PREFACE

Permanent Sovereignty Over Natural Resources, New International Economic Order, Charter of Economic Rights and Duties - these and a host of other similar resolutions of the General Assembly of the United Nations, represent the urges and aspirations of a vast majority of the new international community. After World War II, in country after country, the first flush of jubilation at gaining political independence has been followed by expectations, frustrations, and heartbreaks, of vast multitudes of impoverished people seeking to gain economic and social emancipation. The models of economic development adopted by the developing countries have necessitated recourse to the Western countries again for capital and technology to exploit their immense natural resources. The capital exporting countries do not often subscribe to the ideas forming the basis of the General Assembly resolutions already cited. However much they would like to undertake profitable investments of capital and technology in the developing world they are not able to get away
from their own perceptions of the international legal norms governing foreign private investment. This clash of interests can be seen at its best in the insistence of the capital exporting countries, that provision of 'prompt, adequate and effective' compensation in the event of expropriation or nationalization of alien property is an accepted principle of customary international law, and an equally vehement assertion on the part of the developing world that there is, indeed, no such accepted principle of customary international law and their permanent sovereignty over their natural wealth and resources naturally implies that the question of compensation is one to be decided in accordance with their own laws and policies. While such 'vanishing consensus' on the rules of customary international law for the protection of foreign private investment continues to assume crisis proportions now and then, of which nationalization of the Anglo-Iranian Oil Company (1951) and the Suez Canal (1956) were perhaps the worst examples, in matters like regulation, supervision and taxation which constitute the other pillars of what has been called the international
investment climate, international legal norms are just about non-existent. The efforts of various international organs under the League of Nations and the United Nations systems during the last half century have not produced any universally accepted rules or principles on any of these matters so that "international business is functioning today in a legal no man's land. There is no comprehensive system of international law for guiding business across national frontiers... A multiplicity of national legal systems widely differing even in essentials from each other constitute the legal environment for international business..."^{2}

The national legal systems are not only varied, these are also fast changing because of the compulsions of rapid socio-economic change in the developing world. In so far as the countries of South Asia are concerned it is virtually impossible to get current and comprehensive information about their laws, policies and procedures

\footnote{1\textit{UN, GA Reg. 824 (ix) of 11 Dec. 1954.}}

at any one place. The foreign investor often shies away from these countries from out of a fear of the unknown without even trying to undertake an economic evaluation on merits.

The present study aims, on the one hand, at tracing the evolution of international legal norms relating to foreign private investment, and on the other, at giving an analysis of the national legal systems, policies and state practices of the countries of South Asia on the subject. Such a study will, it is felt, fill a great void, remove many a cobweb of misunderstanding about these countries, and help private foreign investors understand the legislative framework in this region in proper perspective and in its true setting of the prevailing norms of international law. It will further help throw up ideas for action at national, regional and international levels for a continued development of the international legal norms.

I am grateful to Shri Gian Prakash the Comptroller and Auditor General of India for allowing me to undertake this study along with my official duties.
I am deeply indebted to Professor R.P. Anand and Dr. M.L. Aggarwal of the School of International Studies, Jawaharlal Nehru University, who took lots of pains to go through the draft with great care and patience. Their very valuable suggestions were of immense help to me in completing this study. I am also grateful to Dr. Rahmatullah Kham who initially interested me in this subject.

I owe my gratitude to the staff of the Indian Council of World Affairs Library, the Indian Investment Centre, the Indian Institute of Foreign Trade and several officials in the ministries and departments of the Government of India and in the diplomatic and trade Missions in Delhi of Pakistan, Sri Lanka and Bangladesh for their helping me obtain the diverse source material. I am particularly grateful to Shri Mohd. Yunus who willingly undertook so much leg work in that connection.

My thanks are also due to S/Shri S.S. Gigoo, and Ravi Datta, who took great pains in typing the draft as well as the final manuscript of this study.
Last but not the least, I am beholden to my wife Minnie Swarup and my children Piyush, Poonam and Surabhi, who not only made a sacrifice in letting me do this work in the time entirely owed them but also goaded and encouraged me at all stages of my work.

Sd-
(R.S. GUPTA)

New Delhi,
6 March 1984

In this resubmission I have considerably revised Chapter III on Expropriation. In gathering fresh source material for that purpose I got a lot of help from Prof. John Grant of the University of Glasgow, Dr. Anderson of the Glasgow University Library and the staff of Mitchell Library, Glasgow. I am grateful to all of them.

I have not been able to find time to update the law in Chapters IV and V; this could be done before publication.

(R.S. GUPTA)

London
31 May 1986