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LEGAL ASPECTS OF
DOING BUSINESS IN
LATIN AMERICA

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**LEGAL ASPECTS OF DOING BUSINESS
IN LATIN AMERICA**

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Introduction

THOMAS J. BRAHAM

EL DORADO: THE MYTH

To understand the concept of 'business' in Latin America, one must delve, however briefly, into the history and demographics of the region involved,¹ for our subject here concerns an area of the world of incomparable diversity and complexity, even confusion, as evidenced by the very name 'America'.²

In land area, the South American continent is nearly twice as large as the United States, with more than twice the population; Brazil alone comprises one-half of the land mass of South America and the same proportion of population. Spanish and Portuguese are the primary languages, except in the Caribbean Basin, but at least half of the people in Guatemala, Ecuador, Bolivia and Peru do not understand Spanish, and in Paraguay the entire population is bilingual, speaking Guarani and Spanish.³

President Kennedy was wont to describe Latin America as 'the most critical area in the world'⁴; others consider it a society where social injustice abounds, with an 'invisible population',⁵ and the Caribbean Basin has been characterized as 'the Middle East of the Western Hemisphere'.⁶ But common to each Latin American country is a pioneer restlessness that permeates everything – law, politics, business and art.⁷ It is a pioneer spirit born of the Myth of El Dorado⁸ and nurtured by settlers who came to '*hacer America*' (to have it for its gold), who valued making a sudden fortune more than political or religious liberty.⁹ It is this 'myth' that has helped to perpetuate the idea of the inexhaustible, readily exploitable riches of Latin America. To counter the 'myth', various economic models or methodologies have been attempted or adopted by the respective governments, and it is to these systems, legal and economic, that we now turn our attention.

EL DORADO: THE CURSE

'Our wine is bitter
but it is ours.'

José Martí

Nationalism can at once be a matter of convenience for a government wanting to divert attention from internal problems and a method of countering what it perceives as one manifestation of the 'Curse of El Dorado' – neo-colonialism and its attendant economic exploitation, both real and imagined. In the former mode, it might find expression in territorial disputes, such as those experienced

by Venezuela with Colombia over the territorial (oil-rich) waters of the Gulf of Venezuela, or Argentina's and Chile's differences over the (oil- and gas-rich) Beagle Islands, or even the extreme case of Great Britain and Argentina's 'war' over a group of desolate islands noted for basically nothing and known by two names – Falklands and *Las Malvinas*.

In the latter mode, the legal practitioner encounters problems of the political risk genre (nationalization, expropriation) and *La Dependencia*, the 'Dependency Theory' which counsels strong action against external economic forces. 'Self-determination' shall counter the ravages of rapid modernization, or so goes the theory,¹⁰ and such actions often have resulted in the stagnation or virtual destruction of some economies; nevertheless, most Latin Americans know that their only real chance for modernization is income through trade, as is epitomized by the Latin American Free Trade Association (LAFTA), the Andean Common Market (ANCOM), the Caribbean Community (CARICOM), and the Central American Common Market (CACM).¹¹

To be minimally effective, into the Latin American legal practitioner's lexicon must come terms such as 'Decision 24' (Andean Foreign Investment Code),¹² 'Mexicanization',¹³ the 'New International Economic Order',¹⁴ and the 'Calvo Doctrine',¹⁵ and a willingness to deal with a multitude of differing business environments, all of which require a continuous educational process and demonstrate clearly that Latin American society is neither homogeneous nor static.

For instance, a lawyer confronted with a 'Decision 24'¹⁶ problem finds that the Andean Foreign Investment Code contains approximately 125 supranational prescriptions which have emanated from the 'decisions' approved by its Commission. Indeed, what was hailed as a 'new juristic phenomenon',¹⁷ the world's first . . . regional system of prior restraints on the entry of new private sector investment from outside',¹⁸ also has been characterized as a rather severe straitjacket for private foreign investment,¹⁹ and, along with the 'New International Economic Order',²⁰ has given significant impetus to the erosion of investor confidence in relations with the host countries.²¹ One experienced source even concludes that '(t)he vaunted power of the multinational enterprise may have been met by sufficient countervailing power, exercised by both home and host nations, that is the transnational corporation which is now truly at bay'.²² With respect to multinationals, another author believes it is '. . . in the long term interest of Latin Americans, like most of all (world citizens), to turn the multinationals to democratic purposes before a scientific world elite has secured a monopoly on wealth and power',²³ and this would include nationalization of foreign-owned property and legal restraints on new private investment to restrict export profits, thereby (theoretically) assuring training of local workers and the re-cycling of money into further development.²⁴ But facts and figures will not permit, and indeed another source concludes that Latin America does not have, sufficient time to wait for her peaceable democratic revolution to be led by leaders who have yet to emerge from the ranks of peasants or industrial workers to become forward-looking business leaders.²⁵ If public spending and deficit financing have their limitations, and if austerity programs prescribed by international lending agencies are political liabilities,²⁶ only

increased private investment, by mobilizing the collective resources of the private economy, can bring about a sustained program of development.²⁷ But this same authority cautions that private capitalism must demonstrate that it is not linked with a closed, feudal, aristocratic society, and that it is, on the contrary, the champion of an expanding and egalitarian society²⁸; it cannot take itself for granted. The major objective, he states, is the substitution of local manufacture for imports,²⁹ with 'mixed enterprises' wherein organized labor is involved in the process through international sister and brother unions.³⁰ The thesis finds room for an 'enlightened military' which might act as a midwife in delivering its country into the modern world,³¹ but it has no place for the Latin American capitalist who has not yet advanced beyond the merchant-trader stage and is therefore prone to look upon investment as a treasure to be plundered instead of an expectation to be nurtured.³² And, concludes the author, history will record as one of the ironies of our time that the gravedigger of the feudal societies in Latin America was the presence there of (North American) business.³³

Regardless of whether such a development program could be sustained on any large scale, given the nature of Latin American politics at present, something unconventional must be done quickly or that 'invisible population' will become very apparent. It seems more free trade, not less, may be the answer.

Statistically, some 240 - to 280-billion dollars will be needed in this decade alone to explore and develop Latin American energy resources, and some 500-billion dollars must be invested in the agricultural sector within the next eighteen years if Latin America is to feed its rapidly expanding population. Moreover, the migration from farm land to urban areas has caused twenty to thirty per cent unemployment in many countries, and four-million jobs must be created each year just to maintain current levels of employment.³⁴

While it cannot entirely take the place of official and international concessional assistance, private foreign investment has a substantial and irreplaceable role in the process of development, but as noted, *supra*,³⁵ Latin America presents unique problems for private sector involvement. Nevertheless, rewards can be immense, and in returns that transcend mere profit motives; for as surely as there exist various investment 'disincentives'³⁶ in Latin America, the long-range benefits of improvements in North and South relationships can never be overlooked.

Any investment necessarily involves interaction between people, a giving and taking, and a measure of trust, a commitment. In Latin America, with its fragile economies, and often unstable governments, private sector involvement has been fraught with dilemmas similar to those experienced by the pig and the chicken over 'ham and eggs'. The chicken said he did not object to ham and eggs. The pig, on the contrary, replied that he objected strenuously. It was all right for the chicken to favor this dish; for the chicken it was only a question of a contribution. For the pig it was a total commitment. The countries of the developing world do not lend themselves to experiments by weak or inexperienced or underfinanced private enterprise ventures, and they can be as equally

unforgiving to the unprepared legal advisor, for he or she may be required to solve the 'ham and eggs' dilemma with primary resource – the law.

EL DORADO: LAW AND SOCIETY

'America is ungovernable. Those
who served the revolution ploughed
the sea.'

Simon Bolivar

The *Code Napoleon*, the basis for most Latin American law, was more social welfare-oriented than the protect-the-citizen-from-government constitutions of the English-speaking countries. In the clash of liberty with welfare, the Latins, European and American, preferred welfare as more humane, more caring, less merchant-minded.³⁷ In addition, Latin legal systems have a concept of source of law significantly different from that of the Common Law systems; the primary source of law for them is the codes, principally the civil and commercial codes. The distinction between so-called 'civil' and 'commercial' transactions, incidentally, is basic to Latin American law.³⁸ This has resulted in the general acceptance of comprehensive codes as a source of business and trade law, with often unintended results,³⁹ but their modern codes and charters, replete with the *considerandos* and *resolviendos*, are not so much a testament of a people enthralled by technology and captivated by industrialization⁴⁰ as they are manifestations of a general hope that a new economic order will result in greater equity and justice through international trade.⁴¹

A classic example of the ongoing hybridization of the Latin American codes is the Cartagena Agreement⁴² (actually signed in Bogota), or *Acuerdo de Cartagena*, which gave life to the Andean Common Market (ANCOM), comprised of Venezuela, Colombia, Ecuador, Peru and Bolivia. ANCOM's members, all part of the Latin American Free Trade Association (LAFTA),⁴³ were dissatisfied with its ability to foster development within the Andean Group economies⁴⁴ and embarked upon a course of industrial development, via the integration model, calculated to achieve a place in the international economy as an exporter of manufactured goods.⁴⁵ This has been a highly eclectic process of 'hybridization' of the commercial and civil codes, for the Andean Pact stands for the commitment and overriding concern of its signatories for economic and social development.⁴⁶ This is especially evident in the Andean Foreign Investment Code, or Decision 24 of 1970,⁴⁷ and in its Sectoral Programs of Industrial Development (SPID), wherein key sectors of the economy are targeted for development within specific members of the Andean Group.⁴⁸ One observer believes that, if the Andean Group achieves its objectives, there will be an increasing trade diversion away from the United States in favor of growing intra-Andean exchange.⁴⁹ But that statement was made in 1978, and now the Latin American practitioners must master new additions to their lexicons: 'CACM',⁵⁰ 'CARICOM',⁵¹ and 'CBI'.⁵² Each of these testifies to a potential for

a unique direction in development in 'the Middle East of the Western Hemisphere'.⁵³

The Caribbean Basin Initiative, or 'CBI'⁵⁴, was submitted to the Congress by President Reagan on 16 March 1982. It is a twelve-year plan designed to boost the economies of the Caribbean and Central America. The bill allows duty-free access to the United States for all products produced in the region, except textiles and apparel and certain amounts of sugar. It proposed 350-million dollars in United States direct foreign aid to the region for fiscal year 1982 and extended the investment tax credit to United States entities in the region. Much of the bill covers economic guarantees to Puerto Rico and the United States Virgin Islands against potential business and tax losses due to trade jumps with the other islands.⁵⁵

Under the legislation, the President would propose duty-free access to the United States from some twenty-eight countries⁵⁶ of the Caribbean and Central America, excepting those considered communist, those that have nationalized United States firms without adequate compensation, or those that afford preferential trade treatment to other developed countries which is likely to have a 'significant' adverse effect on United States trade. The bill, however, would allow the President to disregard any of the three criteria on grounds of 'national economic or security' interests.⁵⁷

Canada, Colombia, Mexico and Venezuela have joined the United States in affording preferential trade treatment, direct foreign assistance, and technical assistance to Basin countries,⁵⁸ and both donor and recipient countries are free to choose the type of aid they feel is necessary in individual circumstances. Moreover, there is a stipulation in the United States plan that would encourage an active, free labor movement in each recipient country.⁵⁹

But the major thrust of at least the United States legislation is to attract Japanese and United States manufacturing firms away from the Far East to the labor-surplus Caribbean Region.⁶⁰ Indeed, the hallmark of the entire program is extensive private sector involvement, along with bilateral special investment treaties with each country.⁶¹

The model bilateral investment treaty⁶² is especially important, as evidenced by its title as that 'Concerning The Reciprocal Encouragement And Protection Of Investments'.⁶³ Although a detailed analysis of the model treaty is precluded by the scope of this introduction, the first paragraph of Article II⁶⁴ thereof gives a clear delineation of the basic purposes and intent of the treaty – reciprocity in trade and investments. The Treaty also requires compensation for expropriation,⁶⁵ indemnification for 'damages due to war and similar events',⁶⁶ relatively unfettered repatriation of profits and currency transfer,⁶⁷ exchanges of information between the parties with respect to national interests,⁶⁸ and a mechanism for the 'settlement of investment disputes between one party and a national or company of the other party'.⁶⁹

If one then compares the model treaty⁷⁰ with 'Decision 24',⁷¹ 'Mexicanization',⁷² the 'New International Economic Order'⁷³ and the 'Calvo Doctrine',⁷⁴ the conflicts and contrasts abound. And they should, for they are at once concerned with some Latin American countries on the threshold of development as industrialized states with 'take-off' economies and fast evolving domestic

markets of their own⁷⁵ and with other countries which can be classified only as 'developing' in its most pejorative sense.

In 1981, Latin America held the unenviable distinction of having the highest rate of inflation and heaviest concentration of foreign debt of any region in the world.⁷⁶ Argentina posted a 1981 inflation rate of 132 per cent, making it 'the world inflation champion', as President Leopoldo Galtieri put it.⁷⁷ The only Latin economy to show improvement on inflation was Chile, and Venezuela has continued to spend more than it earns.

In the north of Latin America is Mexico, where foreign business concerns face red tape, lost letters, restrictions on ownership, and shrinkage at the border.⁷⁸ Mexico is a country of almost two-million square kilometers, more than sixty-five million inhabitants, a *per capita* income of almost one-thousand dollars, a good infrastructure in most areas, except the agricultural sector, and a comparatively developed economy.⁷⁹ The Mexican government proposes to double Mexico's industrial plant in seven years, estimating the population then to be eighty-five-million.⁸⁰ A world oil glut, fiscal turmoil and currency devaluations may force less ambitious plans upon Mexico, but certainly to the extent that multinationals open up markets and give access to financing and technology within the framework of Mexican laws and on the basis of mutual benefit, Mexico is open to foreign investment, especially to labor-intensive and high local-content manufacturers.⁸¹

Mexico's National Industrial Development Plan establishes an industrial policy through the year 1990 and is designed to increase investment in the development of a less concentrated economy, which is dispersed to areas along the borders and near various ports.⁸² It is a plan that envisions very high priority among certain investments, such as capital goods manufacturing and food processing industries. Mexico's greatest economic problem is unemployment,⁸³ so it is the labor-intensive industrial activity that is destined to receive the greatest quantitative and qualitative incentives from the Mexican government, pursuant to the plan. And, of course, one should never forget the Mexican 'Maquiladora' in-bond program for assembly plants under which a foreigner may own 100 per cent of a plant in Mexico, ship the parts to the plant from his home country free of Mexican duty, assemble the product in Mexico, employ Mexican labor, and ship the finished product back to his home country.⁸⁴

As is true in much of Latin America, Mexico is a land of contrasts with great mineral wealth and a rich culture, but with enormous disparities in personal wealth and income distribution. No matter how sophisticated Mexico's industrial plans become, they must look ahead to demographic problems or forever be fearful of a potential economic order hostile to any private sector solutions.⁸⁵

To the south of Latin America lies what is touted as the 'next world superpower'⁸⁶ – Brazil.

In Brazil, it is *grandeza* – greatness as a nation and indeed it is reflected in its statistics. Brazil is the most populous nation in Latin America with a population exceeding 123,000,000, a figure increasing by approximately 3,000,000 every year and which is spread about a territory of 3.3-million square miles, making it the fifth largest nation in the world. It has the world's tenth largest economy with a 1980 gross national product of 242-billion dollars and

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the second-largest military establishment in the Western Hemisphere with 272,000 men in uniform, equipped mainly with Brazilian-made arms. It has more land under cultivation than Europe, raises twice as many cattle as Argentina and more sugar than Cuba, and builds more ships than any country in the world except Japan. Brazil has ten per cent of the world's known iron-ore reserves, and it is approaching Australia as the world's largest iron-ore exporter.⁸⁷

In order to develop its vast resources, Brazil has depended on foreign capital which controls the majority of its automotive, pharmaceutical, beverage, tobacco and textile industries, and foreign entities continue to invest in Brazil.

In Brazil, virtually all economic activity is subject to a substantial amount of governmental regulation.⁸⁸ Here, one finds the classic application of government paternalism wherein government agencies commonly make themselves part of the contractual negotiations between private parties.⁸⁹ For instance, a Brazilian firm negotiating a licensing or technical assistance agreement with a foreign firm must have the contract approved by the National Institute on Industrial Property.⁹⁰ To one author, Brazil is a country of thousands of laws, regulations and directives, with thousands of bureaucrats ever eager to pull from their desk an unknown legal provision, as if it were a gun, and shoot the citizen who wishes to engage in any kind of productive activity.⁹¹ And then how does anything get done? '*Jeito*', replies the Brazilian, their '*Institutional Bypass of the formal Legal System*,'⁹² which simply applies the law in a 'common sense' fashion – whatever that may be.

From the giants of the Latin American north and south, we move to Colombia, so intellectual but so violent,⁹³ and then to Chile, a country of mountains with 2,600 miles of Pacific Coast, and at points only twelve miles wide (to some Chileans their country is God's plan to keep Argentina from the Pacific)⁹⁴. Chile also has the most open foreign investment laws in Latin America, and the only real restriction is a three-year wait for capital repatriation. Investors need only register their capital with the Chilean Central Bank, and there are no substantive admission requirements.⁹⁵

Whereas Chile has an enormous coastline, Paraguay and Bolivia have no sea access, but like Chile and Peru, Bolivia's economy has suffered seriously from reduced demand for its silver, copper and tin by the United States and Western Europe.⁹⁶

In Central America, the business climate is dominated by political problems, with Nicaragua facing revolution of a decidedly Marxist genre and El Salvador battling insurgents recognized as a legitimate political entity by both Mexico and France.

Central to private sector development is a legal system which provides security and foreseeability, or as one author described:

'The rationalization and systemization of the law in general and . . . the increasing foreseeability of the functioning of the legal process in particular, constitute one of the most important conditions for the existence of capitalistic enterprise which cannot do without legal security.'⁹⁷

Of course, the architects and engineers of this process are the lawyers and legislators, international and domestic, and unjustified economic nationalism and isolation is their primary adversary. To be truly successful in this endeavor, nothing must be allowed to stifle the dialogue represented by trade between countries, and this includes direct private investment.

EL DORADO: AN OPINION

The efforts of Latin American countries to control their economic destinies are laudable, but they must be done within the framework of free trade, and the legal mechanisms are available to effect and augment this process.

As the word 'trade' implies, there ideally should be an equitable giving and a receiving, a measure of reciprocity, and the private sector can and must be pivotal in the overall trade system, whatever form that takes. This is all but a realization that, where economic nationalism is concerned, no country today is fully self-sufficient.

The Curse of El Dorado is the legal and socio-economic challenge of the Americas, and for the time being, *Vale mas el camino que la posada*.⁹⁸

INTRODUCTION

Notes

1. 'Latin America' is the entire region south of the United States border, including the Caribbean Basin and Central America, extending to the southern tip of South America.
2. The confusion over the name 'America' has no parallel in any other portion of the globe and, over a period of three to four centuries, the Spaniards were determined not to adopt the word; they spoke of the 'West Indies.' 'America' connoted independence and revolution; indeed, the first statutes drawn up during the reign of Charles V were titled 'Laws of the Indies', from whence came the term *Derecho Indiano*, (Indian law) meaning the law in force over the Spaniards in America. Columbus died unaware that a new continent existed, still firmly convinced that he had reached Japan and that the islands in the Caribbean were a Japanese archipelago. And then further to complicate matters, the framers of the United States Constitution did not think to give their new nation a name of its own, making the United States the only country in the world without an unmistakable name. To say 'United States' could mean United States of Mexico, or of Brazil or Venezuela, and they are all part of 'America'. Recognizing this potential for confusion, someone suggested calling the new country 'Freedomia', a hybrid of the Anglo-Saxon 'freo' with a Greco-Latin ending, in order to christen it the country of freedom, but further research revealed that the name in Spanish would mean country of 'free ladies', so that was the end of that.
- But of essential import is the fact there are four Americas that represent four historic zones, four experiences, four styles, four characters, each in search of self-expression, of a culture, and of the lands evolving therefrom. The English America is the United States, the Anglo-French America is Canada, and in the rest of the hemisphere we have Hispano-Indian America and Portuguese America, or Brazil. It is essentially the two latter Americas on which we focus herein, and we shall refer to them as 'Latin America', for the purposes of simplicity, as they were colonized by people from the Iberian peninsula. Arciniegas, *Latin America: A Cultural History* 1967, New York: Alfred A. Knopf, pp. 549, 550.
3. Nehemkis, *Latin America - Myth and Reality* (1964, New York: Alfred A. Knopf), p. 2.
4. Id., p. 3.
5. Id., pp. 4, 5.
6. Id., p. 7.
7. Knight, *Latin America Comes of Age* (1967, The Scarecrow Press, Inc.), p. 3.
8. 'El Dorado' was the 'Golden City' thought to be in an area around Lake Guatativa, fifty miles North of Bogota. At the climax of an annual religious ceremony, the tribal leader was coated with gold and thereupon dived into the lake in an act of ritual purification. Hennessey, *The Frontier in Latin American History* (1978, University of Mexico Press), p. 33.
9. Id., p. 34.
10. Knight, supra, n. 6, p. 215.
11. Id., p. 52.
12. Common Rules Governing The Treatment of Foreign Capital, Trademarks, Licenses, and Royalties, adopted 31 December 1970, effective 30 June 1971 [hereinafter cited as Decision 24], Asociacion Latinoamericana de Libre Comercio (ALALC), 69 Sintesis Mensual 137 (1971) [hereinafter cited as Sintesis Mensual], reprinted with amendments in 16 *International Legal Materials* 138 (1977) [hereinafter cited as I.L.M.].
13. In a narrow sense, 'Mexicanization' means changing the equity structure of a Mexican corporation so that no more than forty-nine per cent of its shares are owned by foreigners. Its broader meaning is found in the combined effect of two 1973 enactments of the Echevarria administration which codified the forty-nine per cent rule and restricted foreign capital in other ways as well. The Technology Law (Ley Sobre el Registro de la Transferencia de Tecnologia y el Uso y Explotacion de Patentes y Marcas, 28 December 1972, 315 D.O. 45 (30 December, 1972)) and the Investment Law (Ley para Promover la Inversion Mexicana y Regular La Inversion Extranjera, 28 February 1973, 317 D.O. (28 February, 1973)), together trace a new high-water mark in Mexico's long history of resistance to foreign enterprise. Murphy, 'Decision 24, Mexicanization, and the New International Economic Order: The Anatomy of Disincentive', *Texas International Law Journal* (1978), Volume 13, pp. 289, 295.
14. See Murphy, supra, n. 13, pp. 298-302. The two principal documents evidencing the efforts of Third World economists to redress the accelerating imbalance of prosperity which the undeveloped countries experienced after World War II, the Declaration on the Establishment of a New

- International Economic Order (G.A.Res. 3201, S-6 United Nations GAOR, Supp. (number 1) 3, United Nations Document A/9559 (1974), *reprinted* in 13 I.L.M. 715 (1974), and the Charter of Economic Rights and Duties of the States (G.A.Res. 3281, 29 United Nations GAOR, Supp. (Number 31) p. 50, United Nations Document A/9631 (1974), *reprinted* 14 I.L.M. 251 (1975), hereinafter cited as Economic Declaration and Economic Charter, respectively. Murphy, *supra*, n. 13, p. 299; also citing Haight, *The New International Economic Order and The Charter of Economic Rights and Duties of States*, 9 *International Law* (1975) 591, 592; other citations omitted.
15. This doctrine is often an integral part of Latin American constitutions and laws, and usually requires foreign companies to submit themselves without exception to the laws and courts of the host countries, and may also bar formal diplomatic representations by home countries on behalf of their nationals concerning investment disputes or other property-related matters. The United States has never accepted the Calvo Doctrine and does not accept a waiver of diplomatic protection by one of its nationals as binding upon the United States government. See Gantz, 'Latin American Trade and Investment: The Role of The State Department's Legal Advisor', *Business and Legal Aspects Of Latin American Trade and Investment* (Shea and Swacker, Ed.) (1976, The University of Wisconsin-Milwaukee), pp. 158, 159, hereinafter cited as Shea and Swacker. The basic theory is that foreign investors are entitled to only the same rights, privileges, and legal remedies accorded to citizens and are therefore barred from appealing to their governments to seek redress for grievances. *References Manual On Doing Business In Latin America* (Shea, et al., ed.) (1980, The Center For Latin America, University of Wisconsin-Milwaukee), p. 193, hereinafter cited as Reference Manual. The Reference Manual, *supra*, is a superb source of reference material on Latin American business, and generally.
16. *Id.*, Reference Manual, p. 87.
17. Murphy, *supra*, n. 13, p. 290.
18. Oliver, *The Andean Foreign Investment Code: A New Phase in the Quest For a Normative Order as to Direct Foreign Investment*, *American Journal of International Law*, Volume 66, p. 763.
19. *Id.*, p. 777.
20. Murphy, *supra*, n. 14.
21. Murphy, *supra*, n. 13, p. 289. See also Murphy, *The Andean Common Market and Mexico: A Foreign Investment Profile*, p. 307; Schliesser, 'Restrictions on Foreign Investment in the Andean Common Market', *International Law* (1971), Volume 5, p. 586.
22. *Id.*, p. 302; see also Rubin, *Reflections Concerning The United Nations Commission on Transnational Corporations*, *American Journal of International Law*, Volume 70, pp. 73, 90.
23. Knight, *supra*, n. 7, p. 251.
24. *Id.*, pp. 249, 250.
25. Nehemkis, *supra*, n. 3, p. 253.
26. *Id.*, p. 204.
27. *Id.*, p. 283.
28. *Id.*, p. 247.
29. *Id.*, p. 258.
30. *Id.*, p. 273.
31. *Id.*, p. 281.
32. *Id.*, p. 241.
33. *Id.*, p. 260.
34. *International Business Digest* (1981), Volume 2, p. 12.
35. See generally notes 11-15.
36. *Id.*
37. Knight, *supra*, n. 7, p. 206.
38. Shea and Swacker, *supra*, n. 15, p. 10.
39. Rogers, *Of Missionaries, Fanatics and Lawyers: Some Thoughts on Investment Disputes In The Americas*, *American Journal of International Law* (1978), Volume 72, pp. 1, 9.
40. Murphy, *supra*, n. 13, p. 304.
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42. 'Acuerdo de Cartagena', *International Legal Materials* (1968), Volume 8, p. 910.