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of foreign
private investment
in the Sudan
and Saudi Arabia

A case study of
developing countries

Fath El Rahman
Abdalla El Sheikh

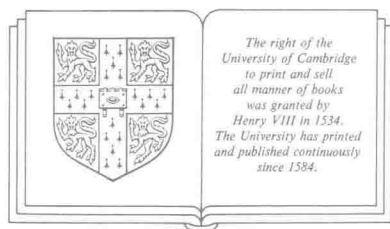
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THE LEGAL REGIME OF FOREIGN PRIVATE INVESTMENT IN THE SUDAN AND SAUDI ARABIA

A Case Study of Developing Countries

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PREFACE

This book deals with the legal regime of foreign private investment in the Sudan and Saudi Arabia, countries which have similar ethnical, religious and social backgrounds, albeit many diverse political and economic characteristics. Yet both countries fall within the category of the 'developing countries', which have been for decades victims of an existing international economic order which heavily tilts the scale against these countries.

The Sudan is the largest country in Africa. Economically, it enjoys a strategic location, lying in close proximity to the lucrative and rapidly growing Middle Eastern markets. Despite its numerous constraints, its untapped potential has attracted the attention of the Arabs, and the international business community, as a highly promising place for investment.

Because of lack of adequate capital and technical know-how, foreign private investment is of paramount importance for the economic development of the Sudan. Public investment hitherto has hobbled the progress of the national economy by burdening the country with the accumulation of massive debts, now at astronomical proportions. Hence the obvious and urgent need of the country for foreign capital makes the legal study of foreign private investment a timely necessity. Saudi Arabia, on the other hand, being one of the richest countries in terms of financial resources, and though it has emerged as an influential international economic power, yet needs foreign investment to import the appropriate technology, expertise and know-how for the realization of its huge developmental goals.

This book is primarily concerned with the exposition of the legal regime pertaining to foreign private investment in the two countries within the framework of international law. The crucial question is that of the control and standard of treatment and protection furnished to foreign investment. This is examined in the context of the current international investment climate, reflected in the conflict between the developed and developing countries over the international law rules governing foreign investment; a conflict which appears especially in the North-South dialogue.

The study falls into three parts. Part One, consisting of three chapters, deals with certain preliminary issues.

Investment Guarantee sponsored by the Arab States, and the proposal of the World Bank for establishing an International Investment Insurance Agency are also discussed in this chapter.

Chapter 9 is the principal theme. It focuses on all legal aspects of economic development agreements between foreign investors and the State.

Part Three is designed for remedies. It consists of Chapters 10 and 11.

Chapter 10 explores the courses which an aggrieved foreign investor can pursue to obtain relief if his investment is destroyed or adversely affected.

Chapter 11 investigates the unilateral sanctions which may be taken by the home States of the investors against the investee State to secure redress for economic injuries of these investors, if other devices prove ineffective.

This book is the outcome of a study completed in 1979 for the Ph.D. degree in the University of Cambridge on 'The Legal Aspects of Foreign Private Investment in the Democratic Republic of the Sudan'. The notion of expanding the study to include Saudi Arabia as well has been precipitated by the genuine desire to explore the regime regulating foreign investment in that country, in an attempt to proffer a vivid account of how far the prevailing Islamic practices have contributed in the development of international rules on the subject. The reader will find more material on Sudanese law than on Saudi law. The reason is obvious. Being a Sudanese lawyer, I am well acquainted with the Sudanese legal system, a facility which was not available to me in the secretive system of Saudi Arabia.

In undertaking the study on which this book is based and in preparing it for publication, I have become indebted to many people. I owe an immense debt of gratitude to my supervisor, Professor R. Y. Jennings, Jesus College, Cambridge University, who both supervised the work when it was in dissertation form and read the manuscript. His sustained encouragement, suggestions and guidance were invaluable, without which this work would have been really difficult. I would like also to thank my colleague Mr Mohammed Nour El Din El Tahir who kindly agreed to read the manuscript and who gave me the benefit of his advice. I would like also to thank Sayed Hussein El Sayed and Saud El Shwaf, Attorneys at Law, Riyadh, for their support and help in providing me with material on Saudi law.

As the original manuscript of this book was prepared for publication in 1980, there have since been some changes in the law which warrant writing a short addendum, to update the work to some extent.

I wish to express my profound thanks to the Sudan Government and the Ford Foundation for granting me scholarships and grants which made the preparation and publication of this book possible.

I am also indebted to my colleagues, the people whom I interviewed and the staff of the Squire Law Library, Cambridge, for providing and assisting me in

ABBREVIATIONS

A.A.A.I.D.	Arab Authority for Agricultural Investment and Development
A.A.L.C.C.	African and Asian Legal Consultative Committee
A.B.A.J.	<i>American Bar Association Journal</i>
A.B.S.I.D.	Arab Board for Settlement of Investment Disputes
A.C.	Appeal Cases (English Law Reports; Decisions of the House of Lords and the Privy Council from 1891)
A.C.P.	African-Caribbean-Pacific countries
A.D.	Annual Digest of Public International Law Cases (now International Law Reports)
A.E.C.U.	African Economic and Customs Union
All E.R.	All England Law Reports
<i>Am.Econ.Rev.</i>	<i>American Economic Review</i>
Att.Gen.	Attorney-General
A.I.D.	Agency for International Development
A.J.C.L.	<i>American Journal of Comparative Law</i>
A.J.I.L.	<i>American Journal of International Law</i>
A.P.I.C.	The Arab Petroleum Investment Corporation
<i>Am.Soc.Int.Law Proceed.</i>	<i>American Society of International Law Proceedings</i>
<i>Bus.Lawyer</i>	<i>Business Lawyer</i>
<i>B.Y.B.I.L.</i>	<i>British Yearbook of International Law</i>
C.B.I.	Confederation of British Industry
C.B.R.	<i>Canadian Bar Review</i>
C.E.R.D.S.	Charter of Economic Rights and Duties of States
<i>Columb.J.Trans.L.</i>	<i>Columbia Journal of Transnational Law</i>
<i>Camb.L.J.</i>	<i>Cambridge Law Journal</i>
<i>C.L.P.</i>	<i>Current Legal Problems</i>
<i>Calif.L.Rev.</i>	<i>California Law Review</i>
<i>Columb.L.R.</i>	<i>Columbia Law Review</i>
C.M.	Council of Ministers
Cmd and Cmnd	Command Papers (British)
<i>C.Rev.</i>	<i>Criminal Review</i>

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