Third World Legal Studies

Volume 15 *Postcolonialism, Globalization, and Law* Article 6

1-6-2000

Peru and the Myth of Independent Statehood

Suzanne Wilhelm
Eastern New Mexico University

PERU AND THE MYTH OF INDEPENDENT STATEHOOD

Suzanne Wilhelm*

I. INTRODUCTION

The New World order, marked by increasing global interdependence and free market economies, is a 'catch-22' for postcolonial Third World[1] countries engaged in the continual struggle for development. Freed from the shackles of direct foreign subjugation, former colonies around the world pursue 'independence' – the power to make their own decisions and influence their own destinies – by seeking to emulate powerful countries that appear to have achieved independence through sustained growth of their economies. Development is seen as the means for attaining the indicia of independence: financial resources, military capability and political clout. During the Cold War, development was characterized by economic protectionism and the promotion of domestic industries. To survive in the future, however, nations must now capture a share in the global marketplace; they must compete. Capitalism and 'opening up' to international free trade and commerce are proclaimed as salvation from the economic turmoil suffered by Third World countries and heralded as the new path to developmental progress--the benchmark of independent statehood. Paradoxically, development by way of entering the global free market economy ultimately results in a further loss of independence, as nations have even less control over their economies and strive to make policy decisions to attract foreign investment and further foreign interests.

* LL.M. Columbia University School of Law, J.D. University of Detroit Mercy; Assistant Professor of Business Law, Eastern New Mexico University. Formerly, International Legal Adviser to the Honorable Carlos Torres y Torres Lara, Vice President of the Congress of Peru, 1996; Visiting Professor, Catholic University of Peru Law Faculty and University of Lima Law Faculty 1994-1997; Intern, Center for Justice and International Law 1993; Assistant Attorney General, Michigan Department of Attorney General 1988-1994.

[1] The term "Third World" is used with respect to nations that are in the process of development to emphasize their subordinate rank in the world economic order.

Perhaps no other Third World country has embraced the free market rhetoric as fully as Peru. Keenly aware that it must follow the tide, due to its subordinate position in the world's economic order, current President Alberto Fujimori sees himself as preparing the country to compete in the 21st Century. Amidst extreme economic chaos, civil war and political instability, when he came to power in 1990, Fujimori instituted an aggressive program for economic reform designed to attract foreign investment by creating an open economy in which foreign and domestic enterprise compete freely.[2] His vision included the elimination of barriers to international trade and a massive campaign to transfer ownership of Peru's state-owned enterprises to foreign firms. He believed that for Peru, there was no other way. Most Peruvian nationals lacked the financial resources for a meaningful bail out, and the few possessed of wealth were understandably reluctant to invest in Peru.[3]

Enticing foreign companies to purchase state-owned businesses proved difficult. Fujimori had to convince the world that terrorism was under control, that the government was stable and that the economy was improving.[4] The vigor with which Fujimori proceeded to achieve these goals is impressive. The President's privatization campaign has been one of the world's most aggressive, attracting foreign investment from all parts of the globe.[5] International trade has sustained growth, with minor setbacks in 1998 due to '*El Niño*' and the Asian crisis, and Peru has re-entered the international financial community with fully restored borrowing capacity.[6] However, these actions have intensified Peru's dependence on foreign capital and have led to governmental policy-making designed to further the economic interests of foreign firms.

In one form or another, foreign interests have dominated Peru since colonial times. Following independence from Spain in 1821, Peru continued to depend on foreign capital from exports and sought

---

[2] Alberto Fujimori, *Peru—The Time is Now*, *in* CARLOS TORRES Y TORRES LARA, PERU: THE TIME IS NOW—PROBLEMS AND SOLUTIONS (Suzanne Wilhelm trans., 1997).

[3] Felipe Larraín et al., *Elements of a Stabilization Program*, ch. 3 *in* CARLOS E. PAREDES & JEFFREY D. SACHS, PERU'S PATH TO RECOVERY (1991).

[4] *Id.*

[5] Peru, National Commission on Foreign Investment and Technology, 3 FOREIGN INVESTMENT BULLETIN, Dec. 1998. (www.mef.gob.pe/peruinv/esp/boletin/pag3.htm).

[6] *Id.*

loans from international sources to finance operations. Privatization is simply an extension of foreign participation in Peru's economy, signaling a return to direct foreign control through ownership of key industries and businesses. To ensure the health and viability of these foreign owned enterprises general business principles tell us that policy decisions must be made without regard to what is best for Peru as an individual nation, or for the Peruvian people. Such is the 'price' of development in today's world. Whether the cost is worth the gain is a question that only the Peruvian people can answer. One thing, however, is certain: In its quest for development, Peru has entered a new era of foreign economic domination, and has lessened the possibility of achieving 'independence' as a nation among equals.[7]

This article examines President Fujimori's strategy to make Peru competitive in the new global order, arguing that extensive direct foreign participation in the economy leads to foreign control, lessening Peru's power to make decisions about its own future for the benefit of the Peruvian people. Fujimori's 'success' is the result of several factors. First, and perhaps most important, the international financial community has been behind him all the way. He has honored the wishes of the World Bank and International Monetary Fund (IMF). Second, he instituted extensive structural reforms to attract foreign investment by aligning Peru's constitution and laws with international interests in creating an open global economy, even to the point of remaking the constitution. Peru's laws to attract private foreign capital serve as an example for other nations desiring to enter the global order and provide an insight into how nations might influence international free market law in the future. Finally, with very few deviations, Fujimori has remained committed to his plan for economic reform in the face of strong public criticism. I begin with an historical overview, and then analyze the privatization of *Telefónica del Perú* and *Petroperu* in light of Peru's extensive structural reform. My analysis reveals the extent of the President's commitment to foreign participation in the economy, despite statistics indicating that absolute poverty is increasing while Peru's economy is improving. If effective

[7] Underlying the concept of the free market's ability to promote economic development is the assumption that all nations should be treated equally in the world. However, all nations are not equal, and equal treatment will not change that fact.

competition in today's world, with its consequent increase in foreign control in the case of Peru, leads to 'development', where then are the benefits to the Peruvian people?

II. HISTORICAL CONSIDERATIONS

Spanish *conquistadores* appeared on Peruvian soil in 1532.[8] Led by Francisco Pizarro, an illiterate man of humble heritage[9], Spanish forces conquered the Inca and established Peru as the capital of the Spanish Empire in the Americas. At that point in time, two great cultures clashed. Inca civilization was agricultural, based on mutual aid and solidarity made necessary by Peru's excessively difficult geographic composition.[10] Peru comprises the Andes Mountains, barren coastal deserts, and the world's densest rain forest, the Amazon.[11] Survival for the Inca meant societal cooperation. They worshiped deities like the sun god who could be seen and appreciated for his brilliance.[12]

The Spaniards could not have been more different. Spain was a fanatical Christian nation seeking riches in the New World.[13] Peru was laden with gold and silver and Indians[14] to work the mines. The Inca had conquered earlier civilizations in the region with gifts of adornment, aid and food, placing the gods of the conquered peoples on an equal footing with their own gods, thereby winning the respect and admiration of those they conquered.[15] The Spaniards, however, conquered the Inca by brutal force, exploited them mercilessly, suppressing their religion and destroying their places of worship.[16] The social structure built on solidarity was forced to give way to individualistic profiteering, agriculture was replaced with mining, and

---

[8] *See generally* KENNETH J. ANDRIEN & ROLENA ADORNO, TRANSATLANTIC ENCOUNTERS, EUROPEANS AND ANDEANS IN THE SIXTEENTH CENTURY (1991).

[9] LUIS MARTÍN, THE KINGDOM OF THE SUN 21-23 (1974).

[10] DAVID P. WERLICH, PERU, A SHORT HISTORY 32-33 (1994); *See also* WILLIAM H. PRESCOTT, EL TRÁJICO FIN DEL IMPERIO INCA 22-25 (1975)(Carlos M. de Dampierre trans.,1975).

[11] THOMAS M. DAVIES, JR., INDIAN INTEGRATION IN PERU 1 (1970).

[12] Prescott, *supra* note 10, at 17-20.

[13] HENRY F. DOBYNS & PAUL L. DOUGHTY, PERU: A CULTURAL HISTORY 57-62 (1976).

[14] The term Indian refers to the indigenous population, the Inca. Through intermarriage among the Inca and the Spaniards, a race of Peruvians called 'Mestizo' developed. This racial group, however, is not considered 'Indian'.

[15] Martín, *supra* note 9, at 10.

[16] *Id.* at 71-75.

a new invisible god claimed preeminence. These two cultures managed to coexist, but the Inca were subjected to a system of enforced racial separation. The Spaniards never tolerated integration.[17] Thus began Peru's long and tortured history of colonialism.

Peru declared independence from Spain in 1821.[18] Napoleon Bonaparte had marched into Spain in 1808 and had dethroned the king, thus creating an opportunity for the colonies which were adverse to the new French regime.[19] Independence was initially achieved in South America in the northern and southern regions. In Peru, the indigenous communities had staged several unsuccessful revolts against the Spaniards who, over time, had developed into two factions: 'Creoles' who were born of Spanish heritage in Peru and Spaniards who were immigrants from Spain. The Creoles advocated separation from Spain, but could never join forces with the Indians out of distrust common to both. A third group, the Mestizos, people of Spanish and Indian descent, were torn between loyalty to the Spanish crown and their Indian heritage. For these reasons, popular revolution was impossible. Two foreigners, Simón Bolívar of Venezuela, and José de San Martín of Argentina, led the liberation movement in Peru.[20] Fighting continued until 1823 when the last royal forces were expelled.

Like most former colonies in Latin America, even after independence foreign interests maintained control of the economy through ownership of key industries and businesses.[21] Fortunes were sustained and new ones made in the exploitation of Peru's vast natural resources: from guano[22], to oil, to gold.[23] The Creoles, Peru's elite class, represented only a slight fraction of the population yet amassed great wealth and power. They maintained the social system inherited from their colonial ancestors of segregation and forced Indian labor,

---

[17] JESUS CHAVARRÍA, JOSÉ CARLOS MARIÁTEGUI AND THE RISE OF MODERN PERU 1890-1930 107-116 (1935).

[18] Dobyns, *supra* note 13, at 120-144.

[19] *Id.* at 138.

[20] *Id.* Bolívar and San Martín sought independence for Peru after successfully achieving independence in their respective countries to assure that Spain could not re-assert control in the region.

[21] Chavarría, *supra* note17, at 107-116.

[22] Bird dung rich in nitrates used as fertilizer.

[23] Chavarría, *supra* note 17, at 160.

and continued to encourage the influx of foreign capital from exports and foreign loans.[24]

In the early 1900's, a new class-consciousness developed in Third World countries struggling for freedom from colonial rule. Fueled by a popular sentiment of anti-imperialism and nationalism, Peruvian workers began to form unions and demand protection from exploitation by the developed nations.[25] More than half a century would pass, however, before Peru's export-oriented economy would shift to the promotion of domestic industry, seeking to redistribute income in a more equitable manner.[26] Reform continued throughout the 1970s, encouraged by the United Nations support for self-determination and the increased activism of Third World nations globally.[27] Successive governments intervened in all spheres of economic activity, expropriating vast private land holdings and nationalizing the foreign controlled petroleum, mining and fishing industries.[28] However, although waves of nationalism brought periods of restricted foreign trade and economic protectionism designed to promote Peru's domestic industrial sector, Peru's dependence on foreign capital continued to grow. Oil exports increased substantially, but high inflation and a growing budget deficit financed by external sources led to enormous foreign debt.[29]

By the 1980's, the oil export boom had ended. Inflation soared out of control. State-owned enterprises were incurring substantial losses due to inefficiency and improper administration. Peru, along with other Latin American countries, faced serious economic difficulties. Large state-owned businesses owed roughly 60% of Latin American external debt. The demands for subsidies by these enterprises to service the debt, bankrupted Latin American governments causing wide-scale default on international loans. Contentious debt restructuring negotiations between international lenders and Latin American governments left lenders hesitant to make new loans. At the same time, equity investors refused to invest in Latin American

---

[24] *Id.* at 216-224.

[25] *Id.* at 148-153; Dobyns, *supra* note 13, at 224-231.

[26] A. Javier Hamann & Carlos E. Paredes, *The Peruvian Economy: Characteristics and Trends*, ch. 1 *in* Paredes, *supra* note 3, at 60-72.

[27] ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES, A LEGAL REAPPRAISAL 27 (1995).

[28] *Id.* at 97.

[29] *Id.* at 66.

countries out of fear of nationalization. These conditions led to the Latin American debt crisis and access to external funds dried up.[30] Peru was unable to meet targets set by the IMF. Despite efforts to stabilize the failing economy, the nation entered a new decade of triple digit inflation, budget deficits, and extreme recession.[31]

Amidst this economic chaos, a bloody civil war began with the Maoist terrorist group, *Sendero Luminoso*.[32] Under the leadership of Abimael Guzman, *Sendero* waged popular warfare in the countryside, appealing to the poor and disenfranchised Indians in the mountainous regions. Kept separate and subservient by the Spaniards, these people spoke their native language, *Quechua,* and were largely illiterate.[33] Unlike neighboring Argentina and Chile, where indigenous peoples had been exterminated, Peru's indigenous population had escaped massacre by retreating into the mountainous regions of the Andes where inclement conditions protected them from the onslaught occurring across the continent. They represented the silent majority in Peru.[34]

By 1990, *Sendero* had captured 60% of the national territory and had destroyed construction and property valued at $25 billion, an amount equal to Peru's external debt. Inflation was at 7,650% and 70% of the population was living in conditions of extreme poverty.[35] Thousands of people, fleeing terrorism, had converged on Lima, the capital, and were living in cardboard slums at the city's edge without electricity or running water.[36] There were over 200 state-owned businesses incurring estimated annual losses of $2.5 billion.[37] President Alan García had stopped the country's external debt

---

[30] *See generally* RICHARD SCHAFFER ET AL., INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT 634-35 (3d ed. 1996).

[31] Armando Cáceres & Carlos E. Paredes, *The Management of Economic Policy, 1985-1989*, ch. 2 *in* Paredes, *supra* note 3, at 80-100.

[32] The terrorist group *Movimiento Revolucionario Tupac Amaru* (MRTA) was also active during this period. Less well known than *Sendero*, MRTA was responsible for the takeover of the Japanese Ambassador's personal residence in Lima in December 1996.

[33] Carlos Torres y Torres Lara, *Los Problemas Internos del Desarrollo: el Perú, in* FORUM DEUSTO, DESAROLLO Y PAZ EN AMÉRICA LATINA: UNA VISIÓN AUTOCRÍTICA DESDE EL SUR 39-51 (1995).

[34] *Id.*

[35] *Id.*

[36] The slum problem, also called "*pueblos jovenes*" continues to be an important issue for the government.

[37] Carlos Torres y Torres Lara, *Brief Summary of the New Constitution of Peru, in* PERU: THE TIME IS NOW, *supra* note 2, at 89.

repayments, which resulted in Peru's virtual expulsion from the international financial community and denial of further foreign financial assistance.[38]

When Alberto Fujimori emerged as the victor in the 1990 elections[39], the cost of war, poverty relief and subsidizing state-owned businesses had bankrupted the government.[40] Fujimori, Peruvian-born of Japanese ancestry, was relatively unknown in political circles, which appealed to the impoverished population who were disillusioned with traditional politics. Fujimori's new party 'Cambio 90–Nueva Mayoría' offered change.

III. ECONOMIC REFORM

Decisive action was necessary. Hyperinflation and economic chaos had crippled the nation and loomed as the most urgent crisis facing the new administration. With Peruvian nationals either unable or uninterested in investing in Peru, economic recovery would require a large influx of foreign capital from expanding exports, privatizing state-owned businesses and securing loans from international sources. State intervention and protectionism, coupled with the failure to service the external debt obligations, had succeeded in isolating Peru.[41] Attracting foreign capital in the post Cold War era would require an open economy, driven by market forces. Peru's standing with the World Bank and IMF, along with other international lenders, had been seriously jeopardized by García's refusal to pay the external debt, and they insisted on rapid stabilization of the economy.[42] President Fujimori's program for economic reform involved three phases: first, 'shock therapy' to stabilize the economy; second, structural reforms to attract foreign investment; and third, massive privatization and debt restructuring.

---

[38] Luis Alberto Arias, *Fiscal Policy*, ch. 6 *in* Paredes, *supra* note 3, at 228-237.

[39] In 1980, Fernando Belaúnde was elected president, marking the return of democracy to Peru after 40 years of military rule. *See generally* Paredes, *supra* note 3, at 69. *Accord* U.S. Department of State, *Background Notes: Peru*, March 1998.

[40] Although *Sendero* had captured 60% of the national territory, its land holdings were in outlying, sparsely populated areas. It had been unable to capture Lima, despite extensive bombing. This, coupled with emigration to Lima from the countryside as frightened masses fled terrorism, led to a demographic explosion that affected the electorate profoundly, contributing to Fujimori's success.

[41] Paredes, *supra* note 3, at 70-71.

[42] LARRY EVEREST, THE SELLING OF PERU (1994).

A. Phase 1: 'Fujishock'

The initial phase was characterized by bold action. Gradual measures, such as price controls and exchange rate manipulation, were deemed impotent with inflation soaring.[43] Besides, such measures were inconsistent with the President's strategy to free the economy from arbitrary restraints that had resulted in a seriously inefficient allocation of resources and price distortion.[44] It was imperative that Fujimori engender international confidence in his program for economic reform and his commitment to a free market economy. As a result, he opted for 'shock treatment', slashing governmental subsidies and price restraints and increasing the price of goods and services supplied by state-owned businesses.[45] The immediate result of this action was an unprecedented acceleration of prices for basic necessities like gasoline and food. The public was enraged; Fujimori had made campaign promises that he would *not* use shock therapy on the failing economy.[46] In response to public outcry, the administration wavered in its commitment to the shock program, adjusting prices and tampering with the exchange rate.[47] These intermittent measures may have caused unnecessary delay in the improvement of the economy, but they humanely provided the suffering masses a reprieve. In any event, by 1991, hyperinflation had ended.

B. Phase 2: Structural Reforms

The second phase of economic recovery, structural reform, began in March of 1991. Import tariffs were reduced, and many quantitative restrictions were eventually eliminated. Several state monopolies were abolished. Labor law reforms made it easier to hire and fire employees. Laws were introduced to promote competition and enable foreigners to participate in the economy.[48] These changes, though

---

[43] Paredes, *supra* note 3, at 120, 299-300.

[44] *Id.*

[45] Carlos E. Paredes, *Epilogue: In the Aftermath of Hyperinflation*, *supra* note 3, at 301-304.

[46] *Id.* Fujimori may not have defeated Mario Vargas Llosa had he been more forthright about his plans to use shock treatment, referred to as "*cirugía sin anestesía*" (translated as surgery without anesthesia). Nevertheless, in 1995, Fujimori was elected to a second term in office, which indicates that the population had regained confidence in the President.

[47] *Id.* at 307.

[48] *Id.* at 312.

significant, were not 'sufficient'. Lack of support in the politically fractured Congress, led to the so-called 'auto-coup' of 1992, in which the President dissolved the Congress and suspended constitutional rule.[49] Later, with the economy in active recovery and *Sendero Luminoso* weakened by the capture of Guzman, Fujimori restored the nation to constitutional rule. However, a new constitution was needed, one designed to attract foreign investment and international business.

Important instances of structural reform include two laws enacted in 1991.[50] The first, Legislative Decree 662, the Law to Promote Foreign Investment, is based on the principle of equal treatment of foreign and national investment. Thus, article 2 guarantees: "Foreign investment, and the companies in which they participate, shall have the same rights and obligations as those of national investment and companies . . . . The national laws shall, in no event, discriminate against investment or companies on the basis of the national or foreign investment participating therein". Other provisions make currency freely convertible[51], establish equal treatment for foreign investment in intangible property[52], and guarantee foreign investors the right to freely engage in commercial and industrial activities.[53] Perhaps the most significant provision of Legislative Decree 662 is Article 10. This article promotes stability by permitting the government to enter into contracts with foreign investors guaranteeing that the tax laws in effect at the time the contract is entered into remain in force for the duration of the agreement.[54] As of September 1998, the government had entered into some 230 tax stabilizing contracts.[55]

The second law, Legislative Decree 757, the Framework Law for Growth in Private Investment, eliminates legal and administrative obstacles restraining private initiative. Article 1 provides: "The objective of this law is to guarantee free initiative and private investment, now or hereafter existing, in all economic activities and

---

[49] Torres Lara, Peru: The Time is Now, *supra* note 2, at 56-60.

[50] Decreto Legislativo No. 662, Ley de Promoción de la Inversión Extranjera (1991); Decreto Legislativo 757, Ley Marco para el Crecimiento de la Inversión Privada (1991).

[51] PERU CONST. art. 7.

[52] *Id.* art. 5.

[53] *Id.* art. 6.

[54] Similarly, article 12 of the Constitution guarantees the labor laws in effect at the time of contract.

[55] Figures cited are reported by the National Commission on Foreign Investment and Technology, Foreign Investment Bulletin, *supra* note 5.

[55] *Id.*

under any corporate or contract form authorized by the Constitution and the laws". Article 4 guarantees freedom of competition under the law of supply and demand, article 8 guarantees private property, and article 12 prohibits discriminatory practices with regard to exchange controls, prices, and tariffs.

These laws initiated Fujimori's plan to attract foreign investment in Peru. They were intended to demonstrate the administration's commitment to an open economy by assuring foreign firms of equal treatment, thus lessening the fear of nationalization and expropriation.[56] 'Tax stability contracts', as they have come to be called, are an added incentive. Nevertheless, making a law that says that private initiative is free does not make it so. Peru's lack of a foundation in open economic structures, and its image as a nation with difficulty adhering to the 'rule of law', an image shared by the Peruvian people, hampered the effectiveness of these new laws. They remain important today, however, due to the new Constitution that purports to change the very structure of the country and its economy.

The Constitution of 1993 is significant in many respects.[57] It responds to the globalization of the economy by accepting that individual nations no longer control their own economies. It thus seeks to 'inject' Peru into the international economy by establishing an open economic regime in which private enterprise is free to both foreigners and nationals.[58] However, the new regime is not a liberal capitalist economic regime but, instead, one in which the state must act to regulate the economy to seek a more equitable distribution of social benefits among its citizenry.[59] Thus, article 58 specifies that private initiative is to be "exercised within a social market economy", listing

[56] It should also be noted that between 1994 and September 1998, Peru entered into twenty-five bilateral and multilateral trade agreements granting protection and guarantees to foreign investment. The United States and Peru have not concluded such an agreement.

[57] Indeed, the circumstances under which the new Constitution was adopted are extraordinary. The President dissolved the Congress on 5 April 1992 in an act of self-preservation. The Congress was badly fractured, and insurrection was imminent. After the coup, under the supervision of the Organization of American States, a temporary congress was elected by the Peruvian people to draft the new Constitution. *See generally*, CARLOS TORRES Y TORRES LARA, LOS NUDOS DEL PODER (1992). Carlos Torres y Torres Lara was President of the Congressional Committee on the Constitution, which drafted the new Constitution. During his distinguished career in public service he has served as Prime Minister, and Vice President of the Congress of Peru. He is former Dean of the University of Lima Law Faculty, where he still teaches. I was privileged to serve as international legal advisor in his congressional chambers.

[58] Torres Lara, Peru: The Time is Now, *supra* note 2, at 69, 96-100.

[59] *Id.*

the following national priorities: promotion of employment, health, education, security, public services and infrastructure.[60] Of special importance are the protection of small businesses and agrarian development.[61] In addition, free enterprise is open to Peruvian nationals and foreigners, who are treated equally.[62] Further, the "state guarantees free possession and disposition of foreign currency".[63] These measures are buttressed by article 61, which ensures free market competition and prohibits monopolies and all practices that abuse dominant market position. Thus, the new Constitution creates an open climate for international commerce and foreign investment.[64]

Further clearing the way for foreign investment, the Constitution of 1993 respects private property and freedom to contract. It provides that the right to property is inviolable[65], and specifies that property is subject to equal treatment whether owned by nationals or foreigners, except that foreigners may not appeal to diplomatic protection.[66] In its treatment of property rights, the new Constitution differs very little from its predecessor. However, what is new is that the Constitution guarantees that "parties may validly agree according to the legal norms in force at the time of the contract. Contract terms may not be modified by law or other dispositions of any type".[67] Under the former Constitution, state intervention in private contractual relations was so pervasive that it had practically destroyed confidence in contract as a manner of securing performance in business operations.[68] Article 61 further provides that contractual disputes are to be settled by judicial resolution or arbitration.[69]

---

[60] PERU CONST. art. 58.

[61] PERU CONST. arts. 59, 88.

[62] PERU CONST. art. 63: "National and foreign investment are subject to the same conditions."

[63] PERU CONST. art. 64.

[64] PERU CONST. art. 63, providing that Peru may practice protectionism "If another country or countries adopt protectionism or discriminatory measures that prejudice national interests".

[65] PERU CONST. art. 70.

[66] PERU CONST. art. 71, restricting foreign ownership, by any means, of mines, lands, forests, waters, combustibles, or other sources of energy within fifty kilometers of Peruvian borders.

[67] PERU CONST. art. 62.

[68] Torres Lara, Peru: The Time is Now, Problems & Solutions, *supra* note 2, at 75.

[69] In its exhortation of faith in the judicial resolution of contractual disputes, article 61 appears oblivious to the well-known lack of independence suffered by the Peruvian judiciary. Nevertheless, article 139 attempts to establish the judiciary as an independent organ of the government, and various programs to correct the injustice occasioned by bribery, political manipulation and lack of judicial training are currently underway. *See generally* United Nations Program for Development, *Nuevas Perspectivas para la Reforma Integral de la Administración de la Justicia en el Perú* (1994).

Finally, the new Constitution profoundly changes the State's competence to engage in business activities. Article 60 provides: "Only where authorized by express law, may the State engage in subsidiary business activity, directly or indirectly, for reasons of high public interest or manifest national convenience".[70] These changes are designed to suppress the 'inefficient' operation of businesses by bureaucrats motivated by political interests instead of profit incentives. The former Constitution mandated that the state exercise its business activities "with the goal to promote the economy, provide public services and achieve the objectives of development".[71] However, unscrupulous individual bureaucrats seeking to promote their own interests through bribery, excessive expenditures, hiring and promotions on the basis of political affiliations, and other inappropriate actions impeded these lofty goals.[72]

The implications of these changes, particularly the last mentioned, are not yet clear. While the new Constitution ostensibly creates an open economy and, as a practical matter, foreign firms have been quick to take advantage of the new openness, public opinion is seriously divided on the issue of President Fujimori's massive campaign to transfer ownership of state-owned businesses to foreigners. Furthermore, the exact meaning of the constitutional language is subject to interpretation by the Congress. For example, what is the meaning of the language, in article 60, that provides an exception to the general rule of no state engagement in business activity by allowing the state to engage in 'subsidiary' business activities "for reasons of high public interest or manifest national convenience"? Might it not allow the government to enter the market and compete with private concerns, or take control of a business where private interests could jeopardize the 'public good'? It should be kept in mind that, even though the Constitution explicitly limits presidential terms to two[73], in 1996 the Congress passed legislation interpreting the Constitution to allow Fujimori to seek a third term as president.[74]

[70] PERU CONST. art. 60.

[71] PERU CONST. art. 113 (1979).

[72] Torres Lara, Peru: The Time is Now, Problems & Solutions, *supra* note 2, at 28.

[73] PERU CONST. art. 112.

[74] The Constitution was adopted in 1993, while Fujimori was already in office. Therefore, his election in 1995 was actually his first term under the new Constitution. He is thus entitled to seek another term, which will count as his second.

Thus Peru's Constitution appears subject to easy and open 'reinterpretation'. Actions like these will not foster faith in the Constitution as a fundamental document, nor engender trust in Peru's ability to function under the rule of law.

C. Phase 3: Restructuring the Debt and Privatization

Fujimori's commitments to world trade and open foreign investment have won international approval. Although the President's reputation in the international community suffered after the auto-coup of 1992, he has generally been applauded by the international financial community for his vigorous approach to economic reform. In late 1991, he began to service the external debt in an attempt to restore faith in Peru's financial integrity.[75] In March 1993, he announced that, with the help of Japan and the United States, Peru had paid arrears accruing since 1986 – when García stopped paying – to the World Bank and IMF.[76] In 1996, negotiations with international commercial lenders and the Paris Club[77] to restructure the debt were successful; both the level of debt and its structure are now compatible with Peru's ability to pay.[78]

Currently, the Ministry of the Economy and Finance reports that Peru has no domestic debt or external short-term debt. The average maturity for Peru's external debt is 10 years, with more than 60% of the debt carrying fixed interest rates.[79] The enormity of these changes cannot be overlooked. Compared to the condition of Peru's external debt when Fujimori took office in 1990[80], he has clearly been successful in managing the country's debt. As a result, the

[75] Felipe Larraín & Jeffrey D. Sachs, *International Financial Relations*, ch. 7 *in* Paredes, *supra* note 3, at 228-333.

[76] Reuters, *Government Pays Old IMF, World Bank Debts* (March 19, 1993).

[77] The Paris Club is a group of financial investors/lenders, including trade credit suppliers, that provide financing to governmental entities. While the World Bank and IMF do not grant debt reduction as part of relief programs as a general rule, commercial lenders, banks and the Paris Club are quite generous in this respect.

[78] Jorge Baca Campodónico, *The Peruvian Economy: Recent Developments and Outlook* (1998) (www.mef.gob.pe/necon/index.htm).

[79] *Id.*

[80] As previously mentioned, under the former administration of Alan García, the external debt obligations were not paid. As of December 1989, total external debt was $19.36 billion, with accrued interest obligations of $1.57 billion. *See* Paredes, *supra* note 3, at 228-232.

international financial community has made Peru an example of what Third World countries can achieve in the new global order.

Privatization also began in late 1991. Soon after the promulgation of Legislative Decrees 662 and 757, the President announced plans to sell an initial list of 23 state-owned businesses.[81] In the first 10 months of the privatization campaign, enterprises were sold at the astonishing rate of one each month.[82] During the next 33 months, 40 state-owned businesses were sold.[83] By September 1998, foreign direct investment had reached $5.441 billion with Spain, the United States and the United Kingdom representing the lion's share of investment.[84] Although foreign investment reaches all sectors of economic activity in Peru, communications, energy, industry and mining account for the largest investment by foreign firms.[85]

Despite its 'success', President Fujimori's massive and energetic privatization campaign has received a mixed reaction from the national population. Public opinion is sharply divided on the issue of foreign direct investment in the economy. Peruvian nationals resent the ownership and exploitation by already rich Western companies of its businesses and domestic industries. When the telephone company was sold to a Spanish firm in 1994, the Peruvian people said little as they were hopeful that advanced Western technology would bring down the cost of telephone installation and service so that average Peruvian families could afford to have a telephone. Two years later, however, when Petroperu, the state-owned oil monopoly, was broken into segments and auctioned off to the highest bidder, the citizenry cried out in anguish. Would the Peruvian people never reap the benefits of their own rich natural resources? Even after 500 years of colonial rule, was there no escape from foreign domination?

The privatization of *Telefónica del Perú* and *Petroperu* exemplify Fujimori's fervor to transfer ownership of state-owned businesses to

---

[81] *Id.* at 312.

[82] A. Javier Hamann et al., *Macroeconomic Guidelines for Resuming Growth*, ch. 5 *in* Paredes, *supra* note 3, at 185. Economists had projected a much lengthier process, due to the poor condition of the state-owned businesses.

[83] Caretas, *Enigma Privatizador*, 1996 (www.caretas.com.pe/1398). During this period, Daniel Hokama, Minister of the Presidency, divested the nation of its "joyas de la familia" (translated as "family jewels").

[84] National Commission on Foreign Investment and Technology, *supra* note 5.

[85] *Id.*

foreign firms. These cases are among the most controversial of the privatizations in Peru: *Telefónica del Perú* for the President's withdrawal of shares from domestic investment in plain preference for foreign investors, and *Petroperu* for his insistence on the piecemeal sale of the oil industry in the face of strong opposition by a majority of the population.[86] They are examined in the next section of the article.

1. *Telefónica del Peru*

In 1994, a controlling interest in *Telefónica del Perú*, the state-owned Telephone Company, was sold to a Spanish firm.[87] It was Peru's first major privatization effort. The President proclaimed the sale a great victory for the Peruvian people: service would improve due to advanced technology and the cost of installation and monthly usage would drop as greater efficiency stimulated productivity. Soon all Peruvians would enjoy what industrialized peoples take for granted: a telephone.

Almost immediately, the Spaniards dropped the cost of installing a telephone line from approximately $500 to $270, offering a credit plan. Families too poor to buy food, with no previous credit experience, were signing up left and right, lured by the concept of 'payment over time'. The initial down payment varied and the contract specified that any missed installments would result in forfeiture of the deposit and any amounts paid, as well as the new telephone line. Monthly usage was billed separately; missing a payment on usage would result in disconnection of service, but not termination of the installment contract. Many families lost their down payments to the Spaniards and the company repossessed their telephone lines; others struggled along keeping up with the installation payments, but without telephone service due to the inability to pay their monthly usage.[88] This exploitation by the Spaniards gave rise to a rash of destructive activities as public telephones were ripped out and destroyed or stolen.

---

[86] Caretas, *supra* note 83.
[87] National Commission on Foreign Investment and Technology, *supra* note 5.
[88] These are my personal observations while living in Peru from August 1994 until January 1997.

The government had retained a 28.6% interest in the company, which was offered in shares to domestic and international investors. The domestic stock offering included subsidized credit, discounts for cash purchases and share bonus incentives. However, just weeks after initiating a multi-million dollar campaign aimed at enticing Peruvians to buy the stock, the government cut the number of shares reserved for domestic buyers in half. This action was reportedly taken after an unexpectedly large demand for the stock by international investors.[89] As a result, of the 28.6% interest retained by the government, the majority of shares have been sold to foreign investors.

Fujimori's plan involved open participation by both national and foreign investors in a free market economy, stimulated by opportunity for gain. This vision of "popular capitalism"[90] implemented in the first instance with the privatization of *Telefónica del Perú,* sparked the interest of national investors from all walks of life. They saw an opportunity for personal gain through ownership of company stock. Even the very poor in Peru were jumping at the chance to participate. Clearly this phenomenon, new in Peru, was a sign that the population had confidence in the free market reforms initiated by Fujimori. When the President cut back on shares available for domestic purchase, he demonstrated a preference for foreign investors in Peru, to the prejudice of national investors who were eager to purchase shares. Peruvian bankers warned that this action would damage Peru's image of popular capitalism and engender distrust for future privatization campaigns.[91] A clear bias against national investors runs counter to an open market economy, and sends a message to Peruvians about the President's economic reforms. They appear designed to benefit foreigners, not average Peruvians. Thus, the two-class system imposed upon Peru by the Spaniards in 1531 remains in force today.

In June 1998, the government announced that the company had agreed to a modification of its purchase contract.[92] As an incentive to the buyer, the original contract had provided the company a monopoly position in the telecommunications industry until June 1999. The new contract changed that date to 1 August 1998, allowing an immediate

[89] El Comercio, *After Privatization Push, Government Cuts Available Shares*, July 4, 1996.
[90] *Id.*
[91] *Id.*
[92] El Comercio, *Monopolio de Telefónica del Perú Terminó* desde *el 1 de Agosto*, June 8, 1998.

increase in the cost of telephone service, but specifying a two year additional period in which the company must cut the cost of installation to $150. On 1 June 1998, Supreme Decree 021-98-MTC was published in the official digest setting out the requirements for new providers wanting to enter the telecommunications market.[93]

What had provoked these changes? In its announcement, the government cited the improvement in conditions brought about by the new company, namely the diffusion of telephone services throughout Peruvian society due to the lowering of the installation costs, as reasons for the change. But why would the company agree to the loss of its preferential market position prior to the originally specified date? In exchange, it did receive a rate increase and the initial phase of capital and technological investment had ended, thus reducing the need for market protection. However, more telling perhaps is the fact that with the acquisition of *Entel, S.A.*, the National Telecommunications Company, *Telefónica del Perú* owns 97.25% of all foreign investment in Peru's telecommunications industry.[94] Thus, there is little to fear from open competition, and much to gain from the image of being an active player in an open market economy.

Privatization should work to promote efficiency and lower the cost of production, resulting in savings to pass on to consumers. This depends, of course, on the market being open to competition that creates the incentive to lower prices. In the case of *Telefónica del Perú*, the initial sale involved a protected monopoly for a limited time period followed by opening the industry to market competition. However, the Spanish firm has been able to secure ownership of a controlling interest in the industry. Setting aside the issue of whether foreign, as opposed to national, ownership of the telecommunications industry is a good thing for Peru, privatization cannot have the intended affect of lowering prices if market competition is not real.

There was little public comment when *Telefónica del Perú* was sold. Privatization was new and the majority of the population could not afford the cost of installation. But the Peruvian people were hopeful. Although the cost of installation has decreased significantly, the increase in cost of monthly service and usage lessens the

---

[93] *Id.*

[94] *See* National Commission on Foreign Investment and Technology, *supra* note 5.

probability that more Peruvians will enjoy telephone service. 'Open competition' in telecommunications seems unlikely to have the effect of lowering the price of consumption to the point at which ordinary Peruvians will be able to finally have a telephone.[95] Nevertheless, the Spanish firm did bring the telephone line into a great many poor households, thus expanding access, if only for the future, and it has brought increased technology in the form of cellular phones and pagers to the very few Peruvians who can actually afford them.

2. *Petroperu*

By far the most controversial privatization in Peru has been that of *Petroperu*, the national oil monopoly. By the time the privatization of *Petroperu* was announced, public sentiment had soured. The piecemeal sale of the oil industry provoked critical public comment from the start. The northern communities and workers lamented that privatization of the oil company would put them out of jobs and deepen the critical condition of poverty in the region and in the nation as a whole.[96] A clear majority of Peruvians rejected the privatization on populist grounds, ignoring the President's claims that exports had bottomed out, state-owned businesses were incurring substantial losses, and the government lacked the financial resources to invest in much needed technology for exploration and exploitation.[97] While citizens collected signatures to stop the sale by referendum, President Fujimori steadfastly moved forward.

To attract foreign buyers, in addition to the ample protection afforded foreign investors in Legislative Decrees 662 and 757 and the Constitution of 1993, the government enacted the Organic Law for Hydrocarbons.[98] Under this law, hydrocarbons belong to the State and are administered by *Perupetro*, a state agency created by the law.[99] Rights in extracted hydrocarbons are transferred to licensees under contract according to article 13, and foreign and domestic individuals

---

[95] *Id.* The United Kingdom and Panama own Tele2000, expected to be the main competitor.
[96] Caretas, *supra* note 83.
[97] Paredes, *supra* note 3, at 45-46.
[98] Law No. 26221. A copy of the Hydrocarbon law can be found at http://200.4.200.194/teleley/bull692.htm.
[99] *Id.* at art. 8.

or corporations may enter into licensing contracts throughout the national territory, including areas within 50 kilometers of the frontiers.[100] The licensee provides all technical and financial resources needed to implement contracts[101], which are governed by the income tax law in effect at the time the contract is entered into.[102] Imports of goods and the expenditure required for activities during the exploration phase of the contract are free from taxation.[103] Exports of hydrocarbons are exempt from taxation.[104] Tax and exchange systems in force at the time the contract is entered into remain in force during the entire life of the contract.[105] The Central Reserve Bank of Peru guarantees the availability of foreign exchange accruing to licensees, who may freely use and dispose of such currency within Peru and abroad.[106] Finally, the law of supply and demand governs activities and prices of crude oil and derived products.[107] These protections were designed to attract foreign capital and technology capable of exploiting Peru's oil reserves for export.

Despite public disapproval, in August 1996, a consortium comprised of three international oil companies, Repsol of Spain, YPF of Argentina and Mobil Oil of the United States, purchased a 60% stake in *La Pampilla*, Peru's largest oil refinery.[108] The dismembering of *Petroperu* continues, with foreign interests from around the world participating in the privatization of the oil industry.[109]

Although President Fujimori ultimately ignored the strong public objection to selling the oil industry to foreign firms, civil unrest and rioting postponed privatization for almost one year and resulted in a 10% share of *La Pampilla* being transferred to refinery workers.[110]

---

[100] Compare with the Constitution's prohibition against foreign ownership of lands located within 50 kilometers of the borders. PERU CONST. art. 70, *supra* note 65. Even though foreigners cannot own the land, they can secure rights to hydrocarbons through licenses.

[101] Law No. 26221, art. 27.

[102] *Id.* at art. 48.

[103] *Id.* at art. 56.

[104] *Id.* at art. 58.

[105] *Id.* at art. 63.

[106] *Id.* at art. 66.

[107] *Id.* at art. 77.

[108] Reuters, *Peru's La Pampilla Refinery Sold for $180.5 Million,* June 11, 1996.

[109] Petróleos del Perú, *Procesos de Privatización* (Aug. 28, 1998) (www.petroperu.com/petro/petro7.htm).

[110] U. S. Energy Information Administration, *Peru* (Jan. 1998) (www.eia.doe.gov/emeu/pgem/ch3g.html).

Despite this gesture, privatization had come to mean foreign ownership and there was nothing in it for the average Peruvian national. Moreover, downsizing created hardship as many workers lost their jobs and, unlike telephone services, oil is a non-renewable natural resource. Although the government retained a 'golden share' in *Petroperu* to maintain a presence in the oil industry and avoid a foreign takeover[111], when the oil reserves are depleted the golden share will be worthless. Peruvian nationals will never reap the benefits of exploiting their own natural resources in oil.

The President's disregard of the popular will is instructive in several respects. First, it shows that Fujimori will not be swayed by popular anti-privatization sentiment: that a majority of Peruvians rejected the plan did not stop the privatization.[112] He persevered in what he believed to be best for the country. It may well be that the Peruvian people do not know what is in their best interests and, as if they are children, a paternalistic government must make decisions for their welfare. Perhaps this is the meaning of Peru's 'social market economy'. In any event, it is antithetical to democratic rule and further erodes Peru's image of popular capitalism. The Peruvian people, unable to participate in their economy, also lack the power to prevent the transfer of ownership of key industries to foreign interests through democratic means.

Second, it is noteworthy that the international financial community can support Fujimori's economic reforms under these circumstances. As Philip Alston notes, respect for the globalization of the open market has emerged as an element that can trump other values.[113] As an example, Alston points to human rights norms, noting: "In the world of globalization, a strong reaction against gender and other forms of discrimination . . . can often require not only a showing that the relevant practices run counter to human rights standards but also a

---

[111] The golden share is employed by governments to retain a voice in the continuing operations of the company even after a controlling interest is sold to private investors. It functions by limiting the voting rights of private investors, giving the government a veto power over decisions by the board of directors of the company, or placing government appointees on the board. *See generally*, International Business Law and Its Environment, *supra* note 30.

[112] It should be noted that to date, the population has not rejected the privatization of *Petroperu* by referendum.

[113] Philip Alston, *The Myopia of the Handmaidens: International Lawyers and Globalization*", 8 EUR. J. INT'L L. 435 (1997).

demonstration that they are offensive to the imperatives of economic efficiency and the functioning of the free market".[114] Perhaps participatory democracy is an outmoded value in the new order of market driven economic management.

IV. PERU TODAY

President Fujimori's three-phase strategy for economic reform has clearly been successful in terms of the global market. Hyperinflation was brought to a halt, and since 1991 annual inflation has dropped to 6.0%, the lowest in 25 years.[115] Structural reform has attracted private foreign investment, which has grown at an average annual rate of 14.2% from 1993 until 1997.[116] In the same period, the economy grew at an average annual rate of 7.3%[117], and international reserves reached $10.5 billion, an amount sufficient to insulate Peru from external shocks like the failure of Mexico in 1995 and the Asian stock crisis of 1996.[118] Exports are also growing, although the country still suffers a trade deficit[119], and Peru is meeting its external debt obligations.

The question then becomes whether divesting the nation's business holdings to foreign interests has been worth the gain. The objectives of encouraging foreign participation in the economy through direct investment are to attract foreign capital, achieve access to technology, and exploit natural resources through the export activities of foreign investors. Economic statistics indicate that Peru is enjoying an inflow of foreign capital, but the trade deficit persists. Although exports are expected to continue growing as new mineral and energy sources are discovered and exploited, it is doubtful that the current trade balance will be reversed to reflect a surplus. Mineral extraction and energy production require a technological capability that Peru does not possess. This technology is currently being imported from developed nations, further contributing to the current deficit.

[114] *Id.* at 442.
[115] National Statistics Institute of Peru, *Indicadores Económicos* (1998) (www.inei.gob.pe).
[116] Campodónico, *supra* note 78.
[117] *Id.*
[118] *Id.*
[119] *Id.*

Furthermore, much of the foreign participation in Peru's economy is directed towards export activities. As a result, capital and technological investment in Peru is made on the basis of strategies for global competition in these sectors, not on considerations of what is best for Peru's economy and population. Only carefully selected sectors of the economy are destined for technological investment. Currently, these sectors are mining and energy production.[120] Other sectors, those controlled by domestic firms, are deprived of technological advancement. Consequently, they will become less and less competitive, both at home and abroad. This will also contribute to the trade deficit as imported products replace domestic products in an open market.

In addition, most of Peru's export industries, mineral extraction and energy production, are capital intensive. As a result, new jobs will not be forthcoming. In fact, downsizing can be expected as the new owners compete for market share in the global economy. As an additional matter, environmental degradation is almost a certainty. Although Peruvian law provides protection for the environment[121], as a practical matter the government lacks funds for aggressive enforcement of these laws.

Finally, the anticipated 'trickle down' to the impoverished masses has not occurred. Like at other times in Peru's history, the country appears to be improving economically yet the vast majority of the population receives no benefit whatsoever.[122] The privatization of *Petroperu* has resulted in exploration and exploitation of oil reserves, but fewer jobs for Peruvian workers. And as a result of Spanish ownership of *Telefónica del Perú,* there are lots of telephone lines, but very few telephones.

V. CONCLUSION

When Peru was sinking into the abyss of hyperinflation, crippling civil war and political disintegration, Fujimori took action, swiftly and

[120] *See* National Commission on Foreign investment and Technology, *supra* note 5.

[121] For an example, see art. 87 of the Organic Law for Hydrocarbons, *supra* note 98, requiring foreign firms to comply with laws to protect the environment, with termination of their contract as a possible penalty.

[122] Dobyns, *supra* note 13, at 247.

boldly, to save the country. And he did save the country. It is easy to criticize his methods, although few capitalist thinkers would deny that private ownership is better for business and that governments should confine their efforts to providing public services like transportation and education. The controversy centers on the issue of whether it is in the best interests of a poor nation like Peru for the government to maintain ownership of state-owned enterprises that it cannot make profitable rather than selling them to foreigners. There is no easy answer.

Fujimori's decision to sell to foreigners has thrust Peru into the global marketplace. As the cases of *Telefónica del Perú* and *Petroperu* reveal, his economic agenda has inured to the benefit of foreign investors and not to the average Peruvian. The President's rationale was that economic prosperity, in time, would leak through the cracks in the walls that separate the members of Peruvian society who enjoy a decent standard of living from the great number of impoverished masses. But the walls are old ones erected by the Spaniards when they first exploited the Inca. The Spaniards imposed their culture on Peru, enforcing racial separation, maintaining the indigenous population in a subservient state of illiteracy and poverty to further their own interests. Class antagonism prevented Peru from achieving independence from Spain through popular revolution. Instead, Peru waited for deliverance. Today, Peru is multi-cultural and multi-ethnic yet many Peruvians do not speak Spanish and live in unspeakable conditions of poverty as the separation of classes continues to stifle Peruvian society.

Peru is the case of a people interrupted in its development by strong foreign interests that usurped the benefits that the country had to offer, siphoning off the value for themselves. Peru, like other former colonies, has a long history of foreign domination. Formal independence has not been able to wrench control over natural resources and the economy from the developed Western nations. Even in times of great nationalistic trends, foreign capital has continued to play a dominant role.

Privatization is simply an extension of foreign control in Peru, an evil President Fujimori deemed necessary for the sake of development. Foreign capital makes savings and builds infrastructure. But development is not the result of correctly following a recipe for economic growth. Nor can economic growth bestow independence upon a country that can do little else than respond to the dictates of foreign interests. There is a delicate balance between attracting foreign capital to improve a country's economic viability so that it can one day function on its own, and directing the economy towards foreign interests such that it becomes increasingly dependent on foreign capital and technology to survive.

Isolation is no longer an option for any country; globalization is today's development game and to play, nations must privatize state-owned businesses, deregulate, open their markets and downsize their governments.[123] However, a moderate mix of the means for entering the global economic order may better serve the interests of underdeveloped countries like Peru. The developed nations can afford the risk of globalization; they control the global economic agenda.[124] For Peru, however, domestic interests become less important as dependency on foreign participation grows. Peru cannot hope to influence the international agenda and therefore, it cannot influence its own destiny. Peru's structural reforms cater to foreign investment and export activities. The entire economy hinges on the influx of foreign capital. Thus Peru enters the New World of global markets not as a player, but as a pawn, and a new era of colonialism begins.

---

[123] *See generally* Alston, *supra* note 113.

[124] For an informative discussion of the nature of the global agenda, offering differing viewpoints as to "who" sets the agenda, *see* Alston, *id*.