huge public funds by senior government officials, including governors of states and regions and members of the appointed parliament. Such corrupt practices cannot be contested at all, as there are no constitutional guarantees for the protection of the contestants' civil liberties and fundamental rights. The system bestows on the offenders a complete immunity from the enforcement of the law against them, which is applied by double standards, and the local courts are subservient to the executive. At one stage, those journalists who were brave enough to write articles in the local press criticizing these corrupt practices were harassed, persecuted and in most cases imprisoned, in addition to being banned from writing any more on the topic.

The referred-to suppressive practices and policies have precipitated against the ruling regime a strong opposition, which is unified under the National Democratic Alliance (NDA), a political organization comprising all political parties from southern and northern Sudan, trade unions and the military command overthrown by the NIF; all are working hard to overthrow the NIF government. The NDA has employed all means possible, including military action, which has made some progress across the eastern borders and in the southern Sudan. The NDA has agreed on programmes and plans to reconstruct a new Sudan on a new basis, which would eradicate the inherited economic and political distortions, and clear the mess created by the NIF government. The NDA has also reached a consensus in order to solve many deep-rooted problems accumulated from the past, which will end the civil war in the south and create a lasting peace in Sudan. To achieve these objectives, the NDA has agreed on certain fundamental issues and constitutional principles which have been incorporated in a draft transitional constitution and certain laws, all of which aim at setting the foundation for a democratic regime based on the rule of law, respect for human rights and recognition of ethnic, cultural and religious diversification. Rights and duties will be based on citizenship without discrimination of any kind. Religion will not be used for political purposes, meaning that there will be a complete separation of religion from politics. The draft transitional constitution incorporated by reference all the international instruments on human rights.

The NDA has also agreed on a comprehensive economic recovery programme prepared by professional economists which aims at the rehabilitation and reconstruction of the basic infrastructures and all the other economic sectors to pave the way for launching a real economic development plan, this to be realized in the light of the new economic concepts which call for a leading role to be played by the private sector in the market economy.

The implementation of these programmes and plans will be entrusted to a national broad-based transitional government which should be in office for four years to prepare the country subsequent to an agreement at a constitutional conference on a permanent constitution, for a general election. To ensure the setting up of a clean government, the NDA has agreed on a draft law which obliges all top government officials to declare before taking office their wealth and that of their close relatives. The declarations will be lodged in a special register to be kept for this purpose at the Ministry of Justice.

The NDA programmes have received widespread recognition and support from the regional and international communities and the majority of the Sudanese people.

Although the NDA has succeeded in posing a continuous threat to the NIF regime, it has failed to achieve an outright victory and overthrow the regime. However, due to the successive military operations of the NDA and outside political pressures, the NIF regime, which became completely isolated, has been forced to reverse its course. First, it expelled the Islamic fundamentalists who made Sudan their springboard for launching terrorist operations in neighbouring countries and worldwide. Second, the regime has adopted most of the programmes of the NDA and incorporated them in a constitution which has restored the democratic multiparty system, with some restrictions. There has been some relaxation on fundamental freedoms such as that of speech and organization. By embarking on such a gradual hyprocratic democratic process the NIF is seeking constitutional legitimacy. Presidential and parliamentary elections were held but were boycotted by the NDA, since they considered these reforms insufficient as long as the state of emergency and the suppressive laws are left in place. It is to be noted that both the NDA and the regime have responded positively to the mediation of some African neighbouring countries including Egypt (with which the regime has succeeded in normalizing relations), in addition to Libya. Both sides of the conflict have agreed in principle to settle their differences through a comprehensive peace settlement, which will end the civil war throughout Sudan.

4. Political and economic reforms To tighten its control on the country the NIF government has adopted by a presidential constitutional decree a federal system of government, which has replaced the regional government regime imposed by Nimeiri in 1972 and 1980. Under the new federal system Sudan has been divided into twenty-six states, each with a government and a legislative council with very limited powers, since the central government holds very wide residual powers.

These constitutional reforms have been coupled with drastic economic reforms based on the philosophy of the market economy, which have paved the way for the normalization of relations with the IMF and other regional and international institutions. The said economic reforms have endorsed the prescription of the IMF, which has resulted in the liberalization of the economy, the removal of state subsidies, the privatization of state-owned companies, tax reform, the adoption of an open-door policy to attract foreign investment from all countries and revision of the investment laws which led to the enactment of the Encouragement of Investment Act, 1999, which was amended in 2000. Section (7) of this Act reflects the liberal attitude of the regime towards private investment by encouraging investments in all economic sectors, including infrastructure, education, healthcare, public utilities, information technology, culture and economic services.

Realizing that no development will be achieved without peace, stability and good neighbourliness, the NIF government has pursued a reconciliatory approach towards some countries with which its relations were restrained or cut off in the early days of the regime, especially Western and Arab countries. This policy has been successful in normalizing fully relations with those countries except the United States.

The economic reforms have been embarked upon in accordance with a comprehensive national strategy which aims at boosting production, achieving a high rate of growth, preserving exchange rate stability through a package implementation of economic, financial and monetary policies based on reliance on the available resources. Perhaps the most important achievement of the regime is its success in resuming the exploitation of the oil discoveries made and abandoned by Chevron in the south and south-west of Sudan by replacing the production-sharing agreement with Chevron by another agreement with a consortium comprising a Canadian firm, Petronas of Malaysia, China National Oil Corporation and some other investors. The consortium has succeeded in drilling more wells, which has raised daily production, as of January 2001, to 200,000 barrels, which is being exported via a 1,610-km pipeline from the oilfields to a newly constructed port on the Red Sea. Also a refinery has been established in the province of Khartoum, which makes it possible to export some oil products. By and large these developments have had a positive impact on the national budget, which in 2001 registered a surplus, of US$227 million, for the first time in the last forty years, and have contributed remarkably to achieving a national growth averaging 6 per cent per annum, reducing the inflation rate and maintaining a stable rate of exchange for the dinar, the new Sudanese currency.

These limited political and economic reforms sent encouraging signals to foreign investors about the improvement of the investment climate. Many foreign investors visited Sudan and showed interest in investing there, especially in oil exploration, mining, electric power generation, agriculture and economic services. The total value of foreign investments established in 1999 alone was about US$925 million, an increase over 1998 of US$ 805 million, mostly in the oil sector.[52]

However, these economic successes are not sustainable to the extent of achieving any economic development, for lack of political stability and the continuous insecurity represented by the continuation of the civil war. The situation is getting worse, for the southern rebels unwisely vowed to blow up the oil installations to prevent the oil from flowing for export, and successive attacks had already been launched on the pipeline. The rebels issued warnings to foreign investors to discontinue their investments, especially in the oil sector, as they considered the oil installations to be legitimate military targets on the basis that the proceeds from the discovered oil finance the escalation of the civil war between the north and the south, where most of the oil finds are situated. Without a political settlement the achievement of national unity will be a far-fetched dream unobtainable without substantial concessions from both opposing factions of the Sudanese conflict, one of the longest-lasting in Africa. Only when peace and stability are achieved, can investments find a favourable climate to flow and prosper in Sudan.

(b) Saudi Arabia

(i) Industrialization

Unlike Sudan, Saudi Arabia, having a relatively stable political system and being one of the richest countries in the world, is a lucrative place in which to invest. In the aftermath of the 1973–4 rise in oil prices, Saudi Arabia accumulated enormous financial surpluses; and being the strongest of the OPEC group, it possesses increasing international economic power. This financial ability characterizes Saudi Arabia as a major capital-exporting country, especially to Sudan. However, to achieve industrialization it also needs foreign investment, in terms of technology and expertise, and this compels the kingdom to be also a capital-importing country to which heavy investment is flowing.

The overall objective of Saudi Arabia is to transform its economy, currently overwhelmingly dependent on the export of crude oil, into a diversified industrial economy, for the oil may be depleted in the future. Since 1974 Saudi Arabia has launched successive five-year plans in which it has allocated billions of dollars for infrastructural development to prepare its free economy for the desired industrialization. The ultimate target has been achieved in setting up a hydrocarbon-based petrochemical industry. And this strategy was easy to implement, thanks to abundant resources of the kingdom. The key project was the building of the giant gas-gathering and treatment systems, which cost US$4.7 billion. The resultant 1.6 million cubic feet of gas per day has been made available both for export and for use by a number of industrial projects located primarily in the traditional oil-producing area, the Eastern Province – but including some to be located in the Western Province as well. These industrial schemes and others have attracted foreign firms on whose technology and expertise the implementation basically depends. Saudi Arabia has to some extent succeeded in diversifying its economy by setting up the giant industrial and export-oriented petrochemical industry and allocating billions of Saudi riyals to expand industrial investments in the oil and mineral sectors. Investment in productive industries is expected to rise to more than 37.3 per cent of the total.[53]

(ii) Institutions for industrial promotion

It has become obvious that to secure the establishment of the best industrial base new institutions to administer the new Saudi petrochemical and mineral processing projects are needed. The General Petroleum and Minerals Organization (Petromin) has been established to administer the oil and gas sectors and is to be the Saudi partner of any foreign company becoming involved in refinery projects.[54] In 1975 there was a general reorganization of the Saudi central administration. The Central Planning Organization was granted the status of a Ministry, and a new Ministry of Industry and Electricity was created.

Saudi Arabia's long-awaited new Foreign Capital Investment Law was approved by the cabinet on 10 April 2000, which repealed the previous investment law. This signals a remarkable shift in the procedures and attitudes towards foreign capital investment in the kingdom. The cabinet also approved the setting up of a General Committee for Investment (GCI) to be in charge of all investments, both national and foreign, under the directive of the Supreme Economic Council (SEC).

The main aim of the new law is to encourage, attract and remove the obstacles to foreign investment, in order to diversify the country's economic activities away from being mainly oil-dependent. This is in direct contrast to the previous legislation, which restricted foreign capital investment to certain narrowly defined economic sectors.

The promulgation of the new law coincides with the Saudi desire to join the WTO, which has persuaded the kingdom to adopt some degree of openness in gradually liberalizing its economy to meet the requirements of admission to the organization. Nevertheless, foreign investment under the directives of the Supreme Economic Council is excluded from certain strategic economic sectors as indicated in the Negative List, which is subject to change from time to time by the Supreme Economic Council. We shall examine the current list in the next chapter. In December 1975 a Royal Commission for Jubail and Yanbu was formed, whose task was to eliminate the bureaucracy holding back the building of the gigantic port, the roads and the other infrastructural development necessary for the two industrial zones at Jubail and Yanbu. Finally, in August 1976, the Saudi Arabian Basic Industries Corporation (SABIC) was created under the auspices of the Ministry of Industry and Electricity, with capital of 10 billion Saudi riyals ($2.8 billion). This state company was charged with undertaking the new industrial projects assigned to the Ministry of Industry and Electricity – ventures in the petrochemical, iron, steel and aluminium sectors.

The positive role played by Aramco (Arabian American Oil Company) in the development of the oil industry in Saudi Arabia cannot be ignored.