

International Investment Contracts and the Debt Crisis[†]

I. Introduction

The Code of Conduct on Transnational Corporations,¹ which has been negotiated in UN bodies for the past ten years, has been the subject of much commentary.² While not yet a binding structure of international law,

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1. The latest draft is dated June 2, 1983. See U.N. ESCOR Doc. E/C.10/1983/S/5.

2. See generally *LEGAL PROBLEMS OF CODES OF CONDUCT* (N. Horn ed. 1980); Hailbronner, *Voelkerrechtliche und Staatsrechtliche Veberlegungen zu Verhaltenskodizes fuer Transnationale Unternehmen*, in *FESTSCHRIFT FUER HANS-JUERGEN SCHLOCHAUER ZUM 75. GEBURTSTAG* 329 (1981); Schaffner, *Die Internationalen Gesellschaften: Von den Polemischen Kampagnen zum Internationalen Verhaltenskodex*, in *UNTERNEHMER—TRAEGER DER ZUKUNFT* 175 (W. Wittmann ed. 1981); Boeckstiegel & Catranis, *Verhaltenskodex der Vereinten Nationen fuer Multinationale Unternehmen: Illusion oder Absehbare Realitaet?*, 1980 *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 1823; Fatouros, *Le Projet de Code International de Conduite sur les Entreprises Transnationales: Essai Préliminaire d'Évaluation*, 107 *J. DR. INT'L* 5 (1980); Fikentscher, *United Nations Codes of Conduct: New Paths in International Law*, 30 *AM. J. COMP. L.* 577 (1982); Garelli, *Perspectives et Structures d'un Code de Conduite des Nations Unies sur les Sociétés Transnationales*, 3 *REVUE ÉCONOMIQUE ET SOCIALE* 145 (1977); Gross, *Codes of Conduct for Multinational Enterprises*, 16 *J. WORLD TR. L.* 414 (1982); Kukat, *Verhaltenskodizex fuer Multinationale Unternehmen*, 1979 *RECHT DER INTERNATIONALEN WIRTSCHAFT* [RIW] 293; Sanders, *Implementing International Codes of Conduct for Multinational Enterprises*, 30 *AM. J. COMP. L.* 241 (1982); Sanders, *The Implementation of International Codes of Conduct for Multinational Enterprises*.

the Code of Conduct nevertheless has had an important impact on the development of crossborder direct investments because negotiating parties are finding it increasingly difficult to accept either the law of the investor or the law of the host country. The Peoples' Republic of China is a good example of the development of the foreign investment regulations because only recently, due to the opening up of Chinese foreign policy, has the PRC begun to develop a legal framework for cooperation with foreign firms. The Code of Conduct can in that respect be a framework for the negotiation of an international investment contract, since it allows the negotiating parties to find an internationally acceptable frame for the drafting of that contract. The impact of the Code of Conduct cannot be evaluated without a review of the historical development of foreign direct investment in less developed countries since 1945.

II. Foreign Direct Investment in Less Developed Countries (LDCs) Since 1945

As a result of the decolonization process, foreign direct investment predominated in the less developed countries during the first twenty-five years after the end of the Second World War. Exceptions like Tanzania, where the former colonial monopoly of the Lonrho Group was transformed into the "para-statal" National Development Corporation due to the Arusha Declaration of President Nyerere of 1967,³ showed no encouraging results in the long run.

The misuse of power and the interference of some transnational corporations with the national economic policy of less developed countries, such as in Chile,⁴ led to the development of a Code of Conduct within the United Nations family. It derived from discussion within the OECD concerning the potential for powerful transnational corporations to evade national regulations. The United Nations Declarations in 1974 on the

prises, 28 NETHERLANDS INT'L L.R. 318 (1981); Schetting, *UNO-Verhaltenskodex fuer Transnationale Unternehmen*, 1983 RIW 287; Steeg, *Internationale Verhaltensregeln fuer Internationale Investitionen und Multinationale Unternehmen*, 1985 ZEITSCHRIFT FUER UNTERNEHMENS UND GESELLSCHAFTSRECHT [ZGR] 1; Studier, *Verhaltenskodizes fuer Multinationale Konzerne und die Interessen Position der Entwicklungslaender*, 1978 VERFASSUNG UND RECHT IN UEBERSEE 411; Wellens, *Transnational Corporations: UN Involvement Towards a Code of Conduct*, 21 GER. Y.B. INT'L L. 442 (1978); Comment, *The United Nations Code of Conduct for Transnational Corporations*, 18 HARV. INT'L L.J. 273 (1977).

3. J. NYERERE, UHURU NA UJAMAA—FREEDOM AND SOCIALISM—SELECTIONS FROM WRITINGS AND SPEECHES 1965-1967 (1968).

4. Behrens, *Rechtsfragen im Chilenischen Kupferstreit*, 37 RABELS ZEITSCHRIFT FUER AUSLAENDISCHES UND INTERNATIONALES PRIVATRECHT [RABELSZ] 394 (1973); Seidl-Hohenveldern, *Die Verstaatlichung von Kupferbergbaubetrieben in Chile*, 1974 RIW 421; Wehser, *Voelkerrechtswidrige Verstaatlichung der Kupferminen in Chile*, 1974 JURISTENZEITUNG [JZ] 117.

Establishment of a New International Economic Order⁵ and the Charter of Economic Rights and Duties of States⁶ were the basis for the United Nations Draft Code of Conduct on Transnational Corporations.

Parallel to this development ran expanding capital transfer to developing countries, caused by the first oil price explosion in 1973 and the recycling of petrodollars through private banks. The excess liquidity, lent by the OPEC states on a short-term basis, was transferred to the less developed countries on a roll-over basis of from three to six months and a linkage to LIBOR⁷ plus a spread for the risk of the credit facility. The excessive liquidity in petrodollars was a supply that found relatively small demand and resulted in relatively low interest rates until 1978. The devaluation of the U.S. dollar during the Carter administration and the tight-fisted policy of the U.S. Federal Reserve Board to control inflation induced the increase of the U.S. dollar and interest rates. The policy impact of the 1970s against foreign direct investment in developing countries and the low interest rates led to excessive borrowing by developing countries and the substitution of internal investment streams by external transfers of resources via the market (imports of goods, services, and technology).

The increase of the interest rates at the end of the 1970s and the subsequent rise of the U.S. dollar have seriously exacerbated the balance of payment problems in the developing countries. Decreasing terms of trade due to diminished income from the export of raw materials caused the de facto default of many developing countries. Mexico was the first large debtor country to apply for the support of the International Monetary Fund to adjust her economic policy in 1982. Today the International Monetary Fund is negotiating the external debt problem with more than sixty-two countries after having alleviated the situation in Argentina and Brazil. Mexico is at the brink a second time because falling oil prices and a natural catastrophe—a serious earthquake—have seriously stressed the Mexican economy.

The previous policy of the International Monetary Fund of restructuring and financing, i.e., reduction of imports and increasing exports, can only be successful if the additional fresh money to finance the necessary structural adaptation can be channeled into the growth areas of the national economy. Despite this fact, the credits of private banks in industrialized countries can no longer be considerably enhanced due to the severe risk of transferring hard currency. The same is true for public development aid. A developing country may also come close to its limits in attempting to achieve import substitution. The country faces the danger that it may cut

5. Dated May 1, 1974, *reprinted in* 13 I.L.M. 715 (1974).

6. Dated Dec. 12, 1974, *reprinted in* 14 I.L.M. 251 (1975).

7 London Interbank Offered Rate.

the supply lines for necessary technological goods that are the prerequisite for further development. An export orientation is therefore the only suitable remedy for less developed countries to service their foreign debt.

In this situation foreign direct investment has regained importance. The LDCs have already begun to reconsider their previous negative attitude toward foreign risk capital.⁸ They have recognized that foreign direct investment is an appropriate way to overcome the debt crisis. Compared to commercial credits, foreign direct investment has the advantage that no interest must be paid and that profit must only be transferred when it has actually been gained and not been reinvested. Moreover, foreign direct investment creates new jobs, increases the transfer of technology and provides, therefore, professional education and the development of the work force.⁹ It has spillover and growth effects for the whole economy. Consequently, the plan of the U.S. Secretary of Treasury, James Baker, presented at the annual meeting of the International Monetary Fund in Seoul in October 1985, envisions an increase in the stream of foreign direct investment to the developing countries parallel to the external transfer of resources via fresh money.¹⁰ The present strategy of adaptation will be enriched by growth-oriented elements.¹¹ The latest financial package for Mexico is a first test for this new strategy.¹²

III. Prerequisites for Foreign Direct Investment in LDCs

A. THE PROCESS OF INTERNATIONALIZATION

The world economy today is concentrated in three major regions: the United States of America, Japan, and Western Europe. Together with the

8. Braun, *Veraenderte Einstellung der Entwicklungslaender zu Auslandsinvestitionen?*, in ZIELSETZUNG PARTNERSCHAFT, DIE WELTWIRTSCHAFTLICHE BEDEUTUNG VON AUSLANDSINVESTITIONEN UND TECHNOLOGIETRANSFER 289 (Draeger Stiftung ed. 1985) [hereinafter ZIELSETZUNG PARTNERSCHAFT]; Kuhn, *Neubesinnung der Entwicklungslaender gegenueber Auslandsinvestitionen*, in ZIELSETZUNG PARTNERSCHAFT, *supra*, at 229.

9. Steeg, *Internationale Verhaltensregeln fuer Internationale Investitionen und Multinationale Unternehmen*, 1985 ZGR 1.

10. INTERNATIONAL MONETARY FUND, *WORLD ECONOMIC OUTLOOK* 101 (Apr. 1986); Duwendag, "Baker-Plan": *Absicherung gegen Kapitalflucht?*, 2 ZEITSCHRIFT FUEER DAS GESAMTE KREDITWESEN 10 (1986); Herlt, *Der Baker-Plan zur Loesung der Internationalen Schuldenkrise*, 1986 EUROPAARCHIV 161; *Gemischte Reaktionen auf Bakers Vorschlaege*, Neue Zuercher Zeitung [NZZ] No. 235, Oct. 10, 1985, at 17; *Wachstumsorientierte Schuldeninitiative Bakers*, NZZ No. 234, Oct. 9, 1985, at 17.

11. C. EBENROTH, *CODE OF CONDUCT—ANSAETZE ZUR VERTRAGLICHEN GESTALTUNG INTERNATIONALER INVESTITIONEN* ¶¶ 108-121 (1987); INTERNATIONAL MONETARY FUND, *WORLD ECONOMIC OUTLOOK* 101 (Apr. 1986).

12. C. EBENROTH, *supra* note 11, ¶¶ 117-121; *Zwiespaeltige Rezepte fuer Mexiko's Schuldentrauma*, NZZ No. 176, Aug. 2-3, 1986, at 13; *Weltbank-Kredite an Mexiko mit Vorbehalten*, NZZ No. 175, July 31, 1986, at 13; *Mexiko signiert "Letter of Intent" an den IMF*, NZZ No. 168, July 23, 1986, at 13.

so-called "Newly Industrialized Countries" (NICs) in the Third World, the present status of the world economy can therefore be characterized as a polycentric order.¹³ In the competition between these regions only those enterprises can survive that are able to strengthen their technological and managerial capacities.¹⁴ Shorter product life cycles and fierce competition in research and development between all nations are prerequisites to larger market potentials. The increasing importance of capital-intensive technologies and the high speed of technological evolution cause high expenditures for the enterprises involved and compel the management to optimize the use of their entrepreneurial capacities.¹⁵ As a consequence only a contemporaneous worldwide market penetration is able to secure the required cost efficiencies. Otherwise the high start-up and operating costs for the modernization and the restructuring of factories, for research and development centers, and for the marketing force would not be sustainable. National markets are in many cases too small for the amortization of the costs of investment in rapidly changing technologies.¹⁶

B. THE ENTREPRENEURIAL STRATEGY

Each entrepreneurial strategy provides at first the development and the use of exclusive capacities and the strengthening of this competitive advantage over other competitors. These advantages may exist in technology, in organizational and managerial know-how, in innovative capacities, or in product differentiation.¹⁷ They may also be a consequence of the fact that affiliates of transnational corporations can use worldwide resources and the experience of the enterprise as a whole. In a second step a decision has to be made whether these core skills should be internalized by way of direct investment or externalized by way of cooperation with other independent enterprises.

The traditional forms of crossborder resource transfer are trade and foreign direct investment. The market economic approach to alleviate the present problems in the world economy involves expanded use of various forms of international transactions, which enable to a large extent a global cooperation, a new sharing of investment risks, control, responsibility,

13. Boerner, *Wie kann die schweizerische Wirtschaft im weltweiten Konkurrenzkampf bestehen?*, NZZ No. 176, Aug. 2-3, 1986, at 30; K. OHMAE, *MACHT DER TRIADE, DIE NEUE FORM WELTWEITEN WETTBEWERBS* 5 (1985).

14. Boerner, *supra* note 13, at 30.

15. K. OHMAE, *supra* note 13, at 13, 14, 19, 20; Seelig, *Begrüßungsansprache*, in *KAPITALINVESTITIONEN IM AUSLAND—CHANCEN UND RISIKEN* 31 (J. Esser & K. Meessen eds. 1984).

16. C. EBENROTH, *supra* note 11, ¶ 2.

17. Dunning, *Explaining Changing Patterns of International Production: In Defense of the Eclectic Theory*, 41 *OXFORD BUL. ECON. & STAT.* 269-74 (1979).

and profits as well as a combination of the transfer of capital, technology, and goods. Such forms of international investment include, for example, licensing contracts, subcontracting, consulting contracts, cooperation contracts, and joint ventures. Also important is innovative export financing such as barter trade, compensation contracts, contract packages, turnkey, and repurchase contracts. These broadened forms of internationalization are appropriate to reduce the transaction costs of the cross-border resource transfer. Growing forms of protectionism support internal transfers inside a transnational corporation network instead of external resource transfers between unrelated parties.¹⁸

The question of whether internalization or externalization is more suitable for the enterprise concerned can only be answered with respect to the relevant local market. Determining this factor is the third step in the entrepreneurial strategy. The enterprise intends to find the best possible combination between its own entrepreneurial advantages and the local-specific advantages of the host country.¹⁹ In this respect the size of the relevant market, the competition, and the degree of regulation are of specific importance.²⁰

C. THE HOST COUNTRY STRATEGY

From the viewpoint of the host country the choice between external transfers of resources (between two unrelated parties) and internal ones (inside transnational corporations) depends on its own entrepreneurial capacity to use the resources. External transfers between unrelated parties are only favorable if the recipient in the host country is in a position to use the transferred object in an optimal way. If the transfer is financed through the international money markets, the products should be internationally competitive to earn hard currency.²¹ Most of the developing countries need, therefore, a marketing and distribution network in the global market to achieve their plans of gaining financing facilities to repay their debts.

Many developing countries have protected their domestic industry by high tariffs against foreign competitors. This artificial situation did not

18. See the "Industrial Economics Approach" in Coase, *The Nature of the Firm*, 1937 *ECONOMICA* 386.

19. Dunning, *Trade, Location of Economic Activity and the MNE: A Search for an Eclectic Approach*, in *THE INTERNATIONAL ALLOCATION OF ECONOMIC ACTIVITY, PROCEEDINGS OF A NOBEL SYMPOSIUM HELD AT STOCKHOLM 395-99* (Ohlin, Hesselborn & Wijkman eds. 1977).

20. Boerner, *supra* note 13, at 30.

21. J. KARL, *WIRTSCHAFTLICHE BESTIMMUNGSGRUENDE UND RECHTLICHE GESTALTUNGSMOEGLICHKEITEN FUER DEN EXTERNEN ODER INTERNEN RESSOURCENTRANSFER AUS DER SICHT DES EMPFAENGERLANDES* 17-32 (1986).

force the entrepreneurs to adapt their industry to world market competition standards.²² Today the LDCs are mainly successful in industrial sectors with a low technological profile, for example the leather, shoe, steel, textile, machinery, and electric industries.²³ In addition, capital-intensive technologies, in which the production technique is mainly standardized and does not sustain considerable electronic developments, are sectors where these countries have advantages.²⁴ By contrast, in the high technology industries only foreign direct investment can lead to a successful position in the world market, because it is based on specific know-how in research and development as well as on important financial and managerial capacities.²⁵ Moreover, the investor bears the risk to amortize his investment.

While considering the export chances of LDCs one must not forget the existence today in the industrialized countries of strong neo-protectionist forces. Technological progress leads to a painful process of economic structure adaptation. The high rate of unemployment and the social unrest bring entrepreneurs and trade unions together in support of the implementation of import quotas and other protectionist remedies to salvage the domestic industry.²⁶

Many countries in times of a constantly growing economic adjustment process prefer to implement neo-protectionist measures, unwilling to accept that they cannot thereby protect these failing industries against international competition. They support ideas of free world trade and globalization only if their benefits can be shown for their own industry. Politicians tend to look only to the next election and sometimes cannot stand firm against requests from trade unions and entrepreneurs for protectionism. For example, the European Community regulates and subsidizes the production and the marketing of agricultural products, subsidizes the price of export goods, and impedes imports. The same is true for the coal, steel, and textile markets.²⁷

Such a policy cannot be successful in the long run. The promotion of exports and the securing of foreign markets can only be achieved if the recipient country has enough foreign exchange to finance its imports. The recipient country must therefore be in a position to sell its products in foreign markets.²⁸ In this respect the world economy needs not a one-

22. *Id.* at 23.

23. See C. POLLACK & J. RIEDEL, *INDUSTRIEKOOPERATION MIT SCHWELLENLAENDERN* 105 (1984).

24. See UN-CENTRE ON TRANSNATIONAL CORPORATIONS, *TRANSNATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 7, 33, 133, 157, 179 (3d ed. 1983).

25. J. KARL, *supra* note 21, at 32-41.

26. C. EBENROTH, *supra* note 11, ¶ 2.

27. *Id.* ¶¶ 7-13.

28. *Id.* ¶ 14; Boerner, *supra* note 13, at 30.

way national economic policy that encourages exports and impedes imports. What we need is reciprocity for free world trade.

IV. The Impact of the Draft Code of Conduct on Transnational Corporations for Foreign Direct Investment in LDCs

A. THE COMPETITION BETWEEN LDCs TO ATTRACT FOREIGN DIRECT INVESTMENT

A highly competitive market exists today for foreign direct investment. In this market natural, economic, technological, political, and legal factors of investment conditions can be distinguished, although it is not possible to draw a clear line between these items. These investment conditions together form the specific host country environment for a potential investor.²⁹ Foreign direct investment will only take place if the host country strategy and the entrepreneurial intentions are acting in unison. The investor will use the package of production factors only if it fits best with his own entrepreneurial strategy compared with the investment conditions of other competing host countries.³⁰ Except for legal factors, a host country cannot change its investment environment in a short period of time. The legal structure is, therefore, a key element to attract or to hinder foreign direct investment. It enables the host country to compensate and to balance possible disadvantages of its natural, technological, political, or economic investment conditions. The more unattractive its factor market for foreign direct investment may be, the more it is obliged to impose legal investment incentives to attract foreign investors.³¹

B. THE IMPORTANCE OF THE DRAFT CODE OF CONDUCT FOR THE FORMATION OF THE LEGAL INVESTMENT CONDITIONS

1. *The Investment Contract as a Legal Framework for Investment*

The main instrument for the regulation of foreign direct investment in LDCs is increasingly the investment contract between the host country and the foreign investor.³² In this contract the investor and the host country can optimize the specific aims of the investment. In that respect they can minimize the investment risks and focus the contract on the economic

29. J. KARL, *supra* note 21, at 12-16.

30. See *supra* notes 17-20 and accompanying text.

31. C. EBENROTH, *supra* note 11, ¶ 58.

32. *Id.* ¶¶ 74-79; P. FISCHER, *DIE INTERNATIONALE KONZESSION* 300 (1974); Waelde, *Transnationale Investitionsverträge*, 42 *RABELSZ* 28 (1978).

development goals of the host country. The investment contract therefore provides for the harmonization of the host country strategy with entrepreneurial intentions. The traditional hierarchical model of investment regulation is subsidized by a market-economy-oriented process of establishing a consensual determination of the specific investment conditions.³³ The principal aim of the investor is to gain appropriate profits and to minimize his risks. The intention of the host countries is to make the investment useful for the development of the domestic national economy.³⁴

One of the greatest problems in negotiating the terms and conditions of the investment contract is to find common legal values acceptable to both the host country and the investor. Most of the LDC legal systems are not well adapted to international transactions. They were developed for national transactions and the various conflict of laws rules and systems do not facilitate the negotiation process for the final drafting of an investment contract. In international negotiations the choice of law is a sensitive factor because one contracting party has to leave its own well-known legal system. Other problems hamper the conclusion of an investment contract, such as the lack of relevant statutes, the lack of information concerning existing legal norms, and the difficulty of making the existing investment contract effective against a parent company abroad.³⁵

2. *The Function of the Draft Code of Conduct*

a. Overview

An important attempt to overcome these difficulties is the United Nations Draft Code of Conduct on Transnational Corporations.³⁶ Other relevant codes in this respect are the Tripartite Declaration of Multinational Enterprises and Social Policy by the International Labor Organization,³⁷ the UNCTAD "Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices,"³⁸ two special codes of lesser importance concerning breast-milk substitutes³⁹ and the utilization of pes-

33. See M. SCHANZE, *INVESTITIONSVERTRÄGE IM INTERNATIONALEN WIRTSCHAFTSRECHT* 34 (1986).

34. C. EBENROTH, *supra* note 11, ¶ 30; M. SCHANZE, *supra* note 33, at 43; Meessen, *Auf dem Wege zu einer neuen Weltwirtschaftsordnung? Versuch einer Standortbestimmung anhand des Entwurfes eines Verhaltenskodex fuer Transnationale Unternehmen*, in ZIELSETZUNG PARTNERSCHAFT, *supra* note 8, at 323-31.

35. C. EBENROTH, *supra* note 11, ¶ 989.

36. The latest draft is dated June 2, 1985. See U.N. ESCOR Doc. E/C.10/1983/S/5.

37. Dated November 16, 1977, *reprinted in* 17 I.L.M. 442 (1978).

38. Dated April 22, 1980, *reprinted in* 19 I.L.M. 813 (1980).

39. Dated May 21, 1983, *reprinted in* 20 I.L.M. 1004 (1982).

ticides,⁴⁰ and—last but not least—the UNCTAD Draft Code on the Transfer of Technology.⁴¹

These codes establish multilaterally approved investment standards on the international level. They can therefore play an important role as a “GATT for international investments.” This is particularly true of the Draft Code of Conduct on Transnational Corporations. This code corresponds already in its structure to an investment contract in that it distinguishes in its two major parts between the duties of the investor and those of the host country.⁴² It deals with almost all relevant investment topics: general and political questions; ownership and control; balance of payments and financing; transfer pricing; taxation; competition and restrictive business practices; transfer of technology; consumer protection; environmental protection; disclosure of information; nationalization and compensation; and jurisdiction. Its intent is to create a fair balance between the at least partially different interests of the investor and the host country. In the fields of labor law, transfer of technology, environmental protection, consumer protection, and antitrust law it is complemented by the above mentioned special codes and drafts.

b. The Draft Code and the Formation of Investment Contracts

The Draft Code of Conduct builds a framework for the negotiations between a foreign investor and the host country. It is designed to prevent the unilateral favoring of one party due to the differences between the legal systems of industrialized and developing countries. The Draft Code contains in this respect guiding principles for the interpretation of international investment contracts. Moreover the Code creates an internationally accepted system for the consensual determination of the investment conditions.⁴³

The guiding principles of the Draft Code show a different degree of concretization and differentiation in their single components. According to how intensively the particular topic is treated, the Code can either offer a concrete model for the contractual fixing of the investment conditions or present only the contractual scope for the final agreement. The Draft Code of Conduct is in this respect a basis for the negotiation of investment contracts under internationally accepted values.⁴⁴ These prin-

40. Dated Nov. 26, 1985. See FAO-Doc. C 85/25-Rev. 1.

41. The latest draft is dated June 5, 1985. See U.N.-Doc. TD/CODE TOT/47 dated June 20, 1985.

42. C. EBENROTH, *supra* note 11, ¶ 328.

43. *Id.* ¶ 80.

44. *Id.* ¶¶ 81, 82.

ciples are the starting-point for further specifications of the investment conditions. Moreover they address themselves to the transnational corporation as a whole and preclude the danger resulting from the fact that the national legal order can only be made effective within a developing country's own territory.⁴⁵

c. The Influence of the Draft Code of Conduct in
Alleviating the Debt Crisis

The UN Draft Code of Conduct also has influence on the macroeconomic level. In facilitating foreign direct investment its intent is to improve the investment climate in LDCs and to strengthen free world trade. In this respect it plays an important role for the necessary increase of foreign direct investment in debtor countries envisaged by the Baker Plan.⁴⁶ This is true even if a final agreement on all provisions of the Code cannot be achieved.

V. Summary

After a phase of repression in the 1970s foreign direct investment is regaining importance for the developing countries. The LDCs have recognized that risk capital can help them to overcome their serious financial problems and to reduce the technological disparity with the industrialized countries. Today developing countries are competing for foreign direct investment. In this competition those host countries will have the best chances whose local investment conditions fit best with the entrepreneurial strategy. The investment conditions of the host country can be separated into natural, technological, economic, political, and legal elements. Of special importance are the legal investment conditions because they alone can be created and modified within a short period of time. These conditions must fulfill the difficult task of harmonizing the investor's interest in minimizing investment risks and achieving appropriate profits with the host countries' aim to make the investment as useful as possible for the domestic economy. The UN Draft Code of Conduct is by its structure and its content able to support this process and can therefore serve as a guide for the creation and interpretation of an investment contract between a host country and an investor.

45. See H. GATTIKER, BEHANDLUNG UND ROLLE VON AUSLANDSINVESTITIONEN IM MODERNEN VOELKERRECHT: EINE STANDORTBESTIMMUNG, SCHWEIZERISCHES JAHRBUCH FÜR INTERNATIONALES RECHT 58 (1981).

46. C. EBENROTH, *supra* note 11, ¶¶ 108-121.

