TOWARDS A BENEFICIAL ROLE OF THIRD WORLD GOVERNMENTS IN INTERNATIONAL JOINT VENTURES

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ABSTRACT

At least up to early 1990s most third world countries governments had been intensively participating in economic activities of their respective states. In many instances this has been in collaboration with Transnational Corporations (TNCs). This article attempts to analyse the objectives that prompted the governments to enter into joint ventures with TNCs. It has been argued in the paper that such objectives were hardly achieved. The article ends up by proposing the new role of the governments in the current era of liberalization and globalisation.

Introduction

In the period since the Second World War the nature of international investments has changed drastically from portfolio investment in foreign public and private bodies, to private direct investments (PDIs). Before the 1960s, most of PDIs had been directed within the then industrially developed countries in the north rather than to emerging capital - scarce Third World group of nations (including Africa, Caribbean and the Pacific). However the striking exception was in investment involving extraction industries such as mining and forest products.[1]

The de-colonization campaigns in the 1940s, 50s, and early 60s that ended by colonial powers granting independence to their colonies opened markets and opportunities for investment in the territories that were up to then under the monopoly of former colonial masters, particularly the French and the British.

Naturally, the newly independent states needed foreign capital to advance their backward economies. Some of them enacted investment laws, *inter alia,* to guarantee certain protection to the would be investors.[2] The subsequent investment consisted of either wholly owned or joint ventures (JVs) enterprises. This essay attempts to analyze the efficacy of JVs between Transinational Corporation (TNCs) and the governments of less developed countries (hereinafter referred to as the governments).[3] In so doing the argument is that given the problems and failures which have been encountered in the governments - TNCs joint ventures and the changing nature of global economic system, the governments should desist from forming joint ventures with TNCs except in certain circumstances only. Governments should resort to their sovereign rights to regulate the business activities within the national territory, and encourage or assist local entrepreneurs through purposeful policy, to enter into joint ventures with TNCs. Therefore, in part one of this essay, the problem which is intended to be addressed to will be defined. Part two thereof will assess critically reasons that prompted the governments to opt at equity participation in joint ventures with TNCs. An outline of the alternative policy and legal framework in dealing with TNCs with special reference to joint venture investments in which TNCs will be given in part three. Finally, in part four as part of the conclusion some additional measures that should be taken to improve the regulation of TNCs which are the major participants in JVs is given.

The Problem

When most of LDCs assumed their statehood, they were confronted with multiple developmental problems which they had to tackle. The political independence euphoria having come to an end, there was the realization that political

independence was not an adequate solution to the problems in hand. It may be noted that in Africa for instance national economies were externally dominated by TNCs belonging to former colonial powers as the table bellow indicates.

Table 1: TNCs Operations in Former Colonies in Africa

Colonial Power	Former colony	% of foreign Investment
United Kingdom	Swaziland	96.6
	Malawi	92.7
	Botswana	88.0
	Rhodesia (Zimbabwe)	83.3
	Zambia	76.6
	Kenya	78.8
	Sudan	74.9
	Ghana	59.1
	Nigeria	53.8
Belgium	Zaire	87.8
	Rwanda	86.8
	Burundi	84.5
France	Niger	95.7
	Central African Republic	91.8
	Senegal	87.4
	Chad	80.4
	Mali	76.9
	Cameroon	75.1
	Gabon	73.4
	Algeria	71.7
	Dahomey	57.0

SOURCE: UN (Publication Sales No. E7311., A11, 11971)

The state of affairs indicated above, prompted we African states desire to exercise their sovereign rights to own the natural resources, by declaring that all the natural resources in their respective states were national property (Piccioto, 1993: 152).[4] Some countries went a step further. They either acquired some equity shares in TNCs businesses or nationalized them. With regard to acquisition a good example can be found in Zambia. The Zambian government acquired 51% of shares from Anglo-American Limited and Roam Selection Trust and formed a public enterprise which entered into joint venture arrangement with them (Asante, 1979: 352). To consolidate the situation, the Zambian Mines and Minerals Act[5] made domestic participation in mining enterprise mandatory (Ndulo: 1987:190). The Tanzanian government went beyond acquisition and nationalized almost every foreign business undertaking[6]. This was after the then ruling party, the Tanganyika African National Union declared its intention of building an egalitarian nation based on a brand of socialism known as Ujamaa[7]. Within a fortnight, to the

chagrin of investors, the government nationalized almost every business and promised to compensate the former owners (Peter (a), 1989, 14 - 20).

In some instances, because of lack of sufficient capital and local technical know how, governments in developing countries had no choice other than entering into joint ventures, or allowing TNCs to operate the wholly - owned PDI. (Lipton & Vasciannie, 1991; United Nation Center for Transitional Corporation; 1987). In choosing to enter into joint ventures, it seemed that governments were prompted by the fact that only control and ownership of 'commanding heights' of the national economy could enable them to fulfill the economic and social responsibilities confronting them (Picciotto, 1987; Asante, 1979; Beamish, 1988; and Lipston and Vasciannie, 1991)

Because there was apparent conflicting of interests due to divergent objectives between the joint ventures partners i.e. host governments and TNCs, it is highly debatable as to whether developing countries achieved their objectives in the light of sophisticated TNCs corporate strategies, which have their primary purpose of maximizing profit and minimizing costs. Further, it is debatable as to whether it is proper, in the current liberalization and globalization of the world economy in which TNCs are assuming the leading and dominant role; coupled with the denationalisation public sector through privatization (Picciotto, 1993: 155-7) that governments should participate in equity in international joint ventures instead of playing a regulatory role in a given legal and policy framework. This paper attempts to address these issues.

Government objectives versus TNCs Strategies

The objectives of Third World participation in joint ventures can be categorized broadly into primary and secondary objectives. The primary objective is to participate in ownership and therefore control of the concerned business. That having been achieved third world governments wanted to achieve the secondary objectives; namely; information and transfer of technology, political considerations, increasing government revenue, attracting foreign capital and investors and attaining future ownership of the joint ventures (Lipton and Vasciannie, 1988). In discussing the above objectives the most fundamental objectives of ownership and control is considered first.

Ownership and Control

Developing countries had a seemingly erroneous belief that through equity participation in joint venture arrangements, governments could exercise control over the activities of the concerned business, to the benefit of their respective countries through the boards of directors in which they are represented by governments appointees (Lipton and Vasciannie, 1988: 121). The ownership of the joint venture does not necessarily lead to the control of the undertaking (Beamish, 1988:12, Asante 1979:341). In the same vein, it is argued that governments participation in the joint venture has not led them to actual control of the said enterprises. This has been due to various reasons. First, most of the governments appointees in joint ventures boards of directors lacked corporate or managerial and operative expertise compared with their counterparts in the TNCs who could usually use their expertise to overshadow local directors. This fact has been aggravated by the fact that LDCs governments usually appointed retired or active politicians and senior civil servants who know nothing or very little about international business undertaking,[8] or are over burdened by other duties apart from the said directorships. They hardly find adequate time for rigorous supervision of the firm which is essential for effective control (Lipton and Vasciannie, 149:50; Asante: 149).[9]

Secondly, TNCs managers in joint ventures, used to offer high sitting and annual fees for directors in order to induce them into subservience so that they could not question various decisions taken by the management or resolutions which are requested by management to be passed (Asante, op cit., loc. cit.).

Thirdly, even where the joint venture was equally owned TNCs have used their expertise in corporate matters to ensure that they remain with an upper hand. For instance, shares held by a third world government may be categorized in such a way as to deny the government full benefit of equity holding. Asante (1979:347) has indicated that one of the methods used is to put in the Articles of Association of the joint venture a provision that they (shares of the governments) were non voting and dividend non participatory.

In certain situations, though the shares held by the partners in a joint venture may be in pari passu, the majority position of the government as a shareholder may be neutralized by the devices of the minority protection in the company business (Asante, op, cit., loc. cit.). On the other hand, TNCs have devised a way of effecting the inclusion of provisions in joint venture contract ensuring that they are given management prerogative in the joint equity entity to be formed (Lipton and Vasciannie 1991: 124) through which they assume day to day managerial functions of the joint venture.

Therefore, because of these reasons it has not been possible for the governments to assume control of the joint ventures despite their having ownership thereof through equity participation.

Obtaining Corporate Information

A necessity for obtaining information in the joint venture is based on a belief that information is essential for effective control of the joint venture. Lipton and Vaciannie (1987:129) have concluded in their research that the government officials representing the government in the board of directors of joint ventures are hardly given full information. They have asserted that it is even better to use government powers to ensure that there is smooth flow of information.

Transfer of Technology and managerial skills

By participating in managerial and technical aspects of the joint venture, developing countries thought that local people could learn some managerial skills to be used after the departure of foreign experts either because of the nature of service contractual terms, or because of the process of "fading out" (Lipton and Vasciannie, 124, 131) With regard to technology transfer, governments nursed a belief (in narrow perspective) that their nationals would learn technical skills through participation in joint venture technical aspects. On other hand, in broader perspectives developing countries, lacking capital and relevant technology as they are, sought an alternative view of their participation in joint venture whereby TNCs could come with necessary technology to be used in the particular enterprise. This has been more relevant in those enterprises which are concerned with exploitation of natural resources such as minerals.[10] In this respect, the Government of Ghana entered in a joint venture with Lonrho Ltd of London for the purpose of exploiting gold in the Ashanti Goldfields. Likewise, the government of Zambia entered into a joint venture with the Anglo-American Ltd and the Roam Selection Trust Ltd, in respect of mineral exploitation of the Zambian Copper Belt. This was simply because though mineral resources were within the respective countries, they (the LDCs) did not posses respective technical capability for their effective exploitation.

We have two things to note in this respect. First, technical or managerial skills are usually acquired by people. That being the case, it is hard to perceive as to whether other alternatives to the acquisition of managerial and technical skills such as direct investment, management, service or turnkey contracts could not play more or equal role in intuiting managerial and technical skills to the nationals, compared with joint ventures.

Secondly, TNCs have hardly any positive motives to bring up to date technology to the Third World. Once they get an opportunity,

they will usually bring obsolete and outdated technology which is useless, and therefore non competitive in their home markets. They may contribute such technology in a form of equipment (machinery) or plant as a their part of equity participation in the joint venture (Lipton & Vasciannie: 143).

Political consideration

When discussing about the reasons behind third world countries participation in joint venture Asante (1979) has noted that there are three stages which those countries underwent before reaching that conclusion. He has argued that, exercising their rights to self determination they struggled for political independence which brought to an end foreign political domination. With realization that mere political independence did not mean control of natural resources and other commanding heights of the national economy, they enacted legislation or issued policy statements (Nyerere, 1968:231,251) to assert their sovereign right to own and control natural resources. This ended in actual realization of the policies through nationalization (Picciotto, 1991) and acquisition of majority equity holding (Asante: 1979) which resulted into the formation of joint ventures.

The aim behind these moves has been to assume, as indicated above, control of commanding height of the national economic resources which, with respect to joint ventures, took the form of equity participation in joint venture. Unfortunately such measures though politically significant[11] have not succeeded in achieving the envisaged control.

Increasing government revenue

Sometimes Third World countries have entered into joint ventures in order to increase government revenue through the distribution of dividends. In some instances where governments have opted for the equity participation in the joint ventures, it has been instead of the taxes which the government would otherwise be collecting. Compared to the revenue which the governments could be getting through taxes, this source have been quite risky and insecure. Governments were risking to lose the revenue if the dividends were not declared or if the counterpart TNC was not managing the enterprise efficiently. For instance the government of the Solomon Island entered into a fisheries joint venture with a Japanese Transitional Corporation. For fifteen years of the joint venture it obtained no dividend from the activities of the joint ventures.[12]

Attracting Foreign Investment

Very often that not LDCs governments had chosen to participate in a joint venture as a sign of good will toward foreign investment, in the wake of the then nationalization movement. Connected with this has been the issue of tax holidays as incentive to investors in a joint venture. Also the governments could be asked to guarantee the loans which are provided to the joint ventures. It is argued that these incentives hardly attract foreign investments. This is so because if the resources available could enable TNCs to profitably operate they could always establish a wholly owned enterprise regardless of whether there are incentives or not.

Assuming future ownership of the joint venture

In certain instances the third World governments entered into the joint ventures for the purpose of acquiring the ownership of the ventures established either, by providing 'fade out' provisions in the joint venture agreements whereby government could automatically acquire certain amount of shares or whereby the TNCs could be required under the agreement to sell certain shares to the government after some time.

Alternatively, governments, because of unpredictability of shares price, sought to put provisions in the agreements which could enable them to re-re-negotiate the joint venture agreement on an ad hoc basis.

Governments thought to use that approach in order to avoid damages which could be caused by outright nationalization of the joint venture, that is, posing a given national as hostile to foreign investment, (Picciotto, 1991).[13]

Having identified those objectives the crucial issues here remain that of determining the extent to which governments are to remain responsible in business interaction with the joint ventures, and what nature of policy and legal framework should guide governments in the changing global economic order.

Toward beneficial role of the government in the international joint ventures

New policy framework

In Part one we have shown that the governments approach toward PDIs, in which preference was given to joint ventures was a result of existing economic, social and political needs in less developed countries. Although it is not the scope of this paper to give judgment as to whether governments have achieved their desired objectives, its opinion is that in the wake of the current move to privatize and liberalize the global economy (including international investment) (Picciotto: 1991) and the other pressing roles facing the LDCs governments [14] (Lipton and Vascinnie 1987), and the fact that the desired objective can always be achieved without participation of the government in business arrangements with the joint partners, governments in LDCs should not participate extensively in business ventures with TNCs.

Governments should instead exercise sound regulatory function to ensure that foreign investment whether wholly owned or in form of the joint ventures (with private local entrepreneurs), is well monitored to ensure that they are socially responsible and responsive to the local needs. In order to be beneficial, such regulatory function, must be based on sound policy framework. Depending on the needs of each country, the following guiding policy principles could be desirable.

In order to avoid total foreign domination of the national economy; at least where natural resources are concerned, no foreign investor should be allowed to establish an investment without entering into the joint venture with local counterparts. In connection with this where local entrepreneurs lack necessary capital, LDCs governments should assist them by taking affirmative action to promote them entering in such joint venture by, for example, providing necessary capital backup.

Contrary to the practice of some governments granting tax holidays and exemptions as incentive to investors (Peter (1990),[15] 1990: 24-6, Mbao,[16] 1986:200-1 and Ngwasira,[17] 1989:195), it is my opinion that such incentives are unwarranted for, and are detrimental to the national income of host countries. They are nothing more than subsidies to foreign investors. Governments should know that their primary duty is to collect taxes from investors, and only initial capital investment should be liable for tax exemption. In other instances normal tax laws should apply.

In order to enhance local skilled manpower development, the excuse of foreign investors to employ foreigners in their investments should be limited to managerial and high technical level where local skilled manpower cannot be found. It should be made part of investors guarantee that they will employ local people in their enterprises. To ensure this LDCs should enact purposeful immigration laws which will limit the issuance of work permits to the situation where it is absolutely necessary.[18]

To ensure that LDCs are not treated as dumping place for obsolete technology, plant and machinery, LDCs should make sure that the imported technology is well scrutinized before being patented, and all agreements related to technology transfer[19] are duly registered[20] after thoroughly scrutiny.

The LDCs government should adopt purposeful policies whereby TNCs whether investing wholly or through joint ventures are only given priority where the intended enterprise, to greater percentage will utilize raw materials which are available locally.

As nationalization are no longer an agenda in world economics, LDCs government should not bother to lay out strategies for

acquisition through fade out agreements or nationalization. Neither should they bother to score political achievement through entering into dubious agreements with TNCs.[21]

The above policy principles will be implemented only if the existing regulatory framework (if any) will be effectively administered by the government agencies. The following section discusses briefly the role of regulatory framework in the context of the policy issues.

Conclusion: Toward effective regulatory framework

Hitherto, LDCs governments, particular in Africa have concentrated in enacting legislation providing for establishment, incentives dispute settlement and other general matter related to foreign investment. (C.F. Peter), 1990, Mbao, 1986 and Ngwasira, 1991). Investment laws have not provided for regulation of the activities of the TNCs which are the major targets of those laws. This has been mainly because TNCs particularly where they are in joint venture are subject to other existing laws of the land.[22]

However it is the view of this paper that in the light of sophistication involved in the business activities involving TNCs, it is advisable for LDCs , to create specialized agencies to regulate the activities of TNCs particularly on the issues highlighted above. It is also advisable that special legislation should be created to regulate business in which TNCs are involved.

If LDCs governments succeed in regulating the activities of TNCs for the benefit of their respective countries, that will be more beneficial role, than direct equity participation in joint ventures with them.

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NOTES

1 See Joint Ventures and their relation to Aid Programmes; New Zealand Institute of Economic research, Wellington, 1978.

2 See For instance **Tanganyika Investment Protection Act** of 1963 and **Cameroonian Investment Code** of 1960. They have been discussed by CM Peter (a) and Ngwasiri C.N.

3 This paper will deal specifically with less developed countries in Africa with random examples from other less developed countries.

4 This was in line with the United Nations General Assembly (UNGA) Resolution No 1803 of 1962 on Permanent Sovereignty Over Natural Resources of Sovereign States.

5 Act No. 32 of 1968 (Zambia).

6

7 It has been sometimes translated as Familihood. For the blueprint of the said egalitarian policy see Nyerere (1968:231) and Yeager (1982:59)

8 Interestingly, in Tanzania for instance after a lot of damages had been done, the government enacted the law which stipulated that for a person to be appointed to directorship in the public enterprise or a joint venture which the government is a partner, he must have some knowledge and experience in the business being undertaken by the venture.

9 A striking analogy can be found in Shivji (1976:89). In this research, he discovered that nine top civil servants in Tanzania shared 115 post of directorships of public enterprises in Tanzania! Although these data are outdated somehow, they reflect the reality.

10 No I supra pg. 11

11 When Tanzania nationalised or acquired the majority shares of privately owned enterprises many people demonstrated to support the move because 'it brought to an end the exploitation of man to man and ushered in the era of economic equality' (Nyerere 1968), This was an important political score

12 This explanation is based on Lipston and Vasciannie (pg. 127)

13 According to **Piccioto** countries like Tanzania, Burma and Albania were deemed to be hostile to foreign investors because of outright natinalisation they did. Tanzania for instance in order to clean its emerge

enacted National Investment Promotion and Protection Act (1990) 'which goes further than necessary to attract foreign investors.

[14] E.g. enhancing social services, infrastructures and maintaining law and order.

[15] For Tanzania

[16] For Zambia

[17] For Cameroon.

[18] This has been also suggested by Lipton and Vasciannie (pg. 125)

[19] E.g Turnkeys, servicing agreements and patents/trademark licensing agreements.

[20] In Nigeria for instance, under a National Office of Industrial Property Act, such agreement should be registered, failure of it they will be unenforceable before the court of law

[21] Lipton and Vasciannie (Pg. 120) have given an example of West African States which announced that it had entered into 50-50 joint venture with TNCs thus ushering in the new era of State - TNC cooperation, without disclosing that shares allocated to the State did not carry voting rights nor right to a portion of dividend.

[22] A good example can be found in Tanzania where there are laws such as Income Tax Act of 1973, Companies Ordinance (Cap 212), Fair Trade Practice Act of 1994, among others.