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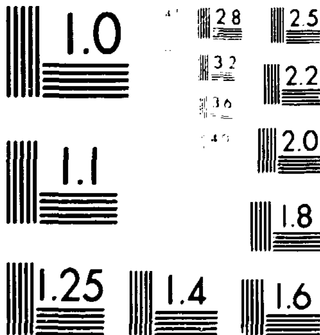

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MAJOR FEATURES AND TRENDS IN MINING AGREEMENTS

Prepared by

The Secretariat of the
United Nations Centre on
Transnational Corporations

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* The paper has been prepared as a special contribution of the Secretariat of the United Nations Centre on Transnational Corporations for the second meeting of the Ad hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements.

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Introduction

The developing countries have been trying to institutionalize the concept of permanent sovereignty over natural resources for almost three decades. Despite the attainment of political in-dependence in the post-World War II era, the developing countries did not have effective control over the exploitation and development of their natural resources.

Throughout the fifties and sixties, developing countries became increasingly discontented with the status quo relationship of dependence upon and exploitation by TNCs from developed economies in respect of their principal natural resources.

The principle of permanent sovereignty over natural resources has been included in numerous United Nations General Assembly resolutions since 1962, and is embodied in the basic documents outlining the principles of a New International Economic Order.[1] Practical efforts by individual developing countries to assert the principle of permanent sovereignty have been a significant factor in changing the overall tone of mining agreements.

Despite the inertia of the TNCs, the relationship between developing countries' governments and the international mining companies has not been static. Mining agreements between these parties have undergone a slow, torturous process. The process of change, while it has yielded benefits to developing countries, has not been completely satisfactory and is still in various stages of evolution in different countries.

The focus of this study is the nature and terms of the non-petroleum mining agreements signed by Western-based transnational mining firms and selected developing countries in the 1970s. The agreements surveyed in part "II," upon which most of the accompanying analysis is based, do not purport to be a scientific sample. These agreements, which include ten developing countries and eleven transnational mining companies, represent a sample based upon the constraints of the time frame and the availability of primary source materials. Moreover, the sample includes originally negotiated agreements and renegotiated terms, and spans six primary resources and two general work-agreements.

I. Historical Review

A. Evolution of Mining Agreements

1. Changes Since 1970

The first half of the 1970s constituted a watershed for developing countries commodity exporters. The ten-year old Organization of Petroleum Exporting Countries (OPEC) successfully forced an upward revision of petroleum prices. Even prior to the successful negotiations in Tehran and Tripoli in 1970, the copper producing and exporting states sought to follow the early OPEC example and create their own organization. In 1967 the Intergovernmental Council of Copper Exporting Countries was born. Producer associations in the phosphate rock and tin industries were also active in attempting to secure higher and more stable prices for their members' exports. In the bauxite industry, the International Bauxite Association has performed a similar role. The process represented a basic change in the bargaining strength and capacities of developing countries in respect of various basic minerals.

The traditional concession terms—forced upon developing countries by the exigencies of the era of neo-colonialism—were no longer acceptable. The trend towards revision of these historical terms was initiated by the petroleum producing countries. Hard-mineral investment agreements lagged a generation behind petroleum negotiations, but grumblings of discontent were heard from this sector as well. The complaints the oil producers leveled against concession

agreements in the late 1950s and into the 1960s, were echoed and adopted by other mineral exporting developing countries in the late 1960s and 1970s.

The traditional concession agreements tended to be earmarked with excessively lengthy contract periods (sometimes as long as a century); total control over decision-making and operations were lodged in the foreign investor; the concession area was exceptionally large and the concessionaire exercised rights of private ownership within that domain (often for all mineral deposits therein); royalty and income tax rates were too low, while the tax incentives afforded the TNC were too great; and project programs were insufficiently detailed leaving the foreign firms with virtually total discretion with respect to all stages of exploration, development, operations, and marketing. The provisions that were missing, moreover, were even more glaring: accounting and pricing procedures were left to be defined by the TNC in the manner best suited to its needs; little (if any) attention was paid to the development of forward and backward linkages; no mention was made of the possibility of renegotiation or government participation in projects; environmental protection and safety was ignored; the employment and training of indigenous labor was ill-provided, especially at managerial and technical levels; the companies were subjected to few regulations with respect to purchasing local inputs and utilizing local services; and infrastructure development received insufficient attention.

In addition to the direct effect TNC operations have in the local economy, the indirect linkages also proved important. The potentially counterproductive consequences mining projects might have on the distribution of income; institutions and values; industrial competition and efficiency; and technological developments and product innovation[2] also became socio-economic and socio-cultural issues of concern to governments.

Over the past two decades, there has been a development of new contractual modes in place of the traditional concession with improved benefits accruing to host countries, and increased attention to those areas of importance to the development plans of the developing countries. The traditional concession has increasingly been supplanted by new agreements including joint ventures, managerial and service contracts, and production sharing. Increased royalty and income tax rates and additional levies imposed on corporate activities have yielded greatly increased host country returns. Corporate commitments (defined in the new agreements) to societal and infrastructure investments have produced additional host country benefits.

The recently negotiated terms are a significant departure from the traditional concessions. The provisions are more numerous and exacting than previously; the agreements, in turn, are more lengthy and complicated than the simple concession arrangement.

In the effort to protect national sovereignty and simultaneously maintain an "organic link to transnational enterprises,"[3] most

agreements firmly vest ownership of ground minerals in the state and provide for the rendering of corporate services for payment in cash and/or in kind. A number of agreements specify that the development and exploitation of mineral deposits is to be executed by a joint venture in which the state owned enterprise retains majority equity ownership. Other agreements provide for government participation, to varying degrees, in ownership. By 1979, approximately 50% of the bauxite and 47% of the copper produced in the non-communist countries were controlled by companies in which the state had an equity stake of 10% or more.[4]

> Traditional patterns of mineral development have been largely overtaken by a marked shift in the ownership of non-fuel mineral industries from international mining firms to host governments.[5]

Though not without reluctance, the mining companies have adapted to this change and learned that they can operate successfully and profitably under varying operational modes and types of agreements.

In addition to new ownership patterns, changes have occurred across the spectrum of host country TNC investment terms. The state usually has a voice in operations; by means of its position on the board of directors on the requirement of receiving prior state approval for project programs; accounting procedures, financial terms, marketing and export policies, and foreign exchange regulations are stipulated; the supremacy of national law is usually incorporated in the agreement terms; and land area and relinquishment terms are more rigorously defined to protect the interests of the state.

Mineral investment often occurs in world wide cycles in response to global economic conditions, periodic recessions, rampant inflation, and which may be beyond the control of any host government. The costs of such investments, moreover, have soared beyond the ability of the mining companies to finance projects from internal funds.

The number of new mining projects announced increased throughout 1973 and into early 1974; but thereafter investments seemed to be on a downswing, as increasing numbers of previously announced projects were cancelled.[6] In addition there appears to have been a shift in investment away from developing countries. It is estimated that only 15% of mineral exploration expenditures were spent in the developing countries, which contain approximately 40% of the world's resources.[7]

The interaction of the need for new mineral capacity, short-term business cycles, and capital availability have left a mark on the financing schemes negotiated by TNCs and host governments. Debt-equity ratios, the issuing and prices of new equity shares, and the nature and the terms of project loans have become frequent items of contractual concern. The rise of project financing, with the concommittant reliance upon international financial institutions for loans and credits, is a trend which will continue and be an area of host country company concern.

2. Host Country/TNC Relationships

Investment agreements are a resultant of a dynamic bargaining relationship between host governments and the transnational corporations. This bargaining process, moreover, does not occur in a vacuum; rather, it takes place in a fluid, changing international environment of ongoing political and economic activities. The agreement which is reached becomes a product of the relative strengths which each of the parties can bring to bear upon the other.

Though the host country and the TNC may share many interests and common goals, "at the project level it is unlikely that the objectives of a multinational firm will coincide with those of the host government."[8] The resolution of differences between the parties, regardless of how cooperative the government or firm may be, will largely be determined by the bargaining position each can command. The terms of an agreement, ranging from the fiscal regime, to management and control, to rights and obligations, reflect the calculus of power between host and investor.

Smith and Wells[9] identified three main factors which influence the the negotiating and bargaining process, and a fourth variable which influences the first three:

1 - the structure and evolution of the industry;

2 - the position and interests of the company within the industry;

3 - the economic, political, bureaucratic, and social forces in the host country; and

4 - the relative negotiating and administrative skills of the TNC and the host.

For instance, if the host government must rely on a small number of non-competitive firms, if the industry is highly integrated at all stages, or if the obstacles to entry are high (i.e., excessive capital costs or capital unavailability), the balance may lean in favor of the TNC. If a country must rely on one or a few particular firms, because of their monopoly of market outlets or industry resources (i.e., needed technology), the TNCs can exact more demanding terms from the government; the converse is equally applicable. For those minerals and in those countries where the TNC is least important to the development of natural resources and is most dispensable, foreign investors will be faced with the most rapidly deteriorating terms and least favorable negotiating position.[10]

> As raw materials industries mature, the most common pattern is a decline in the control that a particular foreign firm exercises. As the technology spreads, new firms enter the industry. As new entrants appear, the bargaining power of the host country usually increases.[11]

The initial premise between the corporation and the host is a mutual interdependence: the governments need the transnational mining companies to change their resource endowment into liquid

assets and exploit their mineral deposits in an efficient manner, while the TNCs need the host countries if the firms are to be able to produce minerals and products to supply to the developed countries.[12]

Domestic pressures on the host government are important factors affecting negotiations. Political, economic, and social forces--especially as manifested in nationalism or pressures by national elites--may force the government to make additional demands on investors. All of these variables and negotiating assets, however, can be translated into favorable terms only through the skillful exercise of negotiations and administration.

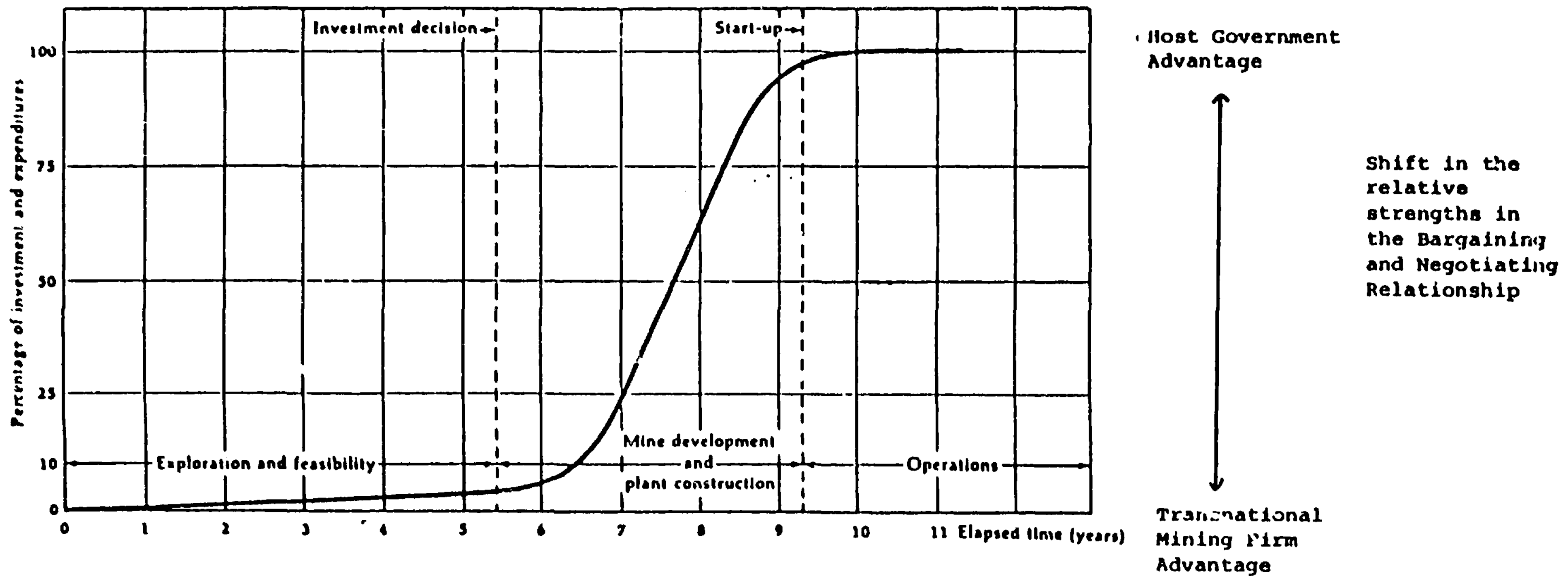
The evolving relationship, what Smith and Wells terms the "concession process,"[13] has a time dimension which is critical. At the initiation of discussions for exploration the risk and uncertainties are at their highest. Though the exploration phase is not particularly costly relative to expenses over the life of the project (see Figure 1) or in comparison to exploration costs for petroleum and natural gas projects, it still is the point of greatest risk. To induce the company to incur such risks and compensate for the ambiguous and undefined variables (ore grade, reserves, development costs, etc.), the government often is forced to offer easy conditions. Moreover, before any investment is made, the TNC has little to lose (save, perhaps, opportunity costs) by demanding strict terms. The prospective host, on the other

hand, needs the abilities and assets commanded by the transnational mining companies to effect the development of its mineral resources.

The country's desire to develop a mineral deposit and obtain an economic return on the same, combined with the high risks associated with the early phases of a project and the host's need for corporate assistance, produces a situation highly favorable to the TNC and one in which the government often feels compelled to "accept virtually any terms to induce some company to develop the resource."[14]

As time progresses, the disequilibria in bargaining strengths between the parties begins to balance and then swings in the favor of the host government. Figure 1 depicts the costs of developing a mining project. Along the vertical axis, the measure of the percentage of investment and expenditure is simultaneously an indication of the relative shift in the power in bargaining relationship from the firm, to a position of balance, to the host. (Note: the percentages on the scale do not apply to the negotiating and bargaining strengths, as neither party would ever have a total monopoly on bargaining power. The reader may, for illustration's sake, assume a hypothetical measure in which no party dominates more than 75% of the bargaining strengths.)

Figure 1: Development and Expenditure Chart for a Modern Large Scale Mining Project; Shift in the Relative Strengths in the Bargaining and Negotiating Relationship.



Adapted from Bosson and Varon, 1977.

This shift in power occurs because as the investment proceeds, the host is that much less dependent on the corporation, and the corporation has that much less it can withhold as a bargaining chip and that much more it has as sunk investment which it must try to protect). Moreover, the firm's domination of knowledge at the earlier stages begins to erode as the knowledge is acquired by the host government and is embodied in the stages of the project already completed. The perception of "fair" returns, further more, may change as the investment project progresses from stage to stage.

3. Practical Issues in Negotiations

While the interest of the foreseen investor and the state may not coincide or may even be mutually exclusive, the negotiating process — and the resulting agreement — should not be viewed as a zero-sum process. The static model of a fixed-sum game, in which the benefits which accrued to one party are not available to and cannot be shared by the other party, does not accurately describe the investment and bargaining process.

If government and firm are inflexibly adamant, the result is most likely the failure to achieve a consensus and successfully conclude an agreement. Under such a scenario, neither party receives any benefits. Flexibility on the part of the parties, however, can provide a mutually beneficial relationship, as evidenced by many

successfully negotiated agreements. The state and the foreign corporation should pursue what Raymond Mikesell called "joint maximizing solutions" which allow for the parties to enjoy increased benefits.[15]

The theoretical constructs of agreement-making have additional limitations in practice. Mining legislation is a central variable in structuring agreements. The 1977 Chilean modifications of Decree Law 600 (1974) provided attractive incentives for St. Joe Minerals and Noranda.

The Indonesian government's model contracts, which have evolved to their fourth generation, provide valuable insight into the importance of host government regulatory regimes. In 1972, the government terminated the 20 pending negotiations for the conclusion of mining contracts of work, citing the need to levy new terms (especially with respect to uniformity of taxes and excess profits taxes, export procedures, and the use of foreign exchange). Following the issuing of the more onerous third generation model contract, the government invited the 20 prospective investors to reconfirm their interests and submit proposals. Only three of the firms responded.[16] In 1980, the Indonesian government presented its fourth generation model, which contained some relaxed provisions.[17] It is too soon to tell whether the less demanding terms will stimulate mineral investments, but that clearly is the intent. Bargaining theory cannot fully explain the evolution of an agreement, as intangible

factors, conflicting goals both between the parties and on the separate part of each party, and environment factors serve as intervening variables in the equation. The theory expostulated in the preceding section assumes an economic nationality which may not apply. It assumed an initial short-term perspective for the government and a long-term time frame for the TNC. This does not imply a lack of perspective or vision on the part of host governments; rather, it is a reflection of the relative needs and strength of the parties in pursuing resource development projects. Though development delays at the insistence of the government are not the rule, some countries have postponed the development of major mineral projects until satisfactory terms could be obtained.

The dual goals of attracting foreign investments and linking resource projects to economic development are difficult to accommodate, as the most attractive investment environment may not necessarily be harmonious with the process of development. "For host governments, the real issues are how to provide an environment in which transnational corporations can contribute to national goals while minimizing costs and maximizing the benefits of private investment."[18]

To accept foreign investment,government attempts to ensure that the benefits of such investment coincide with the development objectives of the country and maximizes the advantages provided by an agreement

with a TNC. In this instance, negotiating skills and knowledge, may be significant. Countries which can command such skills, derived from experience with TNCs, participation in a commodity producing group (i.e., IBA or OPEC), or from an operating state-owned mining company, are in a better position to level demands. Several developing countries, such as Indonesia, have developed considerable expertise based upon all three sources, and the state's sophistication in these areas is reflected in the agreements. Comparison of the details (or lack thereof) of the various agreements points up the different levels of host government ability at exacting specific terms and behaviors from the transnational firm. This is addressed further in section "I,B".

The transnational mining corporation usually adopts investment strategies and tactics to minimize its risks and neutralize the potential problems that may arise because of environmental factors or host government activities. The firm's operations are complicated by the fact that it operates in numerous environments, each of which carries its own set of advantages and disadvantages. By diversifying its mineral sources, engaging in projects in conjunction with local firms, relying on internationally sponsored project financing, and diversifying their equity, TNCs try to minimize the risks of operations. Aware of their strengths and weaknesses vis a vis the host country, the transnational often proves to be flexible in negotiations. Most issues are considered negotiable, even if short-term disadvantages must be incurred. Billerbeck and Yasugi went so far as to conclude that

> "provided that the political and economic environment is favorable to private business, the decision to participate directly in an enterprise in a developing country is usually almost independent of host and home countries' private investment policies."[19]

They do state, however, that the form and location of investments can be influenced by government policies.

As the bargaining theory implies, the transnational must be increasingly accommodating as the project matures. Despite its desire for stability, the firm must be prepared to adapt to changes. Prior to the effecting of the renegotiation of the Boungainville project, for instance, Conzinc Riotinto of Australia offered the Government of PNG increased equity ownership instead of the proposed new tax arrangement. With its investments in place, the firm will usually prefer to cooperate with host demands rather than risk a confrontation which might prove costly to lose.

Increasingly, both the host government and the transnational mining firm are learning to be mutually accommodating. Over the past few decades, there has been a shared growing understanding of the needs and demands of the respective parties. Host countries have tempered their often displayed ideological disdain of the TNCs. Developing country governments have come to recognize the role the corporation can play in mineral exploitation projects and economic development. Firms, on the other hand, are increasingly cognizant of the legitimate concerns of host countries. Moreover, the parties

are aware of the shared interest the firm and government often have in a mining project. This does not imply that the negotiating path is smooth and harmonious, or that there are not numerous conflicting goals and interests between the host and the TNC. Moreover, there are exceptions to this trend. This mutual awareness and sensitivity, however disparate the interests of the parties, does provide a launching pad of understanding which may facilitate cooperation and compromise.

4. Renegotiation

Renegotiation of mineral contracts has become increasingly common in recent years. For example, among the cases surveyed for this study, Kaiser and the Government of Jamaica successfully renegotiated their prior agreement, and Rosario Resources accepted the government's acquisition of Rosario Dominicana and entered into a service contract. In a related development, Broken Hill Proprietary negotiated an agreement with Papua New Guinea to develop the Ok Tedi copper deposits after a subsidiary of Kennecott Copper Corporation failed to reach agreement with the government. The logic of Figure 1 is that pressures for changing terms and renegotiations will inevitably build-up over the course of an agreement. As conditions change or initial assumptions prove false, there are additional forces pushing for renegotiation.

The theory of the host/firm relationship provides an insight into why agreements are subject to change.

> The reasons that change is inevitable become apparent when one recalls the standards against which contracts are measured — what is needed to attract the investor or to hold onto him. The terms required to attract an investor are usually quite different from those required to retain him.... As a result, the stage is set for a quick renegotiation.[20]

The Jamaican Government's renegotiation with Kaiser reflected the evolution of the relationship: the unequal agreement terms Jamaica accepted as a bauxite producer no longer reflected the relative strengths of the parties. The Kaiser investment was a fixture long in place, and the firm needed to come to terms with the Jamaican Government.

The example effect, the setting of standards by one agreement creates additional renegotiation pressures. Once Jamaica secured the renegotiation of one bauxite investment agreement, the stage was set for more rapid renegotiations of the outstanding agreements. The same principle applies with respect to examples being set by one country and duplicated by another.

TNCs in the extractive industries are particularly interested in maintaining stability. The capital-intensive, long-term nature of their investments leaves these firms in a vulnerable position. As evidenced by most of the agreements surveyed, the firms have sought to institutionalize the contractual terms as fixed for the life of the project. Clauses claiming that future laws and regulations will not affect the terms of the agreement and that

laws inconsistent with the agreement do not apply to the project cannot be construed as binding on a sovereign state. Such provisions do, however have a palliative, psychological effect the TNCs seek. If efforts at amicable renegotiation are unsuccessful, the government of a state has a right to enact legislation and apply new statutes to previously negotiated agreements. Such action may entail adverse consequences: the economic health of existing projects may be jeopardized and future agreements may be more difficult to negotiate, as TNCs may either object to the new legislation or be reluctant to invest in a country that applies new regulations and laws ex post facto.

The sanctity of contract and the rights of property ownership are not in fact inviolable. The nature of the state and its legitimate right to permanent sovereignty over natural resources take precedence over contracts between a state and a third party. The state can no more alienate its sovereignty over its resources than any entity can deny its alienable rights. Appeals to state equality, philosophical and humane standards, and historic rights compensation for past imperialism and inequality are ascendant over claims to the fixed terms of a contract. As a "sine qua non of national independence and economic self-sufficiency,"[21] permanent sovereignty over natural resources is a "higher law" than contractual claims.

In almost all of the agreements, assurances were given on the unchangeability of certain terms for a period of time. Chile, as an

extreme example, stated that the fiscal terms were not to be altered for the life of the agreements. Legal claims, however, have often in the past yielded to political, economic and social pressures for renegotiation. The latter used to be more fluid and dynamic, while the legal regime is often inflexible and heavily burdened with bureaucratic inertia.

In 1971, previous investments in the mining industry were nationalized. However in 1977, Chile enacted an investment code in which long term assurances of stability were included. Another example is the change of government in the Domincan Republic which coincided with government's renegotiation with Rosario Resources.

Economic factors can be equally compelling in forcing a renegotiation. When an investor earns a very high rate of return as for e.g., in the case of Bougainville copper mine in PNG, the state often feels it is not maximizing its return on resources and is not capturing enough of the economic rents.

Economic and social changes prompted changes in Peru's relationship with the transnational mining firms. Though Southern Peru Copper Corporation's (SPCC) Cuajone project (1969) was not affected by the 1971 change in the mining code, SPCC's Topequala project was subjected to a new tax regime. In addition, other properties SPCC (and other TNCs) held in Peru had to be relinquished to the Government because of the application of new regulations to leases previously issued. "The greater the profitability of the mine," Mikesell concluded

with respect to his study at the Bougainville and Topequa'a mines "the more intense will be the demand for renegotiation of the contract on the part of the host government."[22] Most of the agreements in our study are too recent to assess their profitability. The Indonesian and PNG agreements, however, partially attempted to defuse the economic pressures for renegotiation by the levying of an excess profits tax. Phased-in government participation, moreover, as included in the Cerro Colorado (Panama) and Indonesian agreements, is an attempt to mitigate the pressures for renegotiation.

Because of the recent vintage of the agreements we have surveyed, it is premature to judge whether renegotiations will occur. The Conoco/CEA/Niger and RTZ/Indonesia agreements have provisions recognizing the possibility of revision and/or renegotiation of contractual terms. The Conoco document recognizes that should fundamental changes occur in the assumptions which were integral to the conclusion of the agreement, the parties may renegotiate the terms accordingly. "In light of all relevant circumstances," RTZ and the Government of Indonesia are to consult with each other and determine when and if the agreement needs to be revised.

As Smith and Wells mentioned in their analysis of the bargaining relationship, changes in the bargaining strength of the host government "will be translated into revision of the concession arrangement only if the host government has sufficient technical competence to recognize that a critical change has taken place."[23] The bargaining skills and knowledge (technical and administrative) are as important

in the effecting of a renegotiation as they are to the formulation of the original agreement. As we mentioned in conjunction with Figure 1, the skills and knowledge of the host government negotiating team and relevant ministry increase dramatically over the term of an agreement. (Corporate skills and information may also increase marginally, but to a lesser degree, proportionally, than that experienced by the government.) The different "generations" or levels of sophistication a state may have with respect to varying resources (i.e., petroleum, as opposed to hard minerals, as opposed to timber) may be directly related to this learning process.[24]

Renegotiations may also be prompted by the TNC. Stockmayer and Walde[25] have suggested that most renegotiations have been made at the insistence of the companies. They cite Reynolds Aluminium's demands for a revision of its fiscal relationship with Haiti and other recent renegotiations in Botswana based on economic and technical problems as examples. Though companies may seek renegotiations, the host country is almost certain to enjoy a relative renegotiating edge compared to its original bargaining position.

B. Issues Between Host Governments and Transnational Mining Companies

Foreign investment mining agreements are lengthy documents, often running 50-75 pages or more. They contain dozens of provisions, of varying import and consequence to the project and the parties to the agreement. It is beyond the scope of this paper to attempt to address all of the issues and terms relevant to mining projects involving transnational mining firms.[26] Those issues of concern that are the most salient to the agreements negotiated during the time frame of our study, and identify the respective views of the TNC and the host government with respect to those issues.

For convenience sake, we have grouped the various terms into six categories. The classifications employed do not purport to be scientific; rather, they are based upon what is considered logical grouping and is by no means the only logical categorization which can be used. The categories also may overlap. The categories and some of the accompanying issues follow.

Mode of Agreement. Under this heading are included issues such as the structure of the host country/firm relationship and form of cooperation, the ownership of the project, financing arrangements, and the tenure of the agreement.

Control and Management. Which party controls the various phases of the project and manages operations is an especially sensitive point. The composition of the board of directors or the executive committee and the process of making policy decisions fall under this rubric.

Profits and Fiscal. This category covers the issues of the division of income and profits, taxes and royalties, repatriation/reinvestment, and the accompanying accounting procedures which govern the agreement.

<u>Pricing, Marketing and Foreign Exchange</u>. Problems of transfer and arm's length pricing, marketing outlets, exports, and regulations with respect to holding and using foreign exchange are included in this category.

<u>Social Issues and Infrastructure Development</u>. This classification includes a broad spectrum of issues, including training and employment of nationals, the development of forward and backward linkages, regional development, investments in infrastructure and non-mining related activities, environmental protection, and the transfer of technology.

<u>Other</u>. As a residual category, a diverse set of issues are included: dispute settlement, renegotiation, the ascendency of national laws, land relinquishment and other assorted concerns.

The host and the firm each have "ideal" preferences about the specific terms of an agreement;[27] both parties have minimally acceptable terms. The negotiating process is concluded within these limits; the completed agreement representing a compromise between the ideal wants and basic requirements of the firm and the host government.

1. Mode of Agreement

The traditional concession is increasingly being replaced by new contractual arrangements, though in many respects the more "advanced" forms of agreements may be almost non-distinguishable from the concession. To date, it does not appear to be the case that the benefits the state gets from a project is correlated with the nature of the agreement. "There is virtually no relationship between the form of the agreement and the host country benefits from the agreement."[28] Any mode of agreement can be highly rewarding or detrimental to the host government's interest, depending upon the provisions contained in the agreement.

In place of the concession, agreements have evolved in the form of equity joint venture (i.e., Noranda/Chile, Kaiser Bauxite/Jamaica, and Alusuisse/Sierra Leone), service agreements (i.e., RTZ/Indonesia, Marubeni/Sudan, and Rosario Resources/Dominican Republic), and production-sharing agreements (i.e., Intercor/Colombia and Shell Petroleum Coal/Indonesia). In addition to the typologies, there are various hybrid forms of agreements involving different levels of government participation in projects (i.e, Texasgulf/Panama).

All of the modes of agreement entail cooperation between the transnational firm and a state-owned company or state agency. As in petroleum, mineral-rich developing countries (and developed countries, for that matter) have developed state-owned mining enterprises as a means of exercising greater control over their natural resources. Lacking the ability to export their country's mineral reserves in the most economically efficient manner possible, state-owned companies and host governments usually rely on transnational mining firms to assist in the development of resource projects. As opposed to the concession, these agreements tend to be shorter in duration (the operating phase never exceeded 35 years), are more specific in detailing the responsibilities of the foreign investor, give limited or no property rights, grant mining leases for less acreage, and (except for some service agreements) leave the majority of risk and capital burdens on the corporation. In addition, the host is perceived as better able to exercise some control over and realize benefits from resource projects.

The TNCs have found these agreements workable and profitable. By working in conjunction with a state-owned or local corporation, the foreign investor may enjoy a better public image, and gain easier access to local capital and markets, without ceding control of a project. Many firms have begun to operate through locally registered subsidiaries to further defuse potential national resentments. These modes of agreement, furthermore, often reduce the risk which must be borne and the capital that must be advanced by the TNC. This is especially true of service agreements for the provision of technical and/or managerial expertise.

Some agreements also allow for the phasing-in or outright granting of government participation interests. Indonesia has the right to acquire 51% of the participation in the RTZ agreement and PNG has the option of acquiring 20% of BHP's holdings in that country while Panama has the option of purchasing an additional 20% equity shares. (After the Panama-Texasgulf agreements was negotiated, Texasgulf withdrew from the project and sold its rights under the agreement to Rio Tinto Zinc. In addition, RTZ acquired a further 29% of the equity from the government, making the new equity split 51-49.) In the Panamanian, Papua New Guinean, and Indonesian examples, as usually is the case, the government must purchase its equity interests. In certain instances, the state may be afforded a "carried" or "free" equity interest. The investor may require additional benefits if it is to "carry" the government's share. In the Conoco/CEA Niger agreement, Niger's must pay not only its share of exploitation expenses; its 30% equity interest is carried by the other partners.

The traditional concession granted the foreign investor extensive property rights and ownership of mineral deposits in the project area. Successor agreements usually vest ownership in the state or the government. The Intercor/Carbocol Agreement (Colombia), however, granted Intercor ownership of 50% of production. At the point of extraction, while the respective undivided CEA/Conoco/Niger uranium interests also included ownership.

The excessive capital costs of project development have encouraged reliance on international project financing. The capital requirements of large-scale projects are beyond the capabilities of the TNC to finance internally. A number of projects acknowledge the need for the parties to cooperate in the finding of external financing. Both the Cerro Colorado and Alusuisse projects stipulate that outside financing is essential, but is not the responsibility of any one party. Under the Chilean agreements, Noranda and San Jose bear the responsibility for procuring any external financing that may be needed. Loans for the Chilean projects, as with the Indonesian agreement, must be approved by the appropriate government agency.

All capital remitted into certain countries, moreover, such as Brazil and Chile, must be registered. Different agreements allow for varying accounting procedures as to what constitutes a capital asset or good which is creditable towards the investment. The Chilean projects allow for the investors to capitalize services and technology. Most agreements provide for the crediting of TNC feasibility studies and associated works towards the total investment of a project.

2. Control and Management

Nationalization of mining companies and resources, and government participation (including majority or even total ownership) in resource projects do not necessarily imply that the state will exercise effective control over projects.

Under traditional concession arrangements, the TNCs enjoyed total freedom in decision making and management at all stages of the project. The only limiting clause would be an ambiguous requirement that the firm follow good mining practices. One of the basic stimuli for the evolution of the new modes of agreement was the desire on the part of the host government to exercise more participation and control over its mineral projects.

The de jure control host governments have gained via the institutionalization of new forms of agreement, however, has not been translated into de facto control. In all of the agreements surveyed in this study, management and control of day to day operations remain vested in the transnational firm. Host governments have attempted to moderate the extensive control the transnational can command as manager, operator, and administrator of mineral projects by means of securing government representation on the board of directors (or executive committee). General policy decisions are supposed to be the domain of the board; the manager is to be the implementor of the policy guidelines and directives issued by the board. Be it by its majority position on the board of directors (Panama), equal representation (Sierra Leone, Colombia, and

Niger), or minority membership (Indonesia), host country governments have attempted to channel the management of operations and keep a watchful eye on projects.

The host country often seeks to retain control of the development of a mineral deposit by requiring that all programs for a given project and important decisions receive prior state approval or be submitted for state scrutiny. Papua New Guinea, which appoints members to the board of directors based upon its proportionate holdings in the company (which is not to exceed 20%), must approve the work proposals BHP is required to submit for the various stages of the project. The Indonesia/RTZ agreement defines a specific five-phase development program and the amounts of money RTZ must spend on each stage.

Even with the above mentioned host government protections, and additional provisions (i.e., mandatory submission of quarterly reports and the inclusion of nationals in the higher echelons of management), the foreign corporation is the main force in decision making and management. The resources which the firm commands — information, expertise, close contact with operators — give it an advantage which is difficult for the state to overcome. Moreover, the developing countries' governments lack the resources to manage operations without employing the assistance of TNCs. The evolution of service agreements is a direct reflection of the developing countries' inability to manage its mineral projects. The new

modes of agreement and statements of government ownership "(do) not substantially affect the location of control or the decision making process so long as a transnational corporation continues to manage the undertaking."[29] Without the acquisition by developing countries' governments of the skills needed to manage resource projects, the control of operations will continue to be — by necessity — lodged in the transnational mining firm.

The state also can enact mining legislation to attempt to restrict the TNC's control. Such legislation and mining codes, however, is more general than the "broad" policy directions established by the board of directors or executive committee and has little application to the daily operating regime. The ministry of mines (or any other government agency which is empowered to control foreign mineral investments) is likely to suffer from all the shortcomings which plague the state-owned enterprise; it, therefore, is not going to be an effective vehicle for controlling mining operations.

3. Profits and Fiscal Regime

These issues get to the heart of what is perhaps the basic motive of both the TNC and the host government in negotiating mineral agreements: The generating of income and profits. The crucial variables in determining the relative distribution of profits are the fiscal provision and other sums the firm must pay to the government, and the accounting procedures used to determine the amount of payments.

These terms also serve a regulatory function by further structuring the host country/firm relationship. "The taxation regime," Smith concluded, "is perhaps the most important element of any national mining policy, for it constitutes an important means for realizing many policy objectives."[30]

The purpose of royalties and taxes is to capture all the economic rents associated with a resource project, beyond that which is required to attract the foreign investor. The most important provisions with respect to rents and profits are the income tax and royalty fees and the applicable accounting procedures. The traditional concession essentially reversed the above mentioned purpose of rents: it captured all the profits (including windfall rents) on the behalf of the transnationals, while providing the host governments with the minimum revenues it demanded to allow firms to exploit their natural resources. Concessions had low income tax rates (that is, when the countries finally were able to levy income taxes on foreign mining operations) and minimum royalties based on physical production rather than value. With accounting procedures left ambiguous, moreover, the firms enjoyed a "field day" of profit maximizing and tax minimizing.

The recently negotiated agreements clearly identify the accounting procedures -- including amortization, depreciation, deductible expenses, tax credits -- that are employed in calculating taxable income. Under its agreement with Niger, for instance, Conoco must

hold its uranium and petroleum interests separate, each governed by its own tax regime. Income taxes are levied on profitability. Most of the tax rates in the surveyed agreements were approximately 50%. Indonesia and PNG afforded lower initial tax rates (35%) during the period of investment recovery, and increased rates thereafter. Conoco, which provided for one-half of the carried equity interest of the Government of Niger, was subject to an income tax of 40.5%.

The major problem associated with income taxes stems from the cyclical volatility of mineral projects. With mineral prices subject to tremendous fluctuations, profits often vacillate from year to year. The fixed tax rate may mean that in years when prices are depressed the company may incur a loss or make minimal profits, while in years of high prices the firm will enjoy windfall profits. The high profit years often leave nationals and host governments thinking that a firm is making too much profit and create pressures for an upward revision of tax rates; such an upward revision, however, threatens the corporation's profit level in all but the best years. In an attempt to redress this cyclical problem, Indonesia and PNG have levied excess profits (windfall) taxes on those years when earnings prove to be "excessive". The former, applies a 60% tax to profits in excess of 15% on invested capital, while the latter levies a 70% tax on earnings above a 20% accumulation rate. At least one mining company spokesperson said that his company was not interested in any investments that are subject to "super taxes."

Taxes do not raise production costs and usually are creditable against the TNC's tax burden in its home country. Kaiser Bauxite must pay taxes in Jamaica equal to the amount of foreign tax credit the firm is allowed on its operations in Jamaica. Taxes are, however, difficult to administer because of the complicated accounting problems which arise.

Royalties, on the other hand, increase production costs. Levied as a percentage of the value of production, royalties both are easy to calculate and are independent of profitability. Indonesia employs a sliding royalty based on the price of sales. Royalties altered the government guaranteed revenues and receipts in the early years of operations (when no profits may be made). Amounts paid in royalties are usually counted as tax deductions rather than tax credits. At the time of the Conoco/Niger agreement, royalty payments in that country were deemed as credits against income taxes. The agreement acknowledged that the Government was changing the accounting procedures. Royalties were going to be considered tax deductions in the future. Conoco was to be subjected to these changes when enacted by the Government.

All of the agreements allowed for duty free importation of various capital goods needed for investment in the projects. This import tax holiday would last for a fixed period of time and then expire. Some agreements (Panama, PNG) provided for taxes on dividends remitted to shareholders in addition to income taxes; others exempted

dividends from any additional taxes (Sierra Leone). Various other fees -- administrative, export, surface, depletion annual fees, etc. -- are levied in some countries, but tend to play minor roles in the overall tax regime.

Most all the agreements provided fixed fiscal terms, and held the TNC exempt from any new or discriminating taxes. Chile offered Noranda and San Jose an "invariable" thirty-year tax regime (though the firm enjoys the option of operating at the prevailing rate if it should prefer), while Kaiser Bauxite received a guarantee of no new taxes until 1984.

Jamaica successfully pioneered the concept of a production levy based on the value of the finished product. By taxing bauxite production relative to the average market price for aluminum the state avoids the possibility of transfer pricing in a vertically integrated aluminum company.

The tax regimes provided in these agreements clearly are favorable to those contained in the traditional concessions. "Government income from mineral agreements is clearly higher in comtemporary agreements than it was from comparable agreements fifteen or twenty years ago."[31] Profitability, however, like control, is not necessarily correlated with the mode of agreement. Under a joint venture arrangement, for instance, the government released less returns in dividends than it would from taxing the entire project. Equity sharing means new risks and investments and not necessarily increased profits.

Under service agreements the TNC as manager or operator usually receives a percentage based on total investment (technical fees to Alusuisse for the construction period), new sales (service fees to Alusuisse and Rosario for managing respective commercial operations), or gross and for operating profits (Texasgulf receives fees for both for its management of the Cerro Colorado operations). All fees are subject to income taxes, except only a percentage. Alusuisse's fees received are deemed taxable income. The fees to which Rosario is entitled (1% gross sales) is to be within the limits of U.S. $1,000,000-$1,750,000, if the amount is to be adjusted yearly in accordance with the consumer price index. Rosario is not subject to income tax in the Dominican Republic.

4. Pricing, Marketing and Foreign Exchange

Most developing countries' mineral production is exported by the TNC to the developed countries. Under the majority of agreements, the TNC, as manager, is responsible for the marketing of all production. Niger and Colombia, however, must market their shares of production. By controlling marketing exports the firm is able to influence the profitability of a mining project. In addition, the TNC is put in a position of being able to circumvent certain accounting procedures and regulations.

The transfer pricing problem is endemic to the minerals sector.

Simply stated, the traditional concession allowed the transnational firm to sell products to affiliated enterprises at arbitrary prices; as a result, the firm would show minimal or net profits upon which it could be taxed. Royalties and other taxes and duties calculated on arbitrarily low values of minerals extracted, transported, processed, or exported yielded very small amounts of revenue for the governments. In an attempt to avoid the potential abuses associated with transfer pricing, virtually all agreements mandate that sales be negotiated at "arm's length" terms which are comparable to the conditions prevailing in the international marketplace between unassociated third parties. While most agreements merely required that sales be negotiated at the best available prices, Noranda's copper sales must meet the standards set by the Chilean Copper Commission. Long-term sales contracts, in many instances (i.e., Indonesia and PNG), must receive state approval prior to exports. Sales contracts for small amounts of ore in Papua New Guinea must get Government approval within 30 days of the execution of the contract. Other agreements contain similar provisions insuring that the government has the right to review the terms of all sales contracts.

Similar transfer price problems may arise with respect to the corporations' smelting and refining fees, the valuation of equipment and machinery imported for mine installation and other construction, services procured from affiliates, and the repayment of principal and interest on interaffiliate debt. The Foreign Investment Committee,

for instance, must review the valuation of capital goods imported into Chile and credited towards the authorized capital investment. The Indonesian agreement provides that any payments RTZ disburses to an affiliated company for services the affiliate renders with regards to RTZ's operations in Indonesia are not to be more than the amount RTZ would pay to a non-affiliated company for providing the same services.

Exports of commodities are a vital source of the foreign exchange developing countries need to pay for their imports. The government, therefore, has a special interest in insuring that foreign currencies from export sales are remitted to the host country and converted into local currency. The TNC, on the other hand, prefers to have the freedom of holding abroad the proceeds from sales and not being forced to turn its hard currencies into a less useful local currency. Most of the agreements allowed the foreign investor to hold abroad an amount of foreign currency equal to its needs to satisfy approved foreign debt obligations for 60 (Noranda and San Jose) or 90 (Kaiser Bauxite, BHP, and RTZ) days. Alusuisse had the option of holding abroad those amounts necessary for the "proper running" of operations in Sierra Leone, and the Niger/Conoco agreement did not specify any restrictions on the company's freedom to hold sales proceeds abroad. All of RTZ's proceeds from the export of Indonesian minerals are to be held in an account abroad in the name of Bank Indonesia as agent for the Company.

Most of the agreements require that sales proceeds remitted to the host country be converted into the appropriate local currency. The sale of foreign currency (and subsequent purchase, when allowed, to cover foreign debts) is usually to occur at the highest prevailing exchange rates. Every foreign investment agreement specifies the terms regulating the use of foreign exchange. Access to the foreign exchange market was considered very important by mining executives, as the TNC must remit profits, repayments of international debt obligations, and other amounts to cover purchases of goods and services in hard currencies.

5. Social Issues and Infrastructure Development

The assortment of issues under this heading are essential for two reasor . Infrastructure development is an esssential prerequisite to the effective development of a mining project and exploitational mineral reserves. Investments in infrastructure and programs to further the social goals of the government are important to the integration of the mining project into the local economy and the promotional regional and national socio-economic development. The provisions with respect to these issues are means by which the host government seeks to maximize the positive and minimize the negative social and economic externalities which the foreign investment creates. Traditional concession agreements are noticeably negligent in those areas of concern.

The Indonesian agreement explicitly acknowledged the goal of having the mining project promote the development of the state's economic and social structure. Some of the other agreements recognized that the promotion of the national interest was an initial premise in the contracting of the agreement. RTZ was also to foster regional development by coordinating its mining operations with regional development programs. In addition, the company pays a regional development tax. Similarly, BHP is required to submit a business development program for approval by the Government of Papua New Guinea. The firm will also promote the development of local business to service the mining proje_c, and give preference to local businesses in subcontracting for services. Exxon is required to promote the development of mineral resources in Colombia by investing specified sums in petroleum and for gas explorations and development and in the evaluation of coal reserves.

At the minimum, the agreements required "preferential" hiring and training of nationals. Other agreements contained more rigorous provisions promoting indigenization of the project work force. BHP's employment and training program must be submitted for the review and approval of the Government of PNG; Alusuisse must have its proposals similarly reviewed and agrees to replace the higher echelons of project management with nationals within a "reasonable" period of time; Intercor is bound to comply with the hiring laws established by the Colombian Government; and the Indonesian Government incorporated

into its agreement with RTZ specific target levels of indigenous employment at the various levels of skill and expertise. The BHP/PNG agreement requires that landowners and inhabitants of the Ok Tedi region and immediate province receive especially favorable treatment with respect to employment opportunities.

The enclave industry and dual economy problems, which arise from the failure of transnational corporate activities to be integrated into the state's economy, are earmarks of the traditional concession arrangements. The promotion of forward and backward linkages is addressed, to varying degrees, in all the foreign investment agreements we surveyed. Efforts by Third World governments to get TNC's to 'unbundle' the "foreign investment package" and employ local inputs to the maximum extent possible (backward linkages) have been most successful in the extractive sectors.[32] The input requirements of a mining project -- technological expertise, advanced skills, capital and technology-intensive equipment, manufactured goods and specialized services -- are not always satisfiable from domestic sources.

Most agreements require that, to the extent possible, and depending upon competitive costs, availability and comparable quality, the TNC is to employ local inputs (goods and services) at all stages of the mining project. Niger was amongst the least rigorous in this area; while requiring preferential usage of local inputs, Conoco is exempt from any restrictions on its selection of suppliers. The

Indonesian and Chilean agreements provide that the cost comparison of imported and domestic goods will include applicable import duties and custom rates on foreign goods. If the cif value of the domestic products are less than the cif value of its imported equivalent plus the import levies, the firm must pay the import taxes from which it is otherwise exempt. The Alusuisse/Sierra Leone agreement stipulates that the firm is to employ local services in the provision of all non-mining services whenever the cost of such local services is not more than the cost to the firm of providing its own services. Alusuisse also agreed to transport its exports in ships partially owned by the Government or flying the Sierra Leone flag.

Less attention has been paid to the nurturing of forward linkages between the mining project and the national economy. The failure to provide for local processing has resulted in the inability of the host states to capture the value added by the processing of raw minerals. As late as the mid-seventies, only 30% of all minerals were processed in the same countries from which they were extracted.[33] The raw ore, moreover, is worth only about 30% as much as the fully processed minerals.[34] Historically, processing facilities have been concentrated in the developed countries because these countries were the main mineral producing states. The problem has been aggravated by additional factors that keep mineral processing a near monopoly controlled by the developed countries: capital requirements, economies of scale, skilled labor demands, technological expertise, discriminatory tariffs, and proximity to major consumption centers.[35]

The Philippine Government relates the amount of foreign investor ownership permitted in mineral projects to the forward linkages the TNC agrees to provide: if the firm is going to export unprocessed ores, equity participation on the part of foreign mining companies is limited to 30%; if first-stage processing is included, 40% foreign ownership is permitted; should the TNC further process ores locally, the foreign corporation can enjoy 60% equity ownership.[36]

Four of the agreements included in our survey recognized the need to provide for forward linkages and maximize the host country's value added. Marubeni, at its own cost, is to prepare a feasibility study for the construction of a ferro-chrome plant in Sudan. The agreement recognized that the construction of such a plant would "add a sizeable value added to the Sudanese chrome" and facilitate its transport to international markets. Kaiser Bauxite is bound by its agreement with Jamaica to be a 25% participant in the equity ownership of an alumina plant the Governments of Mexico and Jamaica previously had agreed to construct, and Alusuisse is to lead a consortium in financing and operating an alumina plant in Sierra Leone. RTZ, furthermore, is required to process Indonesian ores "to the most advanced stage possible."

In addition to the linkages host governments seek to generate in conjunction with transnational mining projects, the TNC usually must make certain infrastructure investments. The extent of infrastructure requirements range from facilities which are essential to mining

operations (i.e., roads, ports, power and water systems) to the provision of a town to accomodate and service employees of the mining project. In addition, some agreements involved social investments: the provision of health and medical treatment, schools, and recreational facilities. Infrastructure and social investments usually are financed in proportion to the equity ownership, though sometimes the firm was required to bear the majority of such costs.

The transfer of technology, in addition to the technical and managerial training of nationals, is essential if the host government or state owned enterprise is to acquire the ability to manage to operate its mineral resource projects. The transfer process, however, seems to be arduously slow. The fact that the TNC has a vested interest in protecting its role as the provider of indispensable specialized and managerial services necessary for the efficient development operation of a mine is, perhaps, the basic reason for the slowness of the transfer process. Until -- and only if -- the transfer is completed, the host government will not be able to exercise the full control of its mineral wealth that is implied in the concept of permanent sovereignty.

We have already mentioned the training of nationals and other issues in the transfer process. The technology, however, is the crucial variable. Without the technology, the transfer process can never be near completion. There is barely any indication that the transfer of technology is being effected by the latest mineral investment

agreements. Even when the TNC is required to build facilities for the local processing of raw ores, it usually retains ownership and control of the technology. Of the agreements surveyed, only PNG and Colombia included provisions for transferring technology to the host. The technology BHP develops in PNG is the property of the local mining project and cannot be assigned on soil without the approval of the state. Only Colombia, however, gained access through an agreement to extensive technology developed by the foreign investor: the patents and technology owned by Exxon for the gasification of coal are to be at the disposal of the state-owned mining company during the term of the agreement.

Environmental protection was ignored under the traditional concessions and continues to receive scant attention. Alusuisse and Intercor (Exxon) are required to protect the environment in accordance with good mining practices and restore any disturbed lands or environments to their original conditions. The only agreement in our sample that contained more than a simple perfunctory clause with respect to environmental protection was the BHP investment in Papua New Guinea. As is the case with other BHP obligations, the firm must submit to and get approved by the state proposals for protecting and restoring the environment. BHP, moreover, can be compelled by the state to make investments -- within limits -- necessary for the restoration and protection of the environment.

6. Other

One sign of increased maturity on the part of the TNC and the host government is the inclusion in almost all agreements of provisions for the resolution of disputes. Arbitration, by either a three-person panel chosen by the disputants or an internationally sanctioned arbitration tribunal (such as the International Centre for the Settlement of Investment Disputes), is the normal mode of conflict resolution.

Land relinquishment, another issue ill-provided in the traditional concession, was rigorously applied only in the Jamaican and Indonesian agreements. The mining lease area in the Kaiser Bauxite/ Jamaica agreement is to be adjusted every five years to an area containing the requisite amount of bauxite reserves. The mining area controlled by RTZ is more strictly limited: the agreement calls for the phased relinquishment of increased percentages of the original project area.

Another provision that is increasingly being incorporated into foreign investment agreements is the waiver of the right to diplomatic protest and right to request home government support on the part of the TNC. This provision, called the Calvo Clause in deference to the Argentine official that was the original author, is included in the Cerro Colorado agreement. It requires that the firm limit itself to seeking legal remedies within the judicial system

of the host government and in accordance with the terms for resolving disputes contained in the agreement.

All agreements assert the supremacy of national laws. Some agreements, however, provide that only those laws and regulations which are consistent with the investment agreement apply. Renegotiated provisions are still the exception rather than the norm: only the Conoco and RTZ agreements made mention of the option of consulting to revise the terms of the agreements if conditions materially change. The Conoco/Niger provision, moreover, seems to be to protect the interests of the company, rather than those of the state, as the firm enjoys the right to have any more favorable terms granted to another uranium producer in Niger incorporated into Conoco's arrangement.

II. Sample Mineral Agreements

A. Bauxite

1. The Republic of Sierra Leone and Swiss Aluminum Ltd.

The Sierra Leone Ore and Metal Company Ltd. (SIEROMCO), a subsidiary of Swiss Aluminum Ltd. (Alusuisse), was granted exclusive bauxite prospecting rights in the Port Loko region on August 1, 1972. Exploration of the area was completed in June 1977, by which time SIEROMCO had proven the existence of 100 million tons of bauxite.

Both parties sharing a mutual interest in exploiting the Port Loko deposits "in a most effective manner," the Agreement states that such effective exploitation will most likely be contingent upon the construction of a local alumina plant in Pepel. The Pepel Alumina Company, a wholly-owned Alusuisse subsidiary, was formed to finanee and execute a preliminary feasibility study. Should the results of such study prove promising, Alusuisse will form a consortium to construct and operate the Pepel Alumina Co. The plant, to be operated independent of mining operations, is to have an estimated annual capacity of 500,000 tons of alumina, with a provision for doubling of such capacity should market conditions permit.

The Government of Sierra Leone and Alusuisse formed a joint venture, the Sierra Leone Bauxite Mining Company Ltd. (the

"Company"), for the purpose of developing and exploiting the Port Loko reserves in a fashion that will provide an inviting environment for prospective investors in the Pepel alumina plant. The Company acquired all Sieromco's rights and information with respect to the Port Loko region.

The Company was formed as 50/50 joint venture, with the Government and Alusuisse each holding 50% of the authorized and issued equity share capital. The authorized share capital shall be Le 10,000,000 (ten million Leones), represented by ten million equal shares; the issued share capital shall be divided into two equal shares. In return for its right to assume SIEROMCO's responsibilities and privileges for the Port Loko bauxite deposits, the Company shall issue new shares to Alusuisse in an amount equal to the costs SIEROMCO incurred with respect to its prospecting of the deposits. The Government shall be issued a like number of shares, in return for which it will pay the Company in cash the full nominal value.

Alusuisse furnished the Company with a mining feasibility study it caused to be completed. The Company then issued to Alusuisse new shares equal in nominal value to the cost of preparing new shares equal in nominal value to the cost of preparing such study. The same number of shares was issued to the Government, to be paid for in cash an amount equal to the nominal value of such shares. All advances made by the Government and Alusuisse towards their obligations to pay up the share capital shall be matched by issuing new

shares equal in nominal value to the amount of such advances. This practice shall continue until the total nominal value of shares thus issued equals 30% of the initial investment cost.

The Company has the responsibility of procuring outside financing, foreign or domestic, to cover working capital and initial investment costs not sufficiently financed by the issuance of share capital. Any net profits of the Company shall be distributed as dividends to the shareholders. Should the Company require additional loans or advances from the Government or Alusuisse, the amounts shall always be divided equally so as to maintain the 50/50 nature of the joint venture.

Within six months of the completion of the mining feasibility study, the preliminary feasibility study on the construction of the alumina plant in Pepel, and negotiations on consortium financing of such plant, Alusuisse shall have the option of withdrawing from the project. Should Alusuisse decide not to participate in the Company, it shall either assign its share to other investors, or its share shall be assigned free of charge to the Government.

The Government granted the Company a 35-year lease to mine bauxite in the Port Loko area. The Company can request 10-year extension periods on the same terms as granted under the original lease. Any other commercial minerals that are recovered with the bauxite are to be governed by the terms of separate negotiations between the Company and the Government. Any diamonds which might be recovered are to be

turned over to the Government. The Company must reimburse SIEROMCO, through Alusuisse, for costs incurred by SIEROMCO for obtaining the license and lease to the project area and all expenses for the exploration and determination of the deposits.

The general policy decisions of the Company shall be made by the Board of Directors. The Board shall be comprised of six members, three selected by each party to the Agreement. The Chairman will be selected by the Government from the Directors it has elected, the Vice Chairman to be selected by Alusuisse. The General Manager shall be nominated by the Company and elected by the Board.

Alusuisse shall manage the Company during the construction stage of the project and for an initial period of 10 years after production day (defined as the earlier of January 1, 1986, or the commencing of operations at the Pepel Alumina Plant). Automatic three year extensions shall be granted unless either party gives one year's prior notice. In addition, Alusuisse is to be the engineer of the Company during the planning and construction period.

Subject to the general policy directives of the Board of Directors, "the Mining Operations of the Company shall be conducted insofar as possible in a manner as Alusuisse mining operations are carried out." To effectively execute its duties, Alusuisse "shall have all powers necessary, appropriate and incidential to the efficient and economic conduct of the Mining Operations."

In return for its services, Alusuisse shall receive the following from the Company:

a. full reimbursement for all Alusuisse employees working in Sierra Leone, including direct and indirect costs;

b. for its technical know-how granted in the construction phase and performance of duties as engineer, a fixed annual fee of 10% of the actual total investment costs of the Company plus 10% of the total investment costs of any expansion; and

c. for its know-how and technical assistance in operations and services as Managing Partner, a fixed fee of 2.5% per annum of the net invoice amounts of all sales made by the Company under the terms of Alusuisse management

Alusuisse shall not be subject to any taxation in Sierra Leone on any income earned under the terms of this Agreement except:

- 10% of the fee actually received under "b" above ("Engineering Fee") shall be deemed the chargeable income upon which tax is to be paid at the applicable standard rate;
- 30% of the fee actually received under "c"

above ("Management Fee") will be considered as chargeable income upon which tax is to be paid at the applicable rate;

- any interest payable to Alusuisse in Sierra Leone based on estates or property located in or contracts entered into in Sierra Leone shall be taxed at the applicable standard rate

Alusuisse shall not be taxed on any dividends from its share in the Company, besides those taxes to be levied on the Company's chargeable income.

The Company shall be subject to the prevailing income tax rate applicable at the date of this Agreement under the provisions of the Income Tax Act and any surtaxes that may be levied. The total tax liability on income of the Company shall be 52% of its chargeable income, regardless of such changes in terms which may occur. Net dividends paid to shareholders after deduction of such taxes shall not be subject to any additional taxes in the hands of the shareholder.

In addition, the Company will be responsible for the payment of the following rents:

- a special exclusive prospecting license rent of Le 50 per year for each square mile as of the date it was granted;

- a mining lease rent of Le 960 per annum for each square mile in the mining area, to be reduced to Le 640 on the December 31 following the production day, and
- a surface rent at the rate of Le 10 per year per acre

The Company will also pay a royalty of Le 0.55 on each ton of washed Port Loko bauxite sold. Such royalty payments are to be allowable deductions in the calculation of Company income for tax purposes.

The Company will be subject to the regular customs duties and tariffs, with the following exceptions:

- for an initial period of five years commencing on the date of its first duty-free import, the Company can import all mining machinery and equipment, construction materials and tools, hospital and sanitary equipment, spare parts and other items needed for construction of the project and related facilities free of all duties and fees;
- for a similar period of time, the Company can import or purchase locally all fuels (other than petrol and kerosene) needed solely for the operations of the Company free of all duties, excise taxes and fees; and

- export, pursuant to the terms of the Agreement, all the products of its mining operations--in either its crude or refined state--free of all taxes, duties, and customs

The Company is exempt from the payment and deduction of any withholding tax on payments to foreign creditors or recipients of interest on indebtedness and on service fees. During the five year tax holiday, the Company shall also be exempt from the foreign travel tax and payroll-tax on employees who are not citizens of Sierre Leone.

Exchange losses or profits resulting from currency fluctuations shall be allowed as deductible expenses or treated as taxable income for purposes of computing taxes.

The Government and Alusuisse will use their best efforts to procure export markets for Port Loko bauxite. During each of the first three years of operations, the Company shall not export more than one million tons of bauxite. In subsequent years, the Company can increase exports, provided it obtains the prior approval of the Government. Sales shall be made "at best obtainable prices and conditions in accordance with good competitive business practices."

Subject to exchange control regulations, the Government and the Bank of Sierra Leone grant the Company the right to receive and retain abroad in banks of its own selection the foreign exchange "necessary to ensure the proper running of its business in Sierre Leone." The Company enjoys the right to pay in freely convertible currencies all

funds represented by capital, interest payments, profits and dividends, loans and advances, and invoices for supplies and services imported into Sierra Leone by transfers out of Sierra Leone at the official rate of exchange prevailing for exports or by payments from its earnings retained abroad.

The Government afforded the Pepel Alumina Company especially favorable conditions. The "incentives" provided include:

- a five year tax holiday (following the production day), during which time it shall enjoy the status of a development company and not pay taxes on fuel imports;
- five years after the production day, the total of all fees imposed on the import of caustic soda and bunker "C" oil shall not exceed 5% of the cif-value, or such lower percentages as may be agreed; these items also may be imported directly; and
- the right to pay Alusuisse free of tax sufficient compensation for its "know-how, technical assistance, and management" in the construction of the plant and operation of the Pepel Alumina Company

Employment preferences are to be given at all levels, particularly in skilled, technical administrative, and managerial

positions, to qualified Sierra Leone citizens. To further the goals of Africanization "the Company shall within its means and needs provide for the training of Sierra Leoneans designed to qualify them for operating, technical, administrative, supervisory and managerial positions in the Company's operations and activities." The Company training and development program, including its results and future objectives, will be submitted annually to the Ministry of Mines.

The program is to be maintained by Alusuisse, on behalf of the Company. The Company guarantees that "the higher echelons of management as well as the technical services shall be occupied by Sierra Leoneans within a reasonable period of time". The Government agrees not to pressure the Company to employ people who are not qualified or whose services are not needed. Unless there is a labor shortage, the Company will not import unskilled labor.

The Company shall take "all necessary and appropraite preventative, corrective and/or restorative measures "to protect against damage to any persons, lands, water, and atmosphere of Sierra Leone. To realize these ends, the Company will undertake "reasonable endeavors" to reclaim and restore all affected lands to "meaningful use." The exercise of such Company obligations shall not "impair the economic conditions and assumptions forming the base for the decision to set up this mining operation."

All employees and Government personnel, and their families, working in connections with the Company's operations are to receive free

medical treatment and care. Whenever one-hundred or more persons are employed at a permanent work site in the project area, the Company will maintain a dispensary or hospital headed by a qualified medical doctor.

The Company shall purchase products and services from within Sierra Leone, whenever such goods and services are available in comparable quality and at competitive prices to that obtained abroad. All services not directly related to maining, processing, transportation, and other industrial activities and obtainable at costs which do not exceed the costs to the Company of providing such services itself at the same standards shall be procured from local entrepreneurs. The Company also will "encourage" its major contractors to purchase domestic products and services.

The Company agrees to employ "its best endeavors" to transport its products in ships in which the Government has an interest or which fly the flag of Sierra Leone, on the conditions competitiveness and suitability.

Alusuisse is to provide the Company with its know-how and technical expertise with respect to the construction and operation of a bauxite mine and related facilities. As the managing partner of the Company, Alusuisse will plan and design mining installations, the needed transportation system, a power station, auxiliary infrastructure, and other project-related facilities and structures. One of the operating assumptions of the Agreement is that Port Loko deposits are located near the coast in an area which has a well-developed

infrastructure.

Though the Company and Alusuisse and the Agreement are subject to the laws of Sierra Leone, "only those provisions of... 'The Minerals Act' which are consistent with the Agreement shall apply hereto." Disputes regarding the Master Agreement are to be submitted to the jurisdiction of the International Center for Settlement of Investment Disputes. Irreconcilable problems arising under the Management and Technical Assistance Agreement are to be resolved in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Following an early amendment, the entire Agreement is to be governed by the laws of Sierra Leone "and such rules of international law as may be applicable."

2. Government of Jamaica and Kaiser Bauxite Company

The Government of Jamaica and Kaiser Bauxite, a subsidiary of Kaiser Aluminum and Chemical Corporation, began negotiations in 1974 "with the objective of establishing a new basis for the further development of Jamaica's bauxite and alumina industries." In February 1977, the Government, Kaiser Bauxite and Kaiser Aluminum entered into a series of Agreements which restructured their relationships and operations.

Pursuant to the Agreements, "to ensure the maximum development in the national interest of these (bauxite and alumina) industries on an orderly and rational basis" the Government acquired a 51% interest in the mining assets in Jamaica of Kaiser Bauxite. To further promote the national goals of Jamaica, the Master Agreement acknowledges the objective of promoting "as rapidly as possible the acquisition by Jamaicans of technical and managerial skills in all aspects" of these industries.

The major vehicle for conducting the Jamaican operations previously owned and managed by Kaiser Bauxite is to be a partnership between a Government owned company and Kaiser Bauxite. Towards these ends, Jamaica Bauxite Mining Ltd., a Government owned company, and Kaiser Bauxite formed a partnership called the Kaiser Jamaica Bauxite Company.

Kaiser Bauxite sold and assigned 51% of all its mining assets (including land and improvements, rights and interests, machinery and other fixed assets, and roads) held in Jamaica to Jamaica Bauxite Mining Ltd. The transaction was affected at book value, with an initial payment of U.S. $1,385,039, such amount representing 10% of the book value of all Kaiser Bauxite mining assets as of December 31, 1974. The book value is then to be adjusted as of February 2, 1977, the date of the Agreement, and payment is to be made in nine additional equal yearly installments. Interest on the unpaid balance is to accrue at a rate of 8.5% per annum.

Following the sale and assignment of such assets, the two companies each assign their assets to the Kaiser Jamaica Bauxite Company (the "Partnership"). The Partnership is to conduct mining operations at cost on behalf of Kaiser Bauxite and the Government, via Jamaica Bauxite Mining Ltd., after the Government expands its bauxite operations.

As per the relative value of their mining assets, Kaiser Bauxite has a 49% and Jamaica Bauxite Mining Ltd. has a 51% share in the Partnership. Such assets are recorded in separate capital accounts. Any additional advances to the Partnership will be considered a debt to be repaid by the Partnership interest-free. Such advances will not be cred-

ited to the capital account of the con :ibutor and will not be deemed to alter the relative interest the two firms enjoy in the Partnership. Kaiser Bauxite also assigns to the Partnership its interest in supplies, finished goods and miscellaneous receivables for mining operations and accounts payable and accrued liabilities. These amounts will not be considered a capital contribution, but will be credited against the first annual mining charge levied on Kaiser Bauxite.

Additional capital funds which might be needed are to be contributed in proportion to the relative shares of the Partners. Should the Partnership be directed to expand its operations on behalf of the Government, such expansions will be financed solely by Jamaica Bauxite Mining Ltd.

The Partnership will be governed by the Executive Committee. Each Partner can appoint four members to the Committee, with the right to appoint the Chair rotating on an annual basis. Subject to the policy directives of the Executive Committee, Kaiser Bauxite is to manage the operations of the Partnership. The tenure of management is to be for an initial seven-year period, after which Kaiser Bauxite shall continue to serve in the same capacity under the same terms, if so requested by the Partnership. Operations are to be "conduct-

ed insofar as possible in the same manner as Kaiser Bauxite mining operations were previously carried out." Kaiser Bauxite is to be reimbursed for all costs incurred as manager of the Partnership, but is to receive no remuneration for services rendered.

The Partnership is to conduct operations so as to satisfy all of Kaiser Bauxite's annual bauxite requirements. Kaiser Bauxite will pay the Partnership an annual mining charge for each dry long ton of bauxite loaded for shipment on its behalf according to the following formula:

$$\text{mining charge per ton} = \frac{\text{Partnership expenses}}{\text{number of tons loaded for shipment to Kaiser Bauxite}}$$

Kaiser will also pay to the Bank of Jamaica, on behalf of the Government, an annual fee (in U.S. dollars) equal to 1/3% of the portion of the annual mining charge paid by Kaiser Bauxite to the Partnership but not remitted to Jamaica.

In addition, as a charge for the use of Jamaica Bauxite Mining Ltd.'s share of the Partnership assets, Kaiser Bauxite will pay Jamaica Bauxite Mining the following annual fees:

- 14.68% of the amount of Jamaica Bauxite Mining Ltd.'s capital account attributable to mining assets transferred to the Partnership, such fee to be reduced to

10% after 15 years, and

- a similar percentage on any amounts Jamaica Bauxite Mining contributes to expansions of operations.

Any expansions which are undertaken on the part of the Government are excluded from the above provisions.

Under the terms of the Agreement, Kaiser Bauxite sold to the Government at book value all of the lands it had acquired in Jamaica prior to the date of the Agreement. The first installment on such sale was to be U.S. $1,355,173, an amount equal to 10% of the book value of those lands. The price to be paid was adjusted to an amount equal to the book value as of February 2, 1977, and payment made in nine additional equal payments. Interest shall be paid on the outstanding principal at an annual rate of 7%.

Kaiser Bauxite received a special 40-year mining lease. The lease area will contain bauxite reserves sufficient to satisfy the needs of Kaiser Aluminum's Louisiana alumina plants at the present capacity (1,825,000 short tons) for 30 years plus additional lands estimated to contain mineable bauxite equal to the amount of ore Kaiser Bauxite exports from Jamaica during the first ten years of the lease. The total amounts of land and the reserves contained therein will be

reviewed and adjusted every five years. Kaiser Jamaica Bauxite Company is the exclusive agent for the mining of bauxite and executing of operations durir. the term of the special mining lease and the Agreements. Should the Government need land in the contract area for non-bauxite mining projects, Kaiser Bauxite will receive lands as close as possible to the original site, under the same contractual terms, containing bauxite comparable in quality and quantity to that in the original lease area.

Kaiser Bauxite must pay an annual Dedication Fee to the Government in an amount equal to 7% of the purchase price of the lands under lease. Kaiser shall also pay the Government a depletion charge of Jamaican (J) $0.10 for each long dry ton of bauxite the Partnership delivers to Kaiser Bauxite. Said amount will cover all costs the Government incurs in the acquisition of land to be leased to Kaiser.

The rate of profit assessable on Kaiser for Jamaican income tax purposes on each long ton of Jamaican bauxite disposed of by Kaiser and not utilized in the manufacture of alumina in Jamaica shall be the sum of:

- a fixed amount of U.S. $3.075, and

- a variable amount, initially U.S. $1.925, thereafter

adjusted in direct proportion to the base price of aluminum pig quoted by American Metal Market for delivery in the U.S. by U.S. producers

Profits are to be stated in U.S. dollars and paid in the same.

If the amount of Jamaican income tax paid by Kaiser Bauxite is not equal to the amount of foreign tax credits allowed against its income tax liability on Kaiser's operations in Jamaica, one of the following adjustments will be made:

- if the foreign credit (less other taxes paid to Jamaica) is less than the income tax to be paid to the Jamaican Government, the tax for such years will be decreased to an amount which is equal to the credit, or

- if the credit (less other taxes) exceeds the income tax for any year, profits will be deemed to be increased to an amount that will yield an income tax that is equal to the allowable tax credit

Kaiser Bauxite must also pay a production levy. From January 1, 1974, through December 31, 1983, the levy will be an amount equal to 7.5% of the average realized price of primary aluminum metal received by Alcoa, Kaiser, and Reynolds. Kai-

ser is entitled to a 1/2% reduction in the rate of the levy during the period of January 1, 1977, and December 31, 1983, if during such time the firm mines not less than 3 million long dry tons of bauxite and sales to third parties by Kaiser are not less than 500,000 short tons alumina produced from Jamaican bauxite. Sales to third parties are defined as sales "on the best terms available" to companies in which Kaiser Aluminum has less than a 50% interest. If the U.S. imposes price controls on aluminum, either party can request a review of the terms of the levy. Income taxes paid to the Government can be credited against the production levy, but the sum of the levy and income taxes must be equal to or greater than the amount of the levy.

During the period from January 1, 1974, to December 31, 1983, Kaiser Bauxite is to pay a royalty of J $0.50 per long dry ton of Jamaican bauxite mined. Such amount is to be paid in U.S. dollars, if so requested by the Government.

Kaiser is to be free of the imposition of any additional taxes on bauxite mining and operations until 1984. It is responsible, however, for any general taxes not discriminately applied to Kaiser.

The Partnership and Kaiser have the right to export and sell bauxite and retain the proceeds in non-Jamaican currency

without obligation to remit such funds to Jamaica, to hold properties and assets outside of Jamaica, and make payments abroad. Kaiser Bauxite can make payments to the Partnership and third parties and repatriate all funds (including capital contributions on loans plus realized capital gains or interest) it has invested in Jamaica. The foreign exchange held abroad by the Partnership, however, is not to exceed the amount needed by the Partnership to satisfy its foreign exchange needs for the succeeding 90 days.

The Agreement recognizes the plans of the Governments of Jamaica and Mexico to build an alumina plant with an annual capacity of 600,000 short tons. Should the project prove economically feasible and competitive, Kaiser Bauxite will participate in the equity ownership to the extent of 200,000 short tons of capacity per year. Such participation will increase the planned capacity of the plant by an equal amount. Kaiser Bauxite will also be responsible for taking 200,000 short tons of alumina from the plant.

As managing partner, Kaiser Bauxite also must continue its training and development program to further the employment of nationals in the operations and management of the Partnership.

In concluding the Agreement, Kaiser Bauxite agrees to termi-

nate its proceedings against the Government before the ICSID and free the Government of all liabilities with respect to that case. All disputes are to be settled by the appropriate Jamaican courts or resolved by a three panel arbitration board.

B. Copper

1. The Independent State of Papua New Guinea and Dampier Mining Company Ltd.

The Dampier Mining Company Ltd. ("Damco"), a wholly owned subsidiary of the The Broken Hill Proprietary Company Ltd. ("BHP"), entered into an agreement with the State of Papua New Guinea in March 1976. The purpose of the Agreement was the development and exploitation of copper, gold, and other commercial mineral deposits in the Ok Tedi region of the Western Province.

The Ok Tedi Development Company Proprietary Ltd., ("Ok Tedi DCP"), a State owned company, has the exclusive prospecting rights over the Ok Tedi Copper regions. Damco's obligations to commence work under the terms of the Agreement are contingent upon the formation of a consortium of participants with equity interests.) BHP successfully put together a consortium including Amoco Minerals and a group of West German firms.)

At its own expense, Damco is responsible for completing feasibility studies on the "construction, establishment and operation of a mining industry in the Mining Area with a minimum capacity to mine and concentrate 20,000 tonnes of ore per day and the provision of ancillary facilities." The required studies include:

--thorough geological investigations of the copper and gold deposits;

--a preliminary investigation of the establishment of a smelting and refinery operations;

--financial analyses and cash flow projections;

--extensive infrastructure investigations, including the development of water supplies, an airstrip and related facilities, a town, and river, and ocean port facilities

--environmental impact statements;

--technical and economic analyses of the feasibility of transporting ores from the project area

The State is to complete the expenditure of Kina 2,000,000 in assisting on the above studies. Save for such monies, Damco is to bear all the costs incurred by Ok Tedi DC with respect to the Agreement and maintenance of its current staff and operations.

The State shall use its best efforts to investigate the feasibility and cost of installing a telecommunications system and a power station. Should the State prove unable to fund or execute these tasks, the cost and obligations for the work will be borne by Damco.

Any time offer the State approves proposals for the project Damco may acquire all the issued capital of Ok Tedi DC for K10,000. All proposals require State approval. Damco, how-

ever, can challenge any rejection it deems "unreasonable" through the invocation of arbitration proceedings. Subsequent to the State's approval of all project proposals, Damco shall nominate Ok Tedi DC (which will then be wholly-owned by Damco) to carry out the project. (Should Damco nominate another company, said company must be wholly owned by Damco and incorporated in PNG, and the State can re-acquire the shares in Ok Tedi DC from Damco. The company, be it Ok Tedi DC or another firm, to be so nominated is hereinafter referred to as the "Company." The Company then must enter into a deed with the State to be bound by the terms of the Agreement.)

The State can take-up equity in the Company equal to 20% of the issued share capital, or higher if all parties agree. In paying subscription money for its elected shares the State is entitled to receive credit from Company for the following:

--the total amount granted by the State to Ok Tedi DC between March 14, 1975, and June 30, 1976, and spent in connection with the project;

--the amounts actually spent by Kennecott Copper Corporation and related firms on exploration, development, and maintenance of the project prior to March 14, 1975,* less amounts paid by Ok Tedi DC to Kennecott for plant, stock on equipment; and

--amounts expended by the State on any investigations and on facilities it provides (unless the State prefers to

charge the Company a capital user charge)

Damco is to be issued shares in the Company credited as paid in full and equal to costs it assumed in executing this Agreement up to the time the Company enters into the aforementioned deed with the State.

The State will issue the Company a Special Mining Lease for an initial term of 21 years. The Company shall enjoy the right of renewal for a second 21-year period. Subsequent renewals will depend upon future agreement or terms and contitions. The Company shall pay an annual fee for the special mining leases and associated mining leases, as established by the laws of PNG.

The State is entitled to appoint individuals to the Board of Directors of the Company based upon the State's holdings of the Company's issued share capital. When such holdings reach 5%, the State may appoint a director; at 10%, the State may appoint a second director; and when the State's holdings exceed 10%, it may select additional directors as will be necessary to maintain a direct relationship between the proportion of directors appointed by the State and its shareholdings in the Company.

The Company is to pay income taxes at the prevailing date. During the Investment Recovery Period (when the sum of taxable

incomes plus the sum of all tax deductions less amounts of payable income tax are less than the total investment made up to the time of commercial production), however, the rate is not to exceed 35%.

For tax assessment purposes, during the past 10 years of commercial production the like of the mine will not be considered to be larger than 15 years. The par value of all shares issued to the state will be treated as a deductible expenditure on the part of the Company. In any tax year during the investment recovery period prior to the recovery of the initial capital expenditure the company may request additional deductions. These additional deductions are to be the amount necessary to reduce the income tax payable in any one year so as to achieve a recovery of up to 25% of the initial capital expenditure in that year.

At the commencement of commercial production the Company must choose an accumulation rate of either 20% or the yearly interest rate or domestic U.S. Aaa corporate borrowings plus 10%. Based upon the chosen accumulation rate, in any year when the accumulated value of net cash receipts (less the sum of all capital expenditures and allowable tax deductions) is positive, the Company shall pay an additional profits tax. The additional profits tax levied on net cash receipts for such a year shall be 70% less the prevailing income tax rate. In any year immediately following a tax year in which an additional profits tax is levied, the accumulated value of net cash

receipts shall only include the net cash receipts for the year under question.

The dividend (withholding) tax paid by the Company will be set at the prevailing rate. Such tax on gross dividends payable to foreigners is not to exceed 15%. The Company also pays a royalty equal to 1 1/4% of the some of F.O.B. revenue from sales of mine products for export plus the net smelter returns (value of products of smelter and/or reginery less costs suffered by the Company from the time of delivery to the smelter and/or refinery to the time the finished products are accepted by the purchaser) applicable to mine products where they are smelted and/or refined in PNG.

The Company is subject to levies and duties applied under PNG law with the following exceptions:

- -- no tariff, duties or fees on the export of mine products or derivates refined or smelted in PNG;
- -- no levies which discriminate against the operations of the Company, and
- -- no import duties on the import of items needed for mining or connected operations are to be in excess of the average tariffs of selected goods.

Subject to the demands of national defense, public safety, and the state's obligations under multilateral international agreement, the Company has the right to export from PNG the products of its operations.

The Company can hold abroad foreign exchange earned from export sales to the extent necessary to cover its foreign financial obligations for the following three months. All foreign exchange earnings not needed for the payment of principal, interest, and service charges on loan capital, invoices for foreign goods and services, and dividends must be converted into Kina and remitted to PNG.

Should the anticipated foreign exchange earnings not be sufficient to meet the amount needed for payment abroad, the Company may request the state to hold foreign exchange equal to the expected additional amount. In exchange for the state holding (through the Bank of Papua New Guinea) the needed foreign exchange, the Company will lend the state an equal amount in Kina. The state will repay the loan in the needed foreign currency (at the exchange rate which prevailed at the time of the original loan) and pay the Company interest on the foreign exchange deposits at the rate the Bank of Papua New Guinea earns for the state less 0.5% per annum. The Company, moreover, shall not be subjected to a foreign exchange regime which is more exacting than that which applies to persons dealing with foreign exchange in PNG.

The Company bears the responsibility for marketing all mined and smelted and refined products, enjoys "sole control and management of such," and assumes all of the associated risks. Sales, however,

must be made at "prices which are reasonable judged on an arm's length basis in a transaction confined to the products of the Company or otherwise with the approval of the state," subject to standard deductions. Sales contracts for amounts in excess of 25,000 tonnes of mine products must receive the prior approval of the state. All other sales contracts (other than for gold on "normal market terms") must be submitted for state approval within thirty days of execution.

Within five years of the granting of the Special Mining Lease (or later, if the state approves), the Company, "substantially in accordance with the Approved Proposals, will construct, install, provide, and do all things necessary to enable it to mine and concentrate ores from the Mining Area, to transport the concentrates to wharf facilities and to ship such concentrates from such facilities in commercial quantities." Operations are to commence within this time period.

"The Company shall at its own cost, during the construction stage and substantially in accordance with the Approved Proposals construct and establish" and provide for the maintenance of the following infrastructure facilities:

- -- all necessary ports, wharves, and port and wharf facilities and provide the necessary navigational aids and services for the export of mine products;
- -- an airstrip with the accompanying necessary terminal and landing facilities;

-- new roads needed for the execution of this Agreement;

-- storage dams, water works, treatment, transmission and reticulation works needed to service the needs of the Company and the town established by the Company;

-- as agent for the Electricity Commission of PNG, the Company is to design and build plants for the provision of electrical power sufficient for the operations of the Company and the town (but the Commission manages and maintains such facilities, and the Company must pay for power consumed at cost); and

-- town facilities needed to service the Company's needs, including roads, buildings, public facilities (including educational, hospital, police, fire prevention, and post office and housing for government staff personnel), social amenities (including recreation areas, a cinema, a community center, and an employee training center), public works (including sewage, garbage, and drainage), and housing for employees and families; and

-- any additional facilities required under the Approved Proposals.

The state is responsible for the installation of a telecommunications systems to service the Company's operations and the town. The Company will furnish the state with a loan to cover design, planning, construction, and installation costs of such telecommunications

facilities. The loan is to be repaid over a term of 15 years from the commencing of commercial production, with interest accruing on the unpaid balance of the principal at a fixed rate equal to the interest on loans by the International Bank for Reconstruction and Development. The state is to own, maintain, and operate such telecommunications facilities. The Company will be charged the standard rates applicable at the time in PNG. The state also is responsible for the construction and development of ports, river channels, and canals, the costs of which would not be allowanble income deductions on the part of the Company. Upon request by the state, the Company shall provide an interest-free loan for the undertaking of such works.

Should the state elect to provide for any of the infrastructure requirements which are supposed to be borne by the Company, the state may either credit an amount equal to such costs toward its equity shares or charge the Company maintenance user and capital user charges for such facilities. If such equity credits exceed the nominal value of the state's equity share in the Company, the Company will reimburse the state the difference.

All or any of the facilities provided by the Company, save for that portion of the water works needed to service the town, roads in the Mining Area, and loading/unloading facilities for mine products and materials for the project, can be acquired by the state for a purchase price equal to the then depreciated value of such facilities.

The State shall pay for such acquisitions in annual installments equal to the amount the Company would have claimed as an income tax deduction for the purpose of assessment with respect to such facilities. After such acquisitions, the Company still shall enjoy priority use of any acquired facilities and pay the State a maintenance user and capital user charge (if so levied by the State).

Third parties are to be permitted the use, for the purpose of undertaking a mining or other major resource project, of all infrastructure facilities constructed by the Company. Such third parties will pay a share of the operating maintenance, and overhead costs and capital contribution based upon its use of any or all facilities.

"The Company shall employ Papua New Guineans in all of its activities under this Agreement and in all ancillary and related activities except where the employment of non-Papua New Guineans is in accordance with the approved training and local sanction programme or is otherwise approved by the State." Foreign technicians, operators, supervisory, clerical, semi-professional, professional, administrative and managerial staff are to be "progressively" replaced with nationals. Preferential treatment with respect to employment is to be given to "landowners in and other people originating from the Kiunga and Telefomin provinces of the Western Province."

Whenever obtainable in economic quantities, at competitive prices, and of a quality comparable to that available abroad, the Company is to use services, foodstuffs, supplies, fuel, mantarials, plant, and machinery supplied, produced or manufactured in PNG. When the Company needs to import vehicles, machinery, plant, or equipment and does not make the purchases directly from the manufacturer, it will employ the services of traders operating in PNG (contingent upon availability of items and competiveness of terms).

The Company is to promote the development of local businesses to provide goods and services for the project and the town. When available at comparable quality and competitive prices to that available abroad, PNG sub-contractors will be employed by the Company. First preference will be afforded at landowners and other individuals originating in the Kiunga and Teleformin sub-provinces. Damco must also submit to the State for approval of a business development program for the development of PNG enterprises associated with or serving the project.

"All new processes, new methods of manufacture and other mechanical or technological innovators developed within the project shall remain the property of the Company." The Company will take out the patents and technology rights needed to protect such techniques. No patents or technology rights are to be sold, assigned, or licensed without the prior approval of the State.

The Company is obligated to submit for State approval proposals relating to environmental management and protection and implement such proposals. Overburden, tailings, or other wastes are not to be disposed in a manner which is contrary to the approved proposals. The Company shall install and maintain the appropriate equipment needed to measure and analyze waste discharges and regularly report its findings to the Government. Any dump that is no longer utilized is to be left with a surface which will "facilitate the rapid regeneration of vegetation thereon, unless such regeneration is impracticable." "At all times," moreover, "the Company shall endeavor to overcome and minimize any deleterious effects resulting from the Company's operations" upon the environment and inhabitants.

Should the Company violate the environmental provisions of the Agreement, the State can require the Company "to prevent the continued or repeated" contravention. If the Company fials to act, the State may act to prevent such contraventions and all costs will be borne by the Company. The same terms apply to the Company's obligations "to take such reasonable steps as are necessary to remove, dispense, destroy or mitigate" any pollution which results from a contravention of the provisions.

Despite any prior State approval of Company plans, the Company is to compensate people for any losses suffered or interference with any prior existing right to the land use or water caused by the Company's disposal of overburden, tailings or other waste.

In assessing any of the Company's obligations to implement proposals for the protection of the environment, the State will give consideration

> to the limited present use of the area, to the need for its development, to the State's desire for the project to proceed and be economically viable, and to the effect the project must necessarily have on the environment. The Company's obligation will be to act reasonably to mitigate damage to the environment in these acknowledged circumstances.

Damco has the right to terminate the Agreement if:

- Assessment for Phase I (a limited drilling program and ore body evaluation) of the Agreed Work Program on completion of the first 4000 meters of drilling (whichever is first) reveals indicated ore reserves less than 0.85% recoverably by open pit mining at a total waste to ore ratio of not more than three to one;;
- before completion of the feasibility studies, the Company proves to the State's satisfaction that the project is not economically viable; or
- after completing the feasibility studies, but before notifying the State of its intent to proceed with the project, the Company may abandon the project

The State may terminate the Agreement if the Company fails to comply with a number of the textual provisions.

Disputes are to be resolved by a single arbitrator or, if either party prefers, by a three-person arbitration panel. The Agreement "has the force of law" and "applies nothwithstanding anything to the contrary in any other law in force in the country." No subsequent law can effect the Agreement "unless the contrary intention appars, either expressly or by implication, in that

law or as provided for the text of the Agreement.

*Kennecott Copper Corporation had completed preliminary evaluations on the Ok Tedi deposits. Kennecott and the State could not agree on contractual terms, and the firm withdrew from the project.

2. Cerro Colorado Mining Development Corporation and Texasgulf Inc., and subscribed to by Empresa de Cobre Cerro Colorado, S.A.

and

Substitution Agreement between Corporacion de Desarrollo Minero Cerro Colorado and Empressa de Cobre Cerro Colorado, S.A., and Texasgulf Inc., Texasgulf Panama Inc., and The Rio Tinto-Zinc Corporation Ltd.

In February 1976, the Cerro Colorado Mining Development Corporation (the "Corporation"), an autonomous agency of the Republic of Panama, entered into an agreement with Texasgulf Inc. ("Tg") with the principal objective of explciting, "on an economic basis of optimum profitability," the Cerro Colorado ore deposits. To this end, the parties created Empresa de Cobre Cerro Colorado, S.A., (Cerro Colorado, S.A.), a private corporation.

During the first seven years of the Agreement, Cerro Colorado, S.A., had the right to explore for minerals of any kind (except for hydrocarbons, coal, geothermal energy sources, and radioactive minerals) in anticipation of commercial production under the terms of the Agreement. The Agreement anticipated the mining of 30,000,000 metric tons of copper ore and the production of 150,000 metric tons of blister cop-

per per year. On behalf of Cerro Colorado, S.A., project evaluations and feasibility studies will be made, designs prepared, and construction of supporting facilities and necessary installations will be completed for the production of copper minerals and related products.

The authorized capital of Cerro Colorado, S.A., shall initially consist of 1,600,080 shares of Class A Stock and 400,020 shares of Class B Stock, each with a par value of B/.100 (100 Balboas) per share. Upon execution of the Agreement, the Corporation subscribes and pays for 80 Class A shares, and Tg subscribes and pays for 20 Class B shares. Capital shares shall be subscribed to and issued in accordance with the following:

- for its investments in exploration of the deposits, valued at B/.20,000,000, the Corporation is to receive 20,000 Class A shares;

- the Corporation is to receive Class A shares and Tg receive Class B shares having an aggregate par value equal to the amount they disbursed to Cerro Colorado, S.A., (a ratio of 80/20 respectively) for the completion of feasibility studies for the project;

- in satisfaction of the $500,000 fee Tg is to receive

as Administrator during the project evaluation period, Tg gets 5,000 Class B shares;

- the Corporation is entitled to 300,000 Class A shares for its concession rights and privileges with respect to the Cerro Colorado deposits, valued at B/.30,000,000;

- for cash equal to their aggregate par value, Tg gets a number of Class B shares which, when added to the above, equal 25% of the Class A shares issued to the Corporation under the above terms;

- the Corporation, for cash or in consideration of construction costs for infrastructure for the project financed by the State or the Corporation, is to get Class A shares the aggregate value of which is equal to 80% of the additional cash from equity sources required to finance the project;

- Tg, for its cash equivalent, gets Class B shares equal in value to 20% of the additional cash from equity sources needed for financing;

- subsequent shares are to be issued for cash at their par value in such a manner that the Corporation has not more than 1,600,000 Class A shares, and Tg not more than 400,000 Class B shares, provided that each

issuance of shares is in the form of 80% Class A and 20% Class B shares

The Corporation must always retain a majority (51%) of the total issued and outstanding shares of Cerro Colorado, S.A. Any sales or transfer of Class A shares -- except to international financial agencies -- must first be offered to Tg. Tg cannot dispose of any Class B shares for a period of seven years from the commencement of commercial production to any firm in which Tg does not own an interest. After seven years time, Tg may dispose of its Class B shares, provided the Corporation gets the right of first refusal.

The Corporation has the right to purchase all (but not less than all) of the Class B shares held by Tg (or its successor) upon written notice given within 90 days after the release of the audited financial statements of Cerro Colorado, S.A., for the fiscal year ending on the 20th anniversary of the commencement of commercial production. The same applies for each subsequent three-year anniversary. The price per share will be the sum of the retained earnings per share plus eight times the average annual net earnings (after income taxes) per share of common stock of the preceding five fiscal years.

Neither the Corporation nor Tg are responsible to provide the

financing required for the project. Both parties shall, however, have the joint responsibility to arrange for external financing. Any lenders providing funds to finance the project will be exempt from taxes and assessments on interest, commissions, and other charges payable on account of loans for the project.

The Corporation has a seven-member Board of Directors. Five directors are chosen by the holders of Class A Stock, and two are selected by Class B shareholders. Certain major decisions cannot be made without a majority vote from the holders of each class of shares. There will also be a five-person Executive Committee. Two members are to be selected by the majority holders of the issued and outstanding Class A shareholders, one by Class B shareholders, and two by the Administrator. The Executive Committee authorizes sales, supplies, and budget adjustments below a maximum threshhold, and has other lesser powers allocated to it by the Board of Directors.

Tg is appointed the Administrator "to manage, supervise and direct" the operations of Cerro Colorado, S.A., and activities connected with the exploration, evaluation, design, and construction of the project. The Administrator will "carry out its administration" through the Executive Committee, sub-

ject to the authority of the Board of Directors.

The Administrator is appointed for a term commencing with the Agreement and running 15 years from the December 1 following the start of commercial production. The term is subject to extension because of project expansions and/or the agreement of both parties. During the evaluation period, Tg is to complete a feasibility study of the project (including design, construction, and operation, financing, and marketing) and an accompanying study of the technical and economic feasibility of a fertilizer plant. Cerro Colorado, S.A., is to reimburse the Administrator for the project feasibility study from a special account, into which the Corporation is to pay 80% of the costs and Tg is to pay 20%. The cost of the fertilizer plant study is to be borne 50/50 between the Corporation and Tg.

During the design and construction period the Administrator will undertake "all activities it considers necessary for the design and construction of the project, and all auxilliary services," including port, highways, electric power lines and water supply. The State or the Corporation may elect to finance any of the infrastructure requirements, in which case the amount thus expended (excluding any interest or finance charges) shall be entered as capital paid to Cerro

Colorado, S.A. The townsite and ancillary facilities are to be constructed by the Corporation or the State, and the costs of such are not to be considered as cost related to the project.

The Administrator, "through the management structure of Cerro Colorado, S.A.," is to "have full effective control in the management of day-to-day matters relating to the start-up and operation of the Project." Cerro Colorado, S.A., is to pay the Administrator $500,000 for its services during the evaluation stage. For the period of design and construction, the Administrator is to receive 1½% of the total design and construction costs of the project (including infrastructure financed by the State or Corporation), against which the previously paid $500,000 is to be credited. During the production phase the Administrator is to receive two fees:

- a percentage of gross profits declining from 1.5% for the first five years to 0.75% for the eleventh and successive years, and

- a percentage of operating profits, ranging from 2.5% for the initial five years, declining to 0.75% for the eleventh and successive years

In addition, the Administrator is to be reimbursed for all costs incurred at the various project stages.

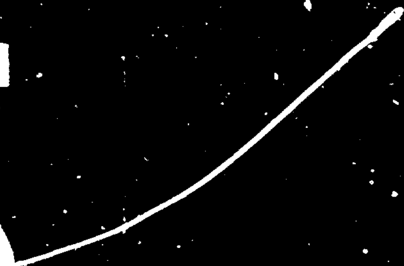
Cerro Colorado, S.A., will be subject to an income tax at the fixed rate of 50% of its net taxable income. Fees paid to the Administrator are deductible, losses may be carried forward for five years, and the depreciation and amortization rates are 20%. The Administrator is subject to a fixed income tax of 50% on all payments (in cash, shares, or otherwise) received from Cerro Colorado, S.A. Dividends to shareholders of Cerro Colorado, S.A., are taxed at a fixed rate of 10%, and capital gains realized by reason of the sale of Class B shares shall be subject solely to income tax by the State at a rate of 25% on the net gain.

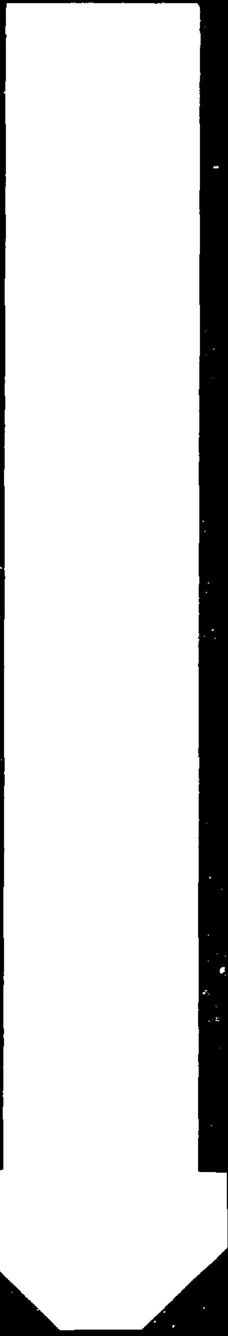
Cerro Colorado, S.A., shall enjoy the following tax exemptions:

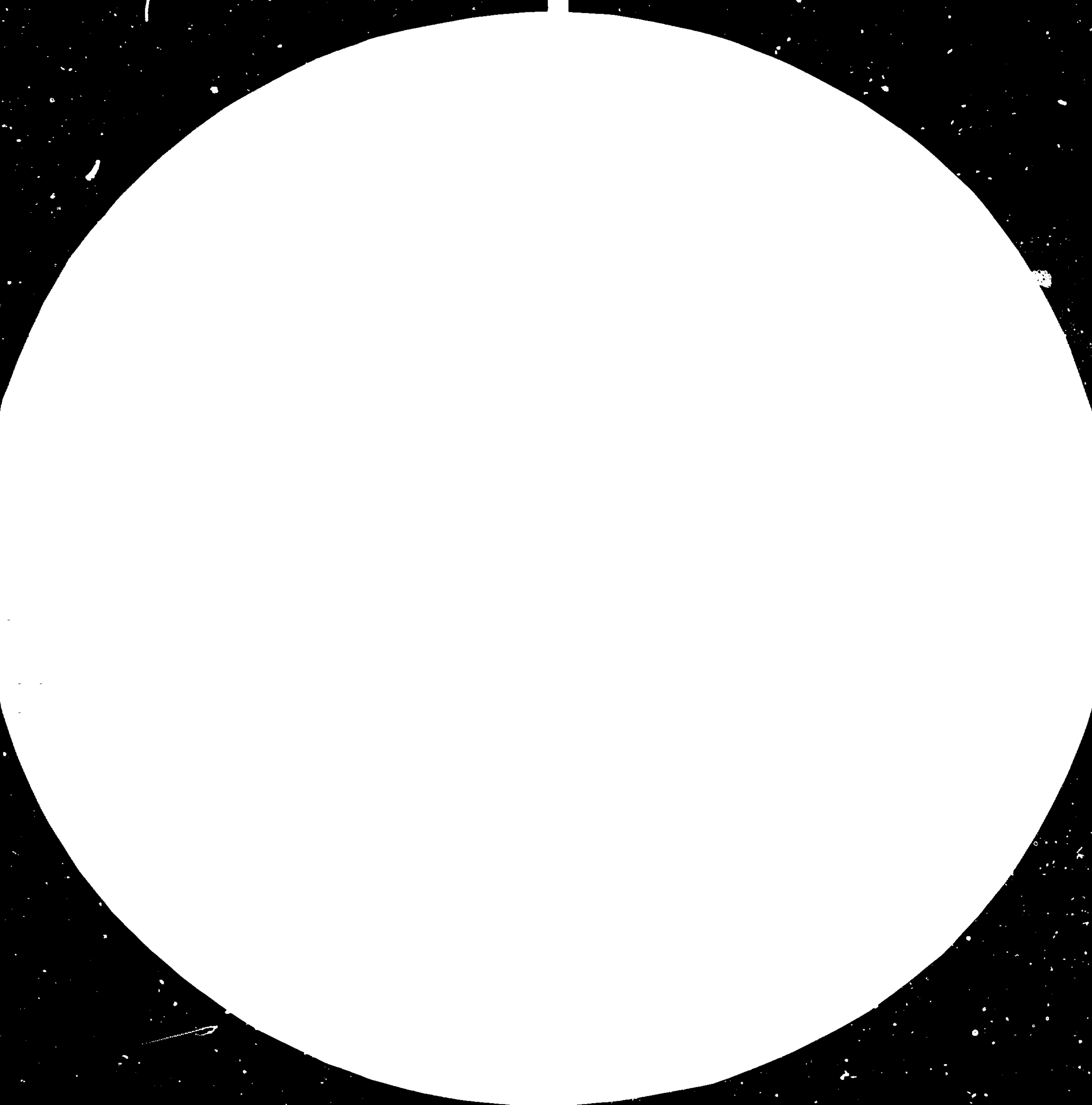
- taxes, duties, and charges on the import of machinery, equipment, spare parts, or materials required for operations;

- taxes and fees on the export of copper and other products the firm produced; and

- taxes on sales and real estate







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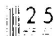
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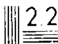
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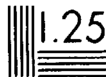
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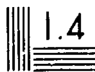
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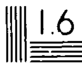
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Cerro Colorado, S.A., shall be subject to any applicable municipal taxes or levies.

Cerro Colorado has the right "to transport, determine the price, market, sell and dispose (of) in any manner" the mine products. The company may keep in Panama and abroad accounts in foreign currency needed to satisfy its financial commitments in such currencies. Excess foreign exchange is to be deposited in the National Bank of Panama. The rate of exchange will be the most favorable rate applicable for any firm operating in Panama. In the event the State imposes foreign exchange controls in Panama, Cerro Colorado, S.A., will have the right to obtain freely convertible foreign currencies needed to pay abroad for services, goods, and dividends and repay the principal and interest on loans.

In hiring personnel, the Administrator and subcontractors will give preference to Panamanian citizens in all job classifications. The Administrator must submit to Cerro Colorado, S.A., a preliminary program to train and instruct personnel, with the goal of "the gradual transfer to the hands of Panamanian personnel of all operations and employment classifications, in order that, such transfer shall be virtually complete at the expiration of this Agreement." Preference will also be given to Panamanian services and

products, assuming availability at comparable quality and competitive prices.

The Agreement is governed by Panamanian law, except to the extent that such law is inconsistent with the Agreement. Unresolvable disputes are to be settled by arbitration under the Rules of Procedure of the Inter-American Commercial Arbitration Commission. Tg waives the right to diplomatic protest, except in the case of a denial of justice.

Subsequent to the initial Agreement, Tg assigned its rights as Administrator to its wholly-owned subsidiary, Texasgulf Panama, Inc. (TgP). In May 1980, a Substitution Agreement was entered into between the original parties, TgP, and the Rio Tinto-Zinc Corp. Ltd. ("RTZ").

RTZ purchased from the Corporation 29% of the share capital of Cerro Colorado, S.A., represented by 29 shares of Class A Stock, at par. Upon purchase, such shares will be converted into Class B Stock. Tg sold to RTZ all its shares in Cerro Colorado, S.A., represented by 20 shares of Class B Stock. RTZ is to become Administrator of Cerro Colorado, S.A., and RTZ Development Enterprise Ltd. (RTZ DE) is to conduct a comprehensive work program on all aspects of the project.

RTZ pays Tg $5,500,000, which represents the sum of all advances Tg made to Cerro Colorado, S.A., in return for which Tg and TgP assign to RTZ all their rights and obligations under the Agreement. Tg has the option to purchase from RTZ 15/49ths of the issued share capital of RTZ Panama Holdings (RTZ PH), a company which is to hold the shares of Class B Stock in Cerro Colorado, S.A. If Tg does not exercise such option, RTZ will pay to Tg additional sums equal to U.S. $715,000, plus any monies paid by Tg towards operating costs, plus interest on the initial amount paid to Tg by RTZ.

The authorized capital of Cerro Colorado, S.A., under the Substitution Agreement is B /. 600,000,000, represented by 3,060,000 Class A Stock shares and 2,940,000 shares of Class B Stock. Both classes of stock have a par value of B/.100 per share. The Board of Directors of Cerro Colorado, S.A., is expanded to 12 members. Each stock holder has as many votes for directors as shall be equal to the number of its shares of stock multiplied by the number of directors to be elected.

3. The State of Chile and Noranda Mines Limited

In July 1977 the Foreign Investment Committee ("FIC"), on the behalf of the State of Chile, and Noranda Mines Ltd. entered into a foreign investment contract "the purpose whereof is the exploration and exploitation of the Andacollo (copper) Deposit."

To effect the above, Noranda is authorized to invest not more than U.S. $350,000,000, the amount estimated to be necessary for the exploration and development of the deposit. Such estimates are based upon studies previously completed by Noranda. If a foundry is to be constructed for the exploitation of the deposits, the authorized capital investment will be an amount not to exceed $500,000,000.

Part of the authorized investment (20% of the investment required for the exploration, examination, development, and exploitation of the Andacollo reserves) will constitute a part of the capital stock of a stock company comprised of the State, represented by Empresa Nacional de Mineria ("Empresa"), and Noranda. The stock company is to be a partnership (the "Partnership") 49% owned by the State and 51% by Noranda. The purpose of the Partnership is to effect the program for the exploration, development, and exploitation of the deposits.

The remainder of the investment "will be represented by new capital contributions, directly from Noranda to the Partnership, by means of loans" obtained from foreign and international sources, loans from Noranda to the Partnership, and international credits granted to the Partnership. The investment by Noranda (be it made directly or on the firm's part by others) is to include:

- freely convertible foreign currency;
- capital goods and spare parts needed for exploration, development, and plant and infrastructure construction (including electric power facilities, transportation, housing, and educational and public service facilities) (most capital goods are to be new and not used);
- feasibility and technical studies; and
- services rendered by Noranda to the Partnership and services provided by Noranda previous to the Agreement and approved by the FIC.

Currencies and capital imported into Chile by or on the part of Noranda Chile Explorations Ltd. previous to the Agreement are, subject to the judgment of the FIC, to be considered part of the authorized investment.

All loans require approval by the Central Bank. Short-term loans (less than three year terms) must "conform with the norms in force on the date of their engagement, while medium- and long-term loans (in excess of three years) are to be provided on conditions that "are similar to those prevailing in the external financial market for projects and corporations of a similar nature."

From the date of the Agreement, Noranda and the Partnership have eight years to import into Chile all currencies, goods and credits constituting the authorized capital investment. The amount of the investment can be increased by the parties by means of reinvested profits or new contributions, should such an increase be needed for the project. The term of the Agreement is 30 years.

Noranda is to pay income taxes at the rate of 49.5%. The following rates are to be applied toward the aggregate income tax levy:

- 10% first category tax;
- 5% habitational tax;
- 40% additional withholding tax; and
- 1.805% additional tax on amounts which might be distributed to foreign investors

The 49.5% aggregate tax rate and the rules for determining taxable income will remain invariable for 30 years. Losses can be carried forward for 5 years. The Partnership can pay up to 50% of the housing tax by relinquishing all or some of the buildings to the State; repairs on employee dwellings are a deductible expense up to 3% per annum.

The Partnership enjoys the right, before the close of the first year of commercial operations, to select the standard depreciation rate or an accelerated schedule, or any rate between the higher and lower limits. Pre-exploitation expenses will be amortized over a five-year period commencing with the start of commercial production. Noranda has the option of operating under the invariable tax provisions specified in the Agreement or chosing to be subject to the prevailing rate (non-invariable), Under the invariable rates herein defined, neither Noranda nor the Partnership will be responsible for new taxes or fees ("be these normal or extraordinary") which would affect their incomes, profit remittances, or charges on production and/or export of goods.

Noranda and the Partnership are exempted from taxes, duties, and fees (including customs duties and value added taxes) on machinery, equipment, and accessories imported as part of the authorized investment. However, Chilean products, as-

suming availability, comparable quality and terms and competitive prices, are to be purchased in preference to foreign goods. Price comparisons will be based upon the CIF Coquimbo value plus appropriate custom house rates (without the value added tax) for imported products, and upon the CIF Coquimbo value (without the value added tax) for domestic products. Should Noranda or the Partnership purchase foreign goods when Chilean products are available on more favorable conditions (as defined above), they will be responsible for the payment of all duties and taxes on such goods. Spare parts are not exempted from import levies of any kind. All imports, moreover, are subject to a tax of 3%. No tax is to be levied on profits remitted abroad.

Similar to the option with respect to the income tax regime, Noranda and/or the Partnership can request that all customs duties remain invariable with respect to the Agreement for a period of 30 years, or can elect to be subject to the prevailing (non-invariable) rates. The parties can import all fuels free from all taxes and fees, save for the 10% custom house duty. Should the maximum custom house duty of 10% be reduced, the Partnership and/or Noranda can choose to pay the new duty, but then lose the guarantee of invariability. Locally purchased fuels are subject to the applicable taxes. The Partnership has the right to regain the value added tax

on conditions similar to that afforded other exporters in Chile.

Noranda and the Partnership have the right to market their products directly or indirectly. Indirect sales must be approved by the Chilean Copper Commission, and all sales "are to be made consistent with the general guidelines established by the Chilean Copper Commission and are applicable unto all the copper producers in Chile." These guidelines are to ensure that sales are "effected at international market prices, such as those established by the London Metals' Market and the United States Producers Price." The parties can hold abroad the foreign exchange proceeds realized on exports to cover expenses for operations, technical assistance, and maintenance of equipment and payment of principal and interest on loans due within 60 days.

Noranda will be free to remit abroad in foreign currencies the "total value of the investment really contributed to the country or of any part thereof and its reinvestments and capitalizations." Remittance of investments will be made with the net resources from the sale or assignment of Noranda's shares in the Partnership or from Noranda's share in the Partnership's sale of capital goods. Any surplus above the value of the investment is to accrue to Noranda and can be

remitted abroad. Noranda also has the right to remit abroad all or part of its profits or dividends in the Partnership.

Noranda and the Partnership are to sell the foreign currencies remitted to Chile -- through investment or export sales -- at the rate of exchange applying to other exporters at the time. Noranda can purchase foreign exchange (to remit abroad those amounts aforementioned as allowable) at the same exchange prevailing at the time.

C. Gold

1. Rosario Dominicana, S.A., and Rosario Resources Corporation: Service Agreement and Technical and Administrative Agreement

Following the acquisition of Rosario Dominicana, S.A., ("Rosario Dominicana") by the Government of the Dominican Republic, Rosario Resources Corporation ("Rosario") entered into a Service Agreement in October 1979. Prior to the acquisition, Rosario was employing its administrative and technical expertise in the managing and operating of the exploration, exploitation, mining, treatment, and marketing operations of Rosario Dominicana. The purpose of the Service Agreement is to provide for the continuation of such services.

Rosario is to offer Rosario Dominicana "its services of counselling and advice on all technical and administrative operations required in the operations properly related to all the functions of mining by Rosario Dominicana." The objective is the "maintaining and improving, in high degree, the technical proficiency in the administration of Rosario Dominicana." These services are to include supervision of operations and engineering projects related to the Pueblo Viejo plant and direction and advice to Rosario Dominicana with respect to

the marketing of its production.

Rosario also is appointed the purchasing agent for the procurement of foreign materials and equipment needed in Rosario Dominicana mining operations. Such services shall include assisting in coordination, purchasing, and expediting orders and contracts with domestic or foreign suppliers.

Rosario received full payment in advance of its fees for the performance of its services until December 31, 1980, the end of the Service Agreement. The amount of such remuneration is unspecified.

On September 16, 1980, the two parties entered into a Technical and Administrative Agreement, in which Rosario agrees to render its services in the working of the Pueblo Viejo mine and establishment of nearby ore deposits. Rosario is also to aid in the exploration and identification of other ore bodies, as authorized and directed by the Board of Directors of Rosario Dominicana. Rosario is to provide a broad range of services, including:

- geological and geophysical studies, exploration, and sampling to locate commercially extractable mineral deposits;

- technical and economic feasibility studies on the de-

velopment of mineral deposits in the Pueblo Viejo region;

- engineering and designing of projects;
- economic planning with respect to financing projects;
- routine supervision of mining operations to maintain the most efficient manner of operations; and
- aid in marketing products, the negotiating of sales and contracts, and coordination of shipping and transportation of exports

In return for services rendered, Rosario Dominicana will pay to Rosario 1% of the proceeds from sales before taxes. The net sum will be no less than U.S. $1 million and not more than U.S. $1,750,000 per year. Should Dominicana commence operations on other properties, in addition to the Pueblo Viejo mine and nearby deposits, the maximum stipend to be paid to Rosario will be reconsidered. Rosario Dominicana assumes all costs for operations. All payments from Rosario Dominicana to Rosario are to be made in U.S. dollars and will be exempt from taxes and deductions in the Dominican Republic, or in increased proportions such that the net sum received by Rosario will be in the above mentioned range.

The fees to be paid to Rosario shall be adjusted automatically by the first day of January of each year subsequent to 1981 in proportion to the increase in the U.S. Consumer Price Index during the preceding year or any other inflation indices mutually acceptable.

The term of the Technical and Administrative Agreement is three years, commencing on January 1, 1981. Either party has the right of cancellation by written notice in advance, and Rosario can terminate this Agreement at any time that Rosario Dominicana fails to make payment in accordance with the agreed schedule.

D. Uranium

1. The Republic of Niger, Le Commissariat A L'Energie Atomique, and Continental Oil Company of Niger.

Le Commissariat A L'Energie Atomique ("CEA") has been involved in the exploration of uranium in Niger since 1959. The Continental Oil Company of Niger ("Conoco") seeks to cooperate with CEA in discovering uranium ore deposits of economically exploitable reserves of approximately five million tons of uranium, at a grade of 0.55% U_3O_8. The Government of Niger, "being particularly concerned about the development of its natural resources, recognizes the importance of this project and wishes to participate in it." Towards the ends of developing a joint venture for the exploration and exploitation, processing and marketing of uranium, the three parties entered into the Agreement in April 1974.

The rights and interests of the parties in the Agreement; titles to the project area and ownership of radioactive minerals; information; corporate assets and equipment purchased for operations; and all minerals produced and concentrates manufactured are to be undivided. Niger is to have a 30% share, CEA a 35%, and Conoco a 35% share in the undivided interests. The Agreement remains in effect "until the termination of all exploratory and/or exploitation activities hereunder." The accompanying "Long-term Agreement" between Conoco and the State has a term of 20 years from the start

of commercial production. Should economically exploitable reserves remain, the parties will negotiate for the continuance of operations.

The project is under the control of the Representative Committee, a body "charged with making the decisions and programs necessary to the realization of the activities delegated to the Operator" and to protect the interests of the parties. It bears the responsibility for all economic, financial, budgetary, and primary technical decisions with respect to all aspects of the project. The Committee is composed of nine members, three chosen by each of the representative parties. All members have an equal vote. During the exploration and development phases (phases one and three), the Chairman of the Committee will be chosen by CEA; when exploitation begins, the Chairman will be selected by common agreement among the then participating parties.

"Decisions as to the scope and the schedule of research and development" under the initial phase are to be unanimous. After the commencing of phase two (feasibility study), a two-thirds majority can decide upon the preparation of the study. "All decisions of general policy in matters of exploration and development concerning work programs, corresponding budgets and important management decisions shall be made by the majority of the members of the Representative Committee," except where other provisions are expressly stated.

The operator is to implement the decisions of the Representative Committee and act as its agent "for the purpose of arranging the services and of all other activities necessary to accomplish the tasks and work intended by the Agreement." Until the fasibility study is completed, the operator is to be CEA; after such time, the operator will be selected by the unanimous decision of the parties. The operator for the exploitation phase will distribute to each party its share of uranium concentrate or associated minerals. The parties are responsible for marketing their respective shares.

Conoco will bear the total cost of the minimum work obligations under phase one. Conoco will also be responsible for the expenses of phases two and three until either the conclusion of the feasibility study or the completion of work representing the amount of maximum expenses agreed upon for phases one, two and three (35,000,000 French francs). Upon completion of phase one, the parties can (by a two-thirds vote) obtain an exploitation license. Any non-consenting party may withdraw from the Agreement. Should the State withdraw, it shall assign its interests in the project to CEA and Conoco; should CEA or Conoco withdraw, it is to assign its interests freely and without tax to the other. This right of withdrawl applies until the completion of phase three.

After Conoco satisfies the cost obligations mentioned above, all pre-extraction and pre-ore concentration costs will be shared

equally by CEA and Conoco (or in proportion to their respective interests should one party reduce its share or decide not to participate). Having decided on exploitation, the parties are to prepare an operating agreement and financial and accounting procedures. Decisions on exploitation are to be made by a two-thirds vote, but unanimity will be needed for selecting principal contractors, investment and operating budgets, ecological protection, and insurance programs.

Until Conoco fulfills its earlier stated financial obligations, CEA will be considered to have made exploration expenditures equal in amount to that spent by Conoco and deductible from the expenses incurred by CEA before the Agreement. Until Conoco completes its initial expenditures, Niger's share of financing will be advanced by Conoco and deemed to have been advanced by CEA to Conoco. After such time, the State's share is to be advanced by CEA and Conoco in proportion to their respective interests in the project. Conoco and CEA "expressly renounce to request any remuneration from Niger of the said expenses," which are to be recorded and amortized as stipulated by the Agreement.

Niger is to pay all exploitation costs for its share of production on the same terms as apply to the other parties. The State may itself finance part or all of its obligations to provide operating costs. Upon Niger's request, CEA and Conoco (in proportion to their interests) will advance the State's share in exploitation

investments and working capital. The first 20 million French francs will be treated as costs to be amortized; additional sums will be considered loans, bearing an interest rate equal to one-half the U.S. prime lending rate plus 1%, to be repaid from Niger's proceeds from the sales of concentrates. "In the event of a national disaster" the President of Niger can "invoke a one-year moratorium on the repayment of principal and interest due on loans from CEA and Conoco." This right will not be invoked more than three times and will apply only if the same standards are applied to all capital loans by other uranium producers to Niger. In such event, the repayment schedule is extended an equal length of time, but interest on the principal continues to accrue during the moratorium period.

Conoco is to hold its petroleum and uranium operations separate. Each is subject to its own accounting, legal, and tax regime. Under the relevant tax law (1968), Conoco must pay an income tax of 40.5% on net profits. The Company is entitled to a depletion allowance not to exceed 10% of total shares or 33% of net taxable income. Such allowances, however, must be reinvested within three years or then will be considered taxable income. The Agreement states that for U.S. income tax purposes, the project operations constitute a tax partnership.

Equipment, materials, and products imported for the purpose of the project are exempt from import taxes and duties. The depreciation and amortization schedule allows for the deduction of contributions in kind at a rate of 10% and pre-production expenses at

a rate of 25%. Conoco also is subject to certain fixed charges and surface royalties. Pursuant to a law being changed at the time of the Agreement, royalties are to be considered a deductible expense rather than a tax credit (as then currently provided) upon the enactment of said law.

Though each party is responsible for marketing its share of production, CEA and/or Conoco shall, without obligation, assist Niger in the sale of its share, should the Government request. There are no restrictions on Conoco's choice of customers, terms and conditions of sales, or mode of payment. Sales, however, are to be made at terms equivalent to those quoted worldwide for concentrates and products of similar specifications, allowing for different conditions.

Niger agrees not to impose obstacles on the free conversion and repatriation of funds for repayment of capital loaned plus interest, recovery of capital invested or loaned and returns (interest or dividends) on such sums, payment for expenses incurred in sales transactions, and satisfaction of financial obligations to suppliers. The State agrees not to restrict the free movement and convertibility of funds belonging to Conoco and will not limit its access to foreign exchange proceeds earned from exports and needed to maintain operations and fulfill its obligations abroad.

Conoco is to provide preferential employment of Nigerian personnel and "contribute as promptly as possible to the occupational and technical training" of nationals. The Company bears the following

responsibilities with respect to the development of infrastructue:

- "provide and contribute" to the housing of workers employed in projects owned or co-owned by Conoco;
- "assist in the establishment" of medical and school facilities to service the needs of employees and their families; and
- "assist in the setting-up" of spare-time activities of a non-commercial nature

Conoco is under no restrictions with respect to its choice of suppliers and contractors. The Company, however, is to give preference to Nigerian businessmen, producers, and contractors for the provision of services, equipment, and products for the project, provided comparable conditons and schedules and competitive prices.

Unresolved disputes are to be settled by arbitration. Cases will be heard by the International Center for the Settlement of Investment Disputes or, if the ICSID lacks jurisdiction, in accordance with the procedures established by the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

Niger guarantees Conoco for the term of the Agreement, the "stability of the general legal, economic, financial, and tax conditions" under which it entered the Agreement and agreed to do business. The mining laws in force at the time of execution of the Agreement are to remain applicable to Conoco's operations and mining claims for the duration of the Agreement. Should

statutory or regulatory changes affect the fiscal or legal nature of Conoco's mining claim, the Company shall enjoy the right either to operate under the provisions in effect at the time of signing or receive the benefits of any more favorable provisions. To afford further protection, the Agreement states that

> in the event of a fundamental change in the conditions which were material to the making of this Agreement, or to the accomplishment of its stated goals. and if the circumstances create for one or all of the Representative Parties, difficulties of performance manifestly outside their initial anticipations, the Representative Parties shall meet with the purpose of modifying the terms and conditions of this Agreement and, if appropriate, the Complementary Documents, in order to alleviate the charges or costs inequitably imposed.

If resolution cannot be reached, the injured party can request arbitration. In addition, if any other firms exploiting uranium deposits in Niger receive more favorable terms than are granted to Conoco under the Agreement, those more favorable terms shall become part of the Agreement with Conoco.

E. Chrome

1. Ingessana Hills Mines Corporation (Sudan) and Marubeni Corporation (Japan).

In May 1975 Ingessana Hills Mines Corporation ("IHM"), a unit of the Grouped Industries Corporation, and Marubeni Corporation entered into an agreement under which Marubeni is to provide technical assistance to IHM "for the exploration, development and production of chrome ore deposits in Ingessana Hills and any other areas in Sudan."

Periodically, Marubeni will send geologists and mining engineers to chrome mines owned by IHM. Such experts are to provide general technical advice and proposals with respect to:

- effective and safe mining operations;
- exploration and development of new deposits;
- quality control of chrome ore; and
- technical training of mining engineers

Marubeni also shall provide some survey and prospecting tools to IHM. Marubeni is to receive no remuneration in return for provision of the above-mentioned services and tools.

To finance an expansion of IHM's chrome ore production, Marubeni is to lend IHM US $1,000,000. IHM is to repay the loan over a five year period, the first installment to be paid one-year from

the date of the loan. The interest on said loan shall be set by mutual agreement.

Marubeni is to purchase between 15,000 and 25,000 tons of chrome ore during the period of July, 1975 through June, 1980. The above sales are subject to the availibility of transport of the ores to Port Sudan and agreement on the purchase price.

Marubeni is to complete, at its own expense, a feasibility study for the establishment of a ferro-chrome plant in the Sudan. "Both sides are convinced that such a plant, once established, will add a sizeable new added-value to the Sudanese chrome, in addition to solving a number of problems facing its transport to international markets." Subject to findings of the economic viability of such a project, IHM and Marubeni will negotiate the creation of a joint venture for the operation of facilities and production and sales of ferro-chrome.

F. Coal

1. Carbones De Colombia, S.A., and International Columbia Resources Corporation

Carbones De Colombia, S.A., ("Carbocol") a government owned corporation and the owner of the title to the contract area (approximately 39,000 hectares in the Municipality of Barrancas and Maicao, in the Department of Guajir, in the area of El Cerrejon) and International Colombia Resources Corporation (Intercor), a subsidiary of Exxon Corporation, entered into an agreement for the exploration, development, and exploitation of coal on the basis of an equal partnership. Once commercial reserves are proven, the Agreement creates a 50/50 joint venture between the parties.

The exploration expenses and risks are to be borne by Intercor. During the four year exploration period, Intercor is to study the area and samp e and estimate coal reserves, study the infrastructure needs, prepare geological reports, and complete an overall project feasibility study. At the point that Intercor establishes the commercial nature of the deposits, the firm acquires its interest in operations and rights to the coal that is produced. From the time that commercial deposits are proven, ownership of all operation are to be for the joint account established by the equal interest of Intercor and Carbocol. Without consideration of the percentage of production received by each, all costs and expenses

for the joint operations are to be charged to Intercor and Carbocol on a 50/50 basis.

Prior to making the joint investments needed for the project, the parties must get previously signed sales contracts for quantities sufficient to justify said investments. Intercor and Carbocol may dispose of their shares in production as they judge convenient by separate sales contracts, "in accordance with the needs of the customer and of the reserves of the field." When either party negotiates a contract, it must offer the other party the option of participating in the suppply of 50% of the contracted quantities. Such other party has the right to enter into a separate sales contract to provide this 50% under the same terms as negotiated in the original contract. Carbocol and Intercor are to split total production (less loss and the amount consumed by operations) equally. Production from the project will first be used to fulfill the sales contracts that were negotiated and executed prior to the investments in the development of the project.

Each party can appoint one representative and two alternates to the Executive Committee. All representatives are to have one vote equal to 50% of the total interests. Resolutions and decisions require the agreement of more than 50% of the total interest. The Executive Committee is "vested with full authority and responsibility to fix and adopt programs of installation, exploitation, operations and budgets" for the project. The Committee must approve all project programs and budgets, advise the operator,

supervise the joint account, and approve all sales in excess of US $50,000.

While the works and installations are under the general management of the Executive Committee, the operator is to execute all project tasks and carry out investments for installation and exploitation. Intercor is entrusted with the technical management of operations and has "the management and orientation of all the operations and activities it may consider necessary for the installation, exploitation, production and transportation" of the joint coal operations. The operator is to employ "the best technical methods and systems required by an efficient and economical coal exploitation." Any non-budgeted expenses in excess of $50,000 cannot be charged to the joint account without the consent of the Executive Committee. The operator is to be considered a separate entity from all parties for the purpose of this Agreement.

The exploration period is to be three years, plus an additional year if needed. Before commencing the installation phase, the contract area is to be reduced to that in which proven reserve are located, plus additional area needed for the maintenance of efficient operations. The installation phase is to be four years in length, with all costs charged to the joint account. Exploitation will be deemed to have begun coterminous with the first shipment of coal in maritime barges (to occur on the day of termination of the installation phase) and is to continue for 23 years.

The full term of the Agreement is 30 (or 31 if the exploration phase is extended) years.

During the time of exploitation, Intercor is to pay a royalty of 15% on its share of production. Intercor is to deliver to Carbocol, as payment of said royalty, an amount in cash equal to the value of 15% of its participation in production. For purposes of royalty payments, valuation of coal is to be the net price at the mine door. If Carbocol requests, Intercor will pay the royalty in kind. All coal consumed in the operations of the project is exempt from the royalty. All participations -- in cash or in kind-- which are due to the Nation, Departments, and Municipalities in accordance with the law are to be paid by Carbocol out of the percentage of production commensurate to the royalty. In no event is Intercor responsible for such payments.

Intercor is responsible, however, for payment to Carbocol on the revenues of participation, a sum based on a tax rate of 52%. The revenue of participation is the difference between total revenue of Intercor less the base revenue. Total income is equal to the amount of coal which belongs to Intercor (50% of total production, less the amount lost and consumed in operations multiplied by the net price realized on sales. Base income is equal to the sum of:

- the royalty paid to Carbocol (15%);

- operating costs of Intercor (one-half of total

mine and infrastructure costs or a portion of costs of operation imputable to Intercor);

- depreciation, determined in dollars (double declining balance method for first five years, straight line depreciation thereafter); and
- base profit before taxes (equal to 35% of the investment accumulated, in dollars by, Intercor in the project; accumulated investment is the sum of the original dollar cost of all investments made by Intercor in the development of the Agreement).

Should the tax rate be more or less than 52%, Intercor shall give a proportionate amount more or less to Carbocol so that the net profits of Intercor after taxes shall be the same that Intercor would have received if the tax rate remained at 52%.

Any assessments levied after the establishment of the joint account and before the parties receive the proceeds from the sale of the coal on the installation and exploitation of the coal mines will be charged to the joint account. Losses and gains in the exchanges rate of payments from and to the joint account are to be for that account. Taxes on revenue, capital, and surtaxes are to be for the accounts of the income of the separate parties. The above-mentioned payments on revenues of participation are to be considered income for Carbocol and will not constitute income chargeable to Intercor.

As per the decision of the Government that the regulations of the National Council of National and Social Economy (CONPES) with respect to those projects which promise to "change into notorious economic and social benefit for the country and for the state entities participants" applies to the Intercor/Carbocol joint venture,

> the parties declare that one of the basic conditions under which it has been possible to enter into this contract is the expeditiousness, on the part of the National Council of National and Social Economy (CONPES) of an exchange system especially applicable for the foreign firms in the sector of coal mining that are established in the Republic of Columbia with the object of carrying on investments in this sector by means of contracts entered into with commercial or industrial firms of the State.

Under the CONPES guidelines, the foreign investor has the right to remit abroad profits from a sale to a national investor of its shares, payments, or rights in a foreign investment agreement. Such profits may be remitted in amounts equal in sum to the total value of the foreign capital investment. The foreign investor also may remit abroad amounts to cover foreign and international loans contracted for the development of the project. Intercor and Carbocol agree, moreover,

> that in order to complete the development of the project in its totality they are required to establish a procedure satisfactory that should be adopted by the governmental entities respectively, such as the Monetary Board and the Office of Exchange, with respect to the form of operating the procedure with regard to income and expenses in foreign currency and the exchange procedure.

When such procedures are negotiated, they will "be understood to be incorporated to the present contract."

The operator agrees to train and prepare Colombian personnel to be substituted for foreign personnel needed to fulfill the terms of the Agreement and "shall comply with all the legal provisions that designate the proportion of employees, laborers, nationals, and foreigners." Infrastructure facilities and works are to be financed and held by the joint account. In constructing such facilities, the operator, on behalf of the joint account, shall whenever possible employ Colombian technology.

The operator is bound to "use means necessary, in accordance with good coal mining practices and the provisions pertaining to the Code of Natural Resources, for the purpose of preventing damage to the persons and natural resources to the region or regions related thereto, especially the rivers, the vegetation, the ground and the animal life." As soon as possible and in accordance with programs agreed upon by the parties, the operator is to re-establish "the land affected by the mining operations." The costs of such restoration and environmental protection are to be borne by the joint account.

During the term of the Agreement, Exxon agrees to put at Carbocol's disposal the right to utilize in Colombia all Exxon's patents and technical information with respect to the technology of the thermal gasification of coal. Carbocol is to pay no charges for such technology. Carbocol is prohibited from transferring any technology thus acquired to third parties. Exxon also is to provide to Carbocol patents and technical information pertaining to the catalytic gasification of coal under the same terms.

Exxon is to use its "best efforts to put at the disposal of Carbocol, in exchange for adequate fees and under terms and conditions to be negotiated 'bona fide' in the future, the technical services with respect to the development of a coal gasification project."

Intercor pledges that Exxon will invest US $20 million in petroleum exploration and/or in the development of marginal production of crude oil and/or gas in the four years following the execution of the Agreement. In addition, Intercor will spend US $5 million during a five year period to assist Colombia in its evaluation of domestic coal reserves. These expenditures are to begin in the year after commencement of coal exports. Intercor also shall perform and deliver to Carbocol a complete feasibility study for Block B of the Cerrejon region. This study is to include an analysis of the necessary infrastructure.

If the Executive Committee is unable to reach a decision on any matters requiring its approval, each party is to submit the issue to the immediate higher authority of the same party residing in Colombia to arrive at a joint decision acceptable to the Committee. Continued disagreements are "to be submitted to the knowledge and decision of the jurisidictional branch of the Colombian public authority." Differences with respect to technical issues which cannot be resolved are to be settled by the definitive judgement of experts. Each party is to appoint an expert, the two of which are to appoint a third.

Intercor is to enjoy "the same rights and obligations under Colombian law as anyone else exploiting domestic coal within the country."

G. General

1. The State of Chile and Compania Minera San Jose, Inc.

The Foreign Investments Committee ("FIC"), on the behalf of the State of Chile, and Compania Minera San Jose, Inc., ("San Jose"), a subsidiary of St. Joe Minerals Corporation ("St. Joe"), entered into a foreign investment agreement in July 1977. The Agreement authorizes San Jose to make an authorized capital investment of up to US $100,000,000, "to take the form of one or more mining projects of such nature, characteristics and scope as San Jose may determine." The term of the Agreement is thirty years. The authorized capital investment must be completed within eight years of the signing of the Agreement, unless the FIC grants an extension of a maximum of an additional four years.

Such investment is to be composed of equity capital contributed by San Jose (not less than 15% of the authorized capital investment) and foreign or international loans and credits extended to San Jose. The authorized capital investment will be represented by:

- foreign exchange expended in Chile or elsewhere;
- new or used capital assets, including equipment and spare parts;
- administrative, managerial, engineering and other services; and
- technology

All costs related to mining projects in Chile incurred by San Jose and its affiliates from April 1975 through July 1977 are to be deemed part of the authorized capital investment.

San Jose will operate in Chile through a holding company that will both directly engage in mining projects and establish or invest in other firms in Chile. All rights provided to San Jose under this Agreement shall apply equally to all corporations it may organize or in which it may invest in Chile (except where limited provisions are in the text of the Agreement). San Jose also enjoys the right to reinvest profits in mining projects in Chile under the terms of this Agreement.

Net proceeds from sales or liquidation of its capital investment or ownership (or part) of any firm through which its capital investment is carried out is to be exempt from all taxes and charges, except to the extent such proceeds exceed the total value (in foreign exchange) of its capital investment in Chile at the time.

San Jose is to be subject to a total invariable income tax burden of 49.5% on its profits before taxes. The total tax will be calculated on "profits before taxes of the holding company available for distribution to or disposition by San Jose." The holding company will pay a first category tax of 10% and a housing tax of 5%. If the holding company is not a corporation

(socieded anonima) the rates will include an additional withholding tax of 36.98%; if the holding company is a corporation, it must pay an additional rate under the income tax law of 40% and an additional withholding tax of 1.805%. This latter additional withholding tax will be assessed on amounts available for distribution by San Jose and will be paid jointly with the income taxes paid by San Jose. No credit will be available against this 1.805% tax at the holding company level. Up to 50% of the housing tax can be paid by means of the transfer to the State of all or part of the holding company's ownership of houses or townsite facilities. Repairs to such facilities constitute an acceptable income tax deduction up to 3% of fixed assessed value.

San Jose can deduct losses incurred in the preceeding five years. During the term of the Agreement, San Jose can elect to be governed by the prevailing tax regime on the fixed 49.5% income tax rate. The State will hold San Jose exempt from any additional taxes or fees on the mining processing, sale, or export of its production, on its income, or on profits remitted.

Before the close of the first year of commercial production, San Jose must select a depreciation schedule for its fixed assets at an accelerated, standard, or in-between rate. San Jose has the right to treat all pre-production expenses as start-up expenses and amortize them in equal installments over five years from the

commencing of commercial production. If San Jose should abandon a mining project it may deduct the entire unamortized balance in the year of abandonment. Exploration, development, and preparation costs incurred after the beginning of commercial production can be deducted in the year they are incurred.

Except for the 3% tax on import licenses, San Jose can import free of taxes, duties, and levies all equipment, machinery, and accessories (other than spare parts) as part of the authorized capital investment, provided comparable quality goods produced in Chile are not available at the same price and terms of delivery. Price equivalents are to be calculated as follows:

- imported items will be valued at their cost to San Jose, plus insurance and freight charges, plus the amount of duties, taxes and other charges which would normally be levied on imports;
- domestic items are to be valued at their cost to San Jose plus, insurance and freight charges, less applicable value added taxes

Should San Jose import more expensive items than are available at an equivalent price for Chilean goods, the firm must pay all applicable duties, charges, and fees. The above exemptions shall remain in effect during the period of authorized capital investment.

San Jose has the invariable right to recover all value-added taxes paid, including recovery in advance with respect to export commitments. The State insures San Jose that the customs duties rates in effect at the time of the Agreement shall remain applicable for the term, unless San Jose prefers to be subject to the prevailing Chilean customs duties.

"San Jose shall have the right freely to determine the level of its production, the method and timing of its shipments and the volume of its sales." Subject to supervision by Comision Chilena del Cobre (Chilean Copper Commission) or Banco Central, San Jose enjoys the right to sell and export for foreign currency its minerals "in any state or form." All sales, including those to affiliates of San Jose, are to be negotiated at prices and terms "not less favorable than those prevailing at the time in the open market for products of a similar kind and quality and in similar quantities." If San Jose is required to sell in Chile (to a government agency or private firm) any of its mineral production, the prices and conditions of sales are to be "equivalent to those San Jose could obtain abroad."

San Jose shall enjoy the right to free access to the foreign exchange market to sell (for purposes of the authorized capital investment and sell exchange from exports) and purchase (to remit funds abroad and hold a foreign currency account in Chile) foreign currency at the highest available exchange rate. The only fees on

such transactions are to be bank commissions, which are not to exceed 0.5%.

Foreign exchange earned from export sales can be held abroad for the repayment or debts and obligations to international lenders or suppliers and for operating and maintenance costs due abroad within the ensuing 60 days. All such payments must be authorized by Banco Central. Sale proceeds can also be held abroad in an amount equal to any profits that San Jose has been delayed in remitting for more than one year from the date it filed an application for remittance.

Subject to the approval of the FIC or Banco Central, San Jose can remit foreign currency abroad for selected purposes, including payment of interest and principal on loans; all or part of San Jose's capital investment registered with the FIC following the sale or liquidation thereof; and profits earned from operations or realized from a sale or liquidation of capital investment. Invested capital cannot be remitted less than three years after its entrance into Chile.

For payment abroad of import costs due within 90 days, debt obligations due within 180 days, profits, salaries, and any other expenditures approved by the Banco Central, San Jose can repurchase foreign exchange that it has remitted to Chile from export sales.

San Jose has the right to keep on deposit in a commercial bank in Chile repurchased foreign currency not in excess of an amount equal to $100,000 (unless Banco Central agrees to a larger sum).

The Secretary of the FIC is responsible for supervising San Jose's compliance with the Agreement.

2. The Government of the Republic of Indonesia and P.T. Rio Tinto Indonesia

The Government of Indonesia and P.T. Rio Tinto Indonesia (the ("Company"), the shares of which are held by Conzinc Rio Tinto of Australia, Ltd. and The Rio Tinto-Zinc Corporation, Ltd., entered into a contract of work in June 1977. This was the first foreign investment agreement executed in Indonesia under that country's third generation work contracts.

The Company is appointed the contractor for the Government. It enjoys the exclusive rights to prospect and explore for, develop, and exploit mineral deposits (with the exception of hydro-carbons and radioactive minerals) in the contract area and to process, refine and market such minerals. Ownership is vested in the the State, as

> all mineral resources contained in the territories of the Republic of Indonesia, including the off-shore areas, are the national wealth of the Indonesian nation, and the Government is desirous of developing the full potential of mining within its territories.

The project program is divided into five phases. Within six months of the signing of the Agreement, the Company will commence work on the general survey phase. During this initial twelve-month stage, the Company is to spend US $20 per square kilometer to survey the area. The Company may discontinue the survey of any part of the contract area; such area then ceases to be part of the contract area.

Following the completion of the aforementioned, the exploration phase is to begin. If exploration in part of the contract area proves to be "no longer a commercially feasible or practical proposition", such parts are to be excluded from the contract area. The exploration phase is to continue for thirty six months (or such earlier time as the Company decides to proceed with the project program), during which time the Company will spend not less than US $150 per square kilometer.

Within thirty days of the signing of the Agreement, the Company is to deposit Rp. 41,500,000 (forty-one million, five-hundred thousand Rupiahs) in a bank chosen by the Government. After the Company spends Rp. 20,750,000 on the general survey or completes the general survey phase, 50% of the deposit will be released to the Company. The remaining 50% is to be returned to the Company upon its submission to and acceptance by the Minister of Mines of a geological map to be completed after the exploration phase.

The feasibility studies phase is to commence whenever the Company gives notice to the Ministry of Mines of its intent to proceed with the project program and will end upon the beginning of the construction phase. The Company is to have twelve months to determine the commercial feasibility of developing the deposit(s). During the initial phases, the Company is to continuously relinquish parts of the original contract area such that:

- at the end of the general survey phase, the area is

to be reduced to no more than 75% of the original area;

- by the second anniversary of the beginning of the exploration period, the area is to be no more than 50% of the original contract area; and
- before the end of the exploration period, the contract area shall be not more than 25% of the original area

The construction phase is to have a duration of thirty months, within which time the Company is to "with reasonable diligence prosecute to completion the design of the facilities." The Company is to furnish the Minister with the estimated cost of construction. If the time allowed is insufficient, a revised time schedule will be prepared.

Operations are to begin upon completion of the facilities. The operating period of each mining area (the separate areas, within the contract area, which are being developed) is considered to commence when the average daily output is 70% of design capacity (but not later than six months from the completion of the facilities). The operating phase for each mining area is to be 30 years from the commencement of operations. Such commencement should not have been more than eight years since the initiation of the general survey. Upon request by the Company, the Government will consider an extension of the operating phase.

The Company is to pay deadrent to the Government in an amount

ranging from U.S. $0.01 to $1.00 per hectare per year. Royalties are to be paid on the mineral content of products "to the extent that any mineral in such product shall be a mineral for which value is paid to the Company by a buyer." Those minerals having a London Metal Exchange (LME) price will have royalties computed on the basis of the first sellers profit quotation price after export or delivery to a domestic buyer of the most widely traded type or grade of the relevant mineral. Minerals having no LME price quotation will have royalties computed on the basis of prices published in Metals Week or any mutually acceptable price quatation. Royalties are to be increased or decreased in direct proportiaon that the current sales prices differ from the reference prices set-out in the Agreement. For those minerals lacking such reference prices, the Government will specify the metal price. Minerals consumed in operations on the construction of facilities and infrastructure are not to be subject to royalties. If the Government thinks the Company is not retrieving minerals at the recovery rate specified in the feasibility studies, it can request an improvement of techniques or evidence justifying the lower recovery rates attained. Should the Government remain unsatisfied, it can commission an independent study to determing a fair recovery grade. If the Company fails to realize such recovery grade, the Government may increase the royalty on the applicable mineral "to the extent that the recovery of such mineral by the Company falls short of the fair average recovery grade indicated by such studies."

The Company is responsible for the payment of export taxes on products exported, except for certain processed products (i.e., though aluminum, copper, lead, zinc and nickel are subject to export taxes, alumina, copper, lead and zinc concentrates, and ferro nickel are exempt from export taxes). The tax rate is stipulated in the Agreement. Computations for adjustments are the same as set forth for royalties.

The Company is to pay taxes in accordance with the prevailing Indonesian rate; except during the first ten years from the commencement of operations the annual corporate tax rate will be 35% of taxable income, and during the remainder of the operating period the rate shall be 45%. The Company has the right to an investment allowance of 20% of the total investment, to be deducted from taxable income at the rate of 5% per year. Depreciation and amortization rates are computed on a straight-line basis of 12½% per year, with the allowance for also taking accelerated depreciation in any one year of the first four years of the asset. Interest expenses are deductible provided that at least 40% of the projects long-term capital is treated as equity-capital and the interest rates "do not exceed the generally applicable market rate at the time of borrowing."

A Regional Development Tax (IPEDA) will be levied on the Company equal to the sum of deadrent and an amount determined by the number of square meters of land area and floor space used by the Company and closed to the public.

Dividends, interest and royalties on patents paid by the Company are to be subject to a 10% withholding tax.

The Company must pay a windfall profits tax when "high profits resulting from extra-ordinary increases in the price at which the Company's products are sold" are realized. A windfall profits tax liability shall occur when Company profits exceed a 15% rate of return on total funds invested. (Total funds invested is defined as the sum of: 1) total capital invested at commencement of operations, depreciated at 10% per annum), 2) replacement capital, 3) an annual adjustment of (1) + (2) based on the export price index of manufactured goods reported in the United Nations Bulletin of Statistics, 4) exploration expenditures capitalized and depreciated, 5) initial capitalized value of non-replaceable infrastructure outside mining area and value of replacement capital, and 6) net current assets at end of the year of liability). Tax on windfall profits are assessed at the rate of 60% on any profits in excess of a 15% rate of return. For the purpose of assessing windfall profits tax, Company profits will be averaged over the year of liability and the two preceeding years. The windfall profits tax will be based on the difference between average profits and a 15% rate of return.

All of the above-mentioned taxes are to be paid "in Rupiahs or such other currency as may be mutually agreed."

From the date of signing this Agreement until the end of the tenth

year of operations, the Company may import and use in Indonesia free from duties and sales taxes machinery, equipment, spare-parts, and materials for the project. This exemption applies only to the extent such imported goods are not produced or manufactured in Indonesia and available on competitive terms, at comparable cost and quality. In comparing the cost of imports with domestic products, sales tax and import duties are to be applied to the cost of imports.

Subject to export laws, the Company has the right to export products obtained from the project. The Government can, however, prohibit sales which may violate Indonesia's international obligations or public interest. "The Company shall sell the products at the best prices and in accordance with the best terms and conditons obtainable in the circumstances then prevailing."

All sales made to affiliates are to "be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and contitions at which such agreement would be made if the parties had not been affiliated, with due allowance for normal selling discounts or commission." Such discounts or commissions are not to exceed the prevailing rate, so that such deductions do not reduce the net proceeds from sales below that which would have been received if the parties were not affiliated. No discounts will be allowed an affiliate with respect to a sale for consumption by the affiliates. The Company is prohibited from entering into any long-term sales contracts without the prior

consent of the Government.

The Company may contract for technical, management, and administrative services. Should services be contracted from affiliates of the Company, such services are to be provided at a cost not more than a non-affiliated party would charge for comparable services.

If the Company produces gold, silver or platinum, the Government has the option to purchase such metals (except where such metals are a minor part of another product produced by the Company). In the event of a sale of gold, silver or platinum to an affiliate or to the Government, the price of gold will not be less than the gold fixing agreed by the London Gold Bullion Market, the price of silver will be determined to be not less than the LME quotation, and platinum will be priced not less than an international price quotation applicable at the time of sale.

All investment monies remitted into Indonesia (equity capital and loan) are to be deposited in a foreign investment account at foreign exchange banks in Indonesia. Currency conversions shall occur at the prevailing rate of exchange. The Company can transfer abroad in any currency funds for the following:

- net operating profits in proportion to share holdings;
- repayment of principal and interest on Government approved loans;
- allowance for depreciation of imported capital assets;

- proceeds from sales of foreign owned shares to Indonesian nationals or firms;
- expenses for foreign personnel and training of Indonesian personnel abroad; and
- compensation in the case of nationalization of the Company

Proceeds from export sales are to be held in dollars in a special account with a commercial bank abroad in the name of Bank Indonesia, as agent for the Company. With respect to other issues pertaining to foreign currency, the Company will receive treatment no less favorable than that given to any other mining firm operating in Indonesia.

The financing of the project is the responsibility of the Company. The firm can determine the amount of financing that will be raised by the issuing of shares and loans, but will attempt to maintain an equity/loan ratio of not less than 40/60. This proportion is encouraged (see the paragraph on corporate taxes) as a means of maintaining the financial solvency of the Company. Long-term borrowing arangements are to be negotiated on such terms and at effective interest rates "which are reasonable and appropriate for mining companies in circumstances then prevailing in the international money markets."

The Company enjoys "full control and sole management" of the project and bears all of the accompanying risks. In exercising

its tasks, the Company is

> to give at all times full consideration to the aspirations and welfare of the people of the Republic of Indonesia and to the development of the Nation and to co-operate with the Government in promoting the growth and development of the Indonesian economic and social structure.

To further the development goals of the Government,

> the Company shall in good faith and to the fullest practicable extent utilize Indonesian manpower, services and raw materials produced from Indonesian sources and products manufactured in Indonesia to the extent such services and products are available on a competitive time, cost and quality basis.

The Company also agrees to process its ores in Indonesia "to the most advanced stage possible." If it does not establish its own facilities for processing, the Company shall use existing Indonesial facilities, "provided that the charges, recoveries and services therefor are economic and competitive."

Indonesian personnel are to be employed "to the maximum extent practicable consistent with efficient operations." The following table indicates the minimum target of indigenization of personnel, by employment classification, within the first three, five and eight years of the operating phase.

	3 Years	5 Years	8 Years
Unskilled labor	100%	100%	100%
Skilled labor	75	75	100
Clerical	75	90	100
Technical and Supervisory	50	75	85
Management, Professional	50	75	85

The Company will not be held in default of the Agreement if it does not fulfill the above quotas if it can justify its failure to the satisfaction of the Government.

At least one member of the Board of Directors will be Indonesian. The Company will maintain a "comprehensive training program," to be approved by the Government, to meet the indigenous employment targets. Employees in the same classifications are to receive the same treatment (including salaries and opportunities). All employees are to be provided "reasonable" free medical services. Working and living conditions provided by the Company are to be of a standard appropriate for good employers operating in Indonesia. Mining operations are to be executed "in accordance with generally accepted measures in the mining industry" to provide for the protection and health of employees and satisfy the prevailing health, safety and sanitary requirements. All modern safety devices are to be employed.

The Company is to cooperate with the Government in trying to maximize the economic and social benefits generated by the project with respect to the development of the region of operations. It will also advise the Government on co-ordinating projects and infrastructure development to further the industrialization and growth of the area.

Operations are to be conducted in "a manner as not to harm the human environment." The Company will utilize the best appropriate

mining techniques "to protect natural resources against necessary damage, to prevent pollution and harmful emissions into the environment in its operations and to dispose of waste materials in a manner consistent with good waste disposal practices." In addition, the Company shall abide with the applicable environmental regulations.

To facilitate the promotion of the natural interest, the Company will offer participation in the ownership of the Company. In each year after the completion of the first full year of the operating phase, the Company will offer to sell or issue shares to the Government or Indonesian nationals. The offer of shares in each year "shall not be less than 5% of the total number of shares issued when the offer is made."

The terms and conditons for the offered shares are to be "reasonably intended to ensure that such shares are not thereafter transferred to non-Indonesians." The obligation to offer participation with respect to any mining operation will be deemed fulfilled "as soon as not less than 51% of the total of shares issued shall have been offered and either issued to or purchased by Indonesians." Shares will be offered for purchase at valuation based on the higher of the depreciated book value of the total investment or a multiple of six and two-thirds of earnings defined as profits after corporate taxes averaged over the previous five years. Not less than 30% of the total issued shares are to be offered to the Government.

Should the Company's capital share be increased, the proportional holdings of Indonesian shareholders will be maintained by offering new shares to Indonesians in proportion to their existing holdings. Shares purchsed by Indonesians may be paid for in Rupiahs. All shares are to be treated equally.

All disputes which cannot be resolved by the parties are to be submitted for arbitration to the International Center for Settlement of Investment Disputes. If the ICSID is not available to resolve disputes, the parties will each appoint one arbitrator; such arbitrators shall select a third. Questions with respect to tax issues, however, are subject to the jursidiction of the Consultative Board for Taxes.

The Government and the Company may, at any time under the term of this Agreement,

> consult with each other to determine whether in light of all relevant circumstanstances, the financial or other provisions of this Agreement need revision in order to ensure that the Agreement operates equitably and without major detriment to the interest of either party.

The circumstances include the conditions of mineral production, the quality of production, market conditions, inflation, and the "terms and conditions prevailing for comparable mineral ventures."

In revising the Agreement, the parties agree that no changes will be made that imperil the Company's financial credibility abroad and ability to get international financing on terms that are "normal" to the mining industry.

III. Conclusions, Trends, and Prospects

A. Conclusions

The operational constraints identified at the outset of the study, the limited coverage of the sample of contracts and the divergent countries, minerals, and conditions involved in the agreements, all precludes the formulation of general conclusions of broad application. It is possible, however, to arrive at certain limited conclusions based on the agreements studied. These would not necessarily be applicable to the entire spectrum of transnational corporate investments in the extractive sectors of developing countries or to any specific agreement.

The pattern of TNC/host government agreements has undergone considerable change. The assertiveness and demands, the trend towards more effective participation manifested by developing countries and groups has been increasingly mirrored in the evolution of more favorable agreements. The modes of agreement and the specific contractual terms deal more directly with many developing countries concerns.

The benefits which accrue to the developing countries are now more extensive and substantial than those realized under the traditional concession. Developing countries have not wholly attained their multiple goals of permanent sovereignty over their natural resources and the efficient exploitation of their mineral wealth in a manner that insures the maximum promotion of the socio-economic development of the country. Nonetheless, host goverments have come a considerable way from the inequitable terms of the traditional concession.

The evolution of developing country agreements in the past decade has been marked by numerous improvements including-increased national ownership, increasing indigenization of the work force, exercise of greater control over the operations and management of mineral development projects, regulation of the fiscal and financial regime of foreign investments, capturing an increased share of economic rents and earnings, and controlling the terms of the sales of the mineral resources. In addition, provisions previously never included in investment agreements under the concession regime — environmental restrictions and protections, local processing of ores, renegotiation of terms, the relinquishment of land under lease, social and regional investment requirements, windfall profits taxes — have begun to be incorporated into contemporary investment agreements.

This does not mean that developing country government are fully satisfied with the agreements included in this study; nor is the outlook for the future one of unmitigated optimism. As previously mentioned, developing countries' goals with respect to mineral resources and economic development have not been completely attained. Control of mining operations remains a domain dominated by the TNCs, developing countries are dependent upon transnational firms for the provision of vital services and procurement of finance capital, the potential for abuse of the terms of an agreement by a company is still very real, vital economic sectors appear in some cases to be subject to the control of foreign investors.

The balance sheet of the modern agreements is mixed: while improvements are readily discernible and favorable terms readily identifiable, not all detrimental provisions have not been eradicated. However the conclusion that host countries generally receives greatly improved conditions, terms, and benefits under the contemporary agreements than they did under the traditional concession is unavoidable.

B. Trends

The most obvious trend is the continuing evolution from the traditional concession to the more modern modes of agreement. The changing terms of mineral investment agreements in developing countries has been part of a more general global pattern in which the developing countries have attempted to secure a greater share of the world's economic wealth, and to exercise effective sovereignty. As such, mining agreements have interacted with other developments in relations between the industrialized and industrializing countries. The interest in commodity producer cartels, the 1973-1974 oil embargo, repeated United Nations inquiries into the operations of TNCs and their impact upon the developing countries, the ongoing "North-South" debate, and General Assembly resolutions with respect to the principles of permanent sovereignty are but some of the more visible manifestations of such trends.

The agreements surveyed contrast strongly with the terms of traditional concessions and other early investment agreements in the minerals sector. By the late 1970s, service agreements, joint ventures, "modernized" concessions and production-sharing agreements had displaced the traditional concession arrangement. Most of the new agreements include terms that specifically define the responsibilities of and delimit the freedom of operations previously enjoyed by the transnational mining companies. The days when the foreign investor could acquire large tracts of land for fifty years or more, develop an orebody at will, without concern for the wishes of the host government (or even allow a deposit

to remain unworked), and exercise virtual sovereignty over the concession area are gone; rather, recent agreements stipulate definite terms on time schedule and development of a project.

Despite host government gains in the realm of project control and management, TNC's continue to dominate decision implementation and project operations. The movement toward greater state influence in these matters --including provisions for government representation on the board of directors and review of proposals for all stages of project development -- has not made much recent progress. Even when the firm operates solely in the capacity of providing pre-defined services in a limited service agreement (i.e., Rosario/Dominican Republic) the TNC retains effective control. Host countries have made inroads into the near total project control enjoyed by the transnationals in earlier years, but the actual reins of control generally remain in the hands of the TNC as manager and operator. One reason may be that the rapid technological change and innovation for mineral production processing has run ahead of the rate of technological transfer to developing countries. A second reason may be that the recent era of high-cost capital has outstripped the financing capabilities of developing countries.

In the 1970s host governments tended to receive greater economic returns than previously. A number of countries took actions to attempt to guarantee that any windfall rents from mining were captured by the host government. These tactics included the imposition of excess profits taxes (Indonesia and Papua New Guinea) and nationalization (Dominican Republic).

Similarly, governments have sought to retain more of the value added in the refining and processing stages, which historically have been located in the developed countries. The indexing of production levies on unprocessed ores to the price of the finished product (i.e, Jamaica) and the requirement that locally mined ores be locally processed to the most advanced stage economically feasible (i.e, Indonesia) are indicative of host government efforts to increase their earnings from resource production.

Fiscal provisions of the agreements surveyed tended to display the maturing impact of experience. Accounting procedures are increasingly detailed, with exact specifications of what constitutes a tax-deductible expense and other variables that often were undefined in traditional concession agreements. With the anticipated change in the laws of Niger mentioned in the Conoco/Niger agreement, royalty payments appear to be universally treated as tax deductions. As a general rule, the overall tax rate applicable to mining projects is approaching the 40-50% level, although considerable concessons are available in the early years of production and debt repayment.

As noted earlier, host government goals may not always prove consistent. Desires to increase economic returns and control over resources, for example, sometimes prove incompatible. State ownership of mineral deposits that are managed (or serviced) by TNCs operating under service contracts or projects are developed by joint ventures do not necessarily yield fiscal greater returns for the country than, for

example, would a comprehensive tax regime. The general trend towards increased profits accruing to the host country, as a result, has been punctuated by the possibilities of increased economic risks and burdens being borne by the government or by state owned mined enterprises. Gaining increased control over natural resources often takes precedence over other concerns (including earnings), though government goals need not necessarily be construed as conflicting or mutually exclusive.

One clear trend is increased attention to and contractual provisions dealing with social issues and economic development. Contrary to the limited requirements which traditional concessions imposed on the TNC, the agreements surveyed almost unanimously provided for the training and employment of nationals and the use of locally produced goods and services. In addition, other socio-economic terms have begun to appear more often in mining agreements: environmental protection clauses, the promotion of national and regional economic development, and forward processing requirements. No clear pattern is as yet evidenced in these areas, however. Some agreements included provisions dealing with the above concerns, while others did not. Required non-mining infrastructure investments and technology transfers also do not indicate discernible trends, but were mentioned in some agreements. Progress in the area of the transfer of technology and know-how is uneven and this is an area which is crucial to host governments to enable them to manage and control the exploitation of their mineral reserves, and to reduce the enclave nature of many mining projects.

While almost all agreements negotiated in the latter half of the 1970s recognized the supremacy of national laws, most agreements continue to contain some provisions for continuation of the legal regime in force at the time of the agreement or to stipulate that only those national laws that are harmonious with the agreement apply. Arbitration procedures for the resolution of disputes have become a standard fixture in foreign investment agreements. In addition, some host countries have attempted, with varying degrees of success, to have foreign investors disavow any claim to diplomatic support from their home governments.

The 1970s also evidenced certain trends in the minerals sector that were beyond the control of either host country or the TNC firm. International business cycles (with accompanying fluctuations in the availability of finance capital, interest rates, demand for raw material inputs, and labor mobility) are of vital importance to mining investment decisions. Inflation in general and soaring fuel prices similarly affect specific investment decisions and the general investment climate. Depletion of reserves and decreasing ore grades, which lead to higher (and possibly non-competitive) costs of operation, also are not subject to host country or firm control, but nonetheless affect the development of extractive projects. These forces combined in the 1970s to increase the cost of new mineral development projects and project expansions and cause difficulties in putting together the financing of major new mines in developing countries.

C. Prospects

Future developments in the area of developing countries host government/transnational mining firm relationships are uncertain. Market conditions, demand for minerals in industrialized nations, the uneven level of economic development and mineral-management expertise manifested by developing country governments, international economic fluctuations, and world politics render any extrapolations from present conditions a speculative venture. Even a medium term estimate of ten years or so is an inherently uncertain forecast.

Despite these caveats, certain trends, however, are discernible. Ownership rights of the host country will continue to be asserted. Developing countries will increasingly need to participate and influence project decision-making and operations by articulating specific requirements in the investment agreements and requiring that project development programs be scrutinized by the government, thereby demanding time for adequate governmental reviews to be incorporated by the private mining companies in their critical-path planning. Government review of sales contracts, project financing, company accounts, and other economic data relevant to the project will also increase. The contemporary modes of agreement — joint ventures, service contracts, and production-sharing agreements — will become more dominant, as the traditional concession arrangement becomes phased-out. Despite this growth in government involvement in the review of the operations of a resource project, however, for the foreseeable future effective management control on operating decisions will be exercised by the TNC.

"Resource nationalism" is liable to continue to grow in strength. This applies to both resource-rich developed and developing countries. The increasingly exacting terms that developed states (especially Australia and Canada) are demanding with respect to foreign investments in their extractive sectors may result in an increase in the value to the TNCs of gaining and maintaining access to the mineral resources of developing countries. This, in turn, should increase the bargaining leverage of developing country governments. The maturity which host governments and state-owned enterprises will develop through experience will better enable developing countries negotiating teams to translate state bargaining strengths into favorable agreement terms.

The countries' success at getting the TNCs to make extensive capital commitments for infrastructure and related social investments will probably continue. Extending these investments to new areas, such as environmental protection and the restoration of arable land, should be further encouraged. Similarly, the inclusion of provisions specifically designed to have the TNC and the mining project integrated (as far as possible) into the general national economy and promote regional and national socio-economic development should become one of the fundamental premises of foreign investments in mining operations. The extent to which mineral projects can become melded into the overall national economic will remain constrained by the physically remote location of many mines which has led these investments to become economic and technical enclaves.

Developing countries will probably continue to rely on transnational mining companies in the future because the development of new technology and specialized personnel expertise continues to outpace the transfer of know-how to the developing countries. In particular, it outpaces the ability of many developing countries to develop their own cadre of trained nationals to occupy management jobs. The highly specialized services needed for the efficient development and management of mining projects will continue to be provided by the TNCs, and it would thus appear that transnationals will remain essential instruments for the orderly extraction and processing of the mineral wealth of the developing countries.

It is in the area of ore trading and international marketing of minerals that developing countries' may more quickly make strides to become integrated into the world minerals sector. Relatively little capital and time is required to achieve more profitable control over the minerals export trade; this forward integration can be accelerated by the selective use of private sector specialists, most of whom are not TNCs.

Footnotes

[1]General Assembly Resolution 3201 (S-VI, 1974).

[2] K. Billerbeck, and Y. Yasugi, Private Director Foreign Investment in Developing Countries, World Bank Staff Working Paper, No. 348, (Washington, D.C., 1979) p. 13.

[3] Zuhayr Mikdashi, "Commodity Agreements and International Economic Co-operation," National Resources Forum, Vo. 4, No. 1, January, 1980, p. 96.

[4] John H. Dunning, "Multi-national Mining Companies and Governments: A New Detente?", Multi -national Business, No. 1, 1979, p. 15.

[5] Raymond F. Mikesell, New Patents of World Mineral Development (London: British-North American Research Association, 1979) p. 2.

[6] John E. Tilton, The Future of Non-Fuel Minerals (Washington, D.C.: Brookings Institutions, 1977) pp. 59-60.

[7] Rex Bosson and Bension Varon, The Mining Industry and the Development Countries (Washington, D.C.: The World Bank, 1977) pp 10-11.

[8] Rex Bosson and Bension Varon, The Mining Industry and the Development Countries (Washingto, D.C.: The World Bank, 1977) p. 12.

[9] David N. Smith, and Lewis T. Wells, Jr., Negotiating Third World Mineral Agreements, (Cambridge, Massachusetts: Ballinger Pub. Co., 1975) pp. 67.

[10] See: Raymond Vernon, The Economic and Political Consequences of Multi-national Enterprise: An Anthology (Boston: Harvard University, 1972) p. 148.

[11] Smith, p. 12.

[12] According to certain theories of imperialism, the TNC also needs the host country as an investment outlook to perpetuate the dependent relationship or maintain an increasing rate of return to the firm.

[13] See: Smith, p. 3.

[14] Ibid, p. 19.

[15] Raymond F. Mikesell, Foreign Investments in Copper Mining: Case Studies of Mines in Peru and Papua New Guinea (Baltimore, Md.: Resources For the Future/John Hopkins University Press, 1975) p. 28

[16] H. Hutabarate, "Comparisons of Benefits for Indonesia from alternative types of Mineral Agreements for Hard Minerals" (EW Centre, June, 1980) p. 15.

[17] Albrecht Stockmayer and Thomas Walde, "New Developments in Permanent Sovereignty Over National Resources" (Frankfurt: U.N. Division on Natural Resources, Transport and Energy, 1980) pp. 22-23.

[18] Billerbeck, p. 3.

[19] Billerbeck, p. 12.

[20] Louis T. Wells, Jr., "Negotiating With Third World Governments" Harvard Business Review, Vo. 55, No. 1, J-F 1977, p. 74.

[21] Samuel Asante, "Restructuring Transnational Mineral Agreements", American Journal of International Law, Vo. 73, No. 3, July, 1979, p. 340.

[22] Mikesell, p. xxii.

[23] Smith, Negotiating Third World Mineral Agreements, p. 7.

[24] David Smith, New Eyes For Old: The Future, Present and Past in the Evolution of Mineral Agreements (To be presented at E/W Centre Workshop on Mineral Policies to Achieve Development Objectives), May, 1980.

[25] See: Stockmayer.

[26] See, for example Stephen Zorn, "Third World Mining Agreements in the 1970's and 1980's" (New York: United Nations Centre on Transnational Corporations, 1980).

[27] See, for example the issues identified in: Mikesell, New Patents of World Mineral Development, pp. 50-53; Bosson, p. 13-14; Zorn, Third World Mining Agreements, pp. 8-9.

[28] David Smith, New Eyes For Old: The Future, Present and Past in the Evolution of Mineral Agreements.

[29] Asante, p. 352.

[30] Bosson, p. 15.

[31] Smith, New Eyes For Old.

[32] Frank, p. 56.

[33] Dunning, p. 14.

[34] Bosson, p. 10.

[35] Gobind Nankari, Development Problems of Mineral-Exporting Countries, World Bank Staff Working Paper, No. 354 (Washington, D.C.: World Bank, 1979) p. 5.

[36] Frank, p. 90.