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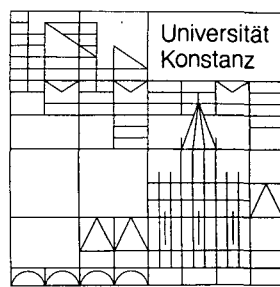
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Juristische
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wissenschaften und Statistik

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Thomas Stern

Investment in Libya:
A Legal and Economic Survey

INVESTMENT IN LIBYA:
A LEGAL AND ECONOMIC SURVEY

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by Peter König (Dipl.Volkswirt) and Thomas Stern (Ass. jur.)

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PRELIMINARY REMARKS (Thomas Stern)

The "Socialist People's Libyan Arab Republic" is the fourth largest country in Africa (1.759540 sqkm) and due to the abundant petroleum resources, one of the richest developing countries of the world. With a Gross Domestic Product (GDP) of about US-\$ 21 billion (1985) and 3.6 million moslemic inhabitants Libya disposes of a per capital GDP of approximately 8 000 Dollars. Formerly a kingdom, Libya is a People's Republic with planned economy since the revolution of September 1969. From this time, Libya has been ruled and influenced by Colonel Muhamar Al Ghaddafi, chairman and leader of the former Revolution Command Council (RCC) and now Secretary General of the General People's Conference and President.

Libya is significantly characterized by a "Dual-Economy". Agriculture and stock breeding have lost their leading position which have been taken over by the petroleum industry out of which more than 55 % of the budget and 70 % of the foreign currency is gained. In the last decade the revolutionary leadership tried to reduce the dependency upon petroleum resources (which will be exploited in 30 to 40 years) due to a forced industrialization and an agricultural reorganization. To achieve this objective the Government has established Five-year-plans since 1976. The third plan was enacted in the beginning of 1986 and is scheduled to cut the percentage of the oil sector under 45 %. Nevertheless, the balance of payments was negative in the last years (1981 - 1985).

Libya is a member to the United Nations and their suborganizations UNESCO, ECA, IBRD, ITU, FAO, ILO, WHO, IFC, IOA, IMF, IPU, WMO, IAEO, ICAO and also to APPA, OPEC, OAPEC and GATT. Furthermore, the "Socialistic People's Libyan Arab Jamahiriya" is member of the League of Arab States and the Organization of African Unity. There are no relations

to the European Communities, but Libya has been comprised to the "General Duty Preferential Agreement" since 1st of July, 1971.

PART A: LEGAL VIEW (Thomas Stern)

1. Investment Legislation

1.1 General

The main source of law in this sector is the "Investment of Foreign Capital Law (IFCL)"¹. It provides for the granting of concessions to enterprises in the non-petroleum sector in which 51 % or more of capital is foreign-owned.²

Persuant to Art. 1 IFCL at the Ministry of Economy and Trade a committee called "Investment of Foreign Capital Committee (IFCC)" has been established. Upon the recommendation of the IFCC the Council of Ministers or other competent authorities may grant exemptions from customs duties and income taxes or other advantages.

The IFCL is supplemented with the "Implementing Regulations of Investment of Foreign Capital Law No. 37 of 1968",³ which stipulates directory provisions for the content of applications for investing foreign capital in Libya in order to benefit from the advantages in Decree-law No. 37.

1.2. Sectoral Investment Legislation

Capital invested in petroleum production is subject to the provisions of the Petroleum Law no. 25 of 1955.⁴ The Petroleum Code is a "fixed content system", where an extensive and detailed description of the respective

¹ Decree-Law no. 37 of 1968, pertaining to "Investment of Foreign Capital Law" was published in Official Gazette no. 37, dated 10 August 1968.

² Enterprises in the petroleum sector are governed by the "Petroleum Law", art. 8 IFCL (see 1.2.).

³ Published in Official Gazette no. 63, dated 26 December 1968.

⁴ As amended 21 May 1955, 3rd July 1961, 9 November 1961, 1962, 16 July 1963, 20 November 1965, 12 February 1970 (law no. 17), 20 March 1971 (law no. 30), 26 April 1971 (law no. 32), 18 October 1973 (law no. 82).

obligations of the parties has been passed by the national legislative body.⁵ This system is also utilized by the USA, Canada, Australia and certain Latin American countries. Under the Petroleum Code a "Petroleum Commission" is set up with which concession terms and conditions are negotiated. Prior to commercial discovery, all costs are borne by the contractor. After commercial discovery, the Government Oil Company contributes to operating expenses. Once production reaches a specified level, the NOC is reimbursed over a 25 year period by the contractor for all NOC expenditures. Production is divided 81 % going to the NOC and 19 % to the contractor. Costs are borne in the same proportions after discovery.

Furthermore, the "Petroleum Commission" is responsible for the execution of the provisions of the Code, takes all decisions in respect of the grant of licenses, exploitation permits and concessions⁶ and is governed by rules of procedure, which the Commission has drawn itself.⁷ The above-mentioned provisions are complemented by petroleum regulations,⁸ that are issued by the Minister of Petroleum Affairs.

1.3. Investment Guarantees

1.3.1. Treaties

There are no existing bilateral investment protection agreements. Libya has concluded "Cooperation Agreements" in economic and commercial sector with various countries in the world. These arrangements with India, Pakistan, the Eastern Block States and some developing countries in Africa and Asia however, are mainly of declaratoric nature. They are prepared and stipulated by the Libyan Government and they only express certain recommendations.

⁵ K.W. Blinn et al., p. 34.

⁶ However, in 1980, petroleum policies provide for production sharing agreements rather than for concessions.

⁷ See Foreign Tax Law Association, Inc.: Commercial Laws of the World, vol. XIV, Libya, p. 53.

⁸ in Force: Petroleum Regulation no. 9 issued 1 July 1973 (annulls Petroleum Regulations 227), amended by Decision no. 207 of 1974 (28 December 1974).

Hitherto Libya has not signed the MIGA-Convention.

1.3.2. Municipal Law, Nationalization

The 1968 IFCL grants to the foreign investor the right to repatriate his capital investment and fair profit and grants to expatriate employees the right to transfer a portion of their salaries abroad.⁹

The Royal Decree Law No. 5 on Industrial Organizations (LIO) of 1965 and the pursuant regulations stipulate the legal powers of the Government of Libya to regulate local industry. The law empowers the Ministry of Industry to nationalize, temporarily and with compensation, any basic industry which ceases or decreases its production quota as defined by the government.¹⁰

After the Popular Revolution of September 1969 the RCC began to nationalize assets and concessions of the foreign petroleum companies. The nationalization laws generally included compensation clauses. The amount of compensation should be determined by a special committee.¹¹

The most important nationalizations were:

- Law Nationalizing Operations for the Import, Sale and Distribution of Petroleum Products, 4 July 1970;
- Decision of 3 May 1971 on Libyanization of Oil Company Posts;
- Law of 1971 Nationalizing British Petroleum's Interest In Concession 65;
- Law 42 Promulgated 11 June 1973 Nationalizing Nelson Bunker Hunt Concession 65;¹²

⁹ Art. 6 FCIL of 1968.

¹⁰ Art. 9 LIO of 1965.

¹¹ Compare: Law of 11 February 1974 nationalizing the American Overseas Petroleum Ltd.

¹² British Petroleum and Bunker Hunt received compensation from the Libyan Government. Afterwards BP sued Bunker Hunt to recover part of the benefits from the former Libyan joint venture. BP was awarded 17 Mio. pound sterling by Law Lords (London, Feb. 4th, 1982).

- Law 66 Dated 1 September 1973 Nationalizing 51 % Of Concessions Of Esso Standard Libya, Libyan American Oil/Esso Sirte,¹³ Shell Exploration & Production Ltd., Mobil Oil Libya¹⁴ /Gelsenberg Libya & Texaco Overseas/Asiatic Petroleum Of California Concession;
- Law 44 Of 11 August 1973 Nationalizing Occidental Libya Inc.;
- Law of 11 February 1974 Nationalizing The Libyan Assets Of The Libyan American Oil Company (LIAMCO);
- Law No. 35 Issued March 1974 Nationalizing Shell Exploratie En Productie Maatschappij, Libya, N.V.;
- Law Dated 11 February 1974 Nationalizing The Libyan Assets Of The American Overseas Petroleum Ltd., Owned 50 Percents By Texaco Overseas Petroleum Company And 50 Percent by California Asiatic Oil Company;¹⁵
- Law 70 Dated 10 October 1974 Amending Certain Provisions Of Laws Nationalizing Oil Companies.¹⁶

By early 1974 the State interest or the stake of the Libyan National Oil Corporation (LINOCO, NOC)¹⁷ in various producing companies or company groups ranged from 100 % in the former British Petroleum - Hunt and AMOSEAS partnerships to 63,5 % in Esso Sirte group and 59,2 % in OASIS. The odd percentages were due to the full nationalization of one partner in each group after its failure to agree to the Government's terms when the other partner has agreed to a 51 % Government stake. The Government held a 51 % interest in Esso Standard, Occidental and Mobil - Gelsenberg, a half

¹³ The NOC agreed on Dec. 17th, 1981, to pay Exxon a total of 95 Mio. US-\$ for its relinquished assets. The estimated net-book-value was more than 120 Mio. US-\$.

¹⁴ Mobil failed to reach agreement with NOC. The question of compensation should be determined by arbitration.

¹⁵ All companies received compensation based on net-book-value. Companies that retained minority shareholdings were entitled to a guaranteed profit margin.

¹⁶ Text of Laws, see Barrows: Basic Oil Laws and Concession Contracts - North Africa.

¹⁷ Law establishing Libyan National Oil Corporation to replace the former Libyan General Petroleum Corporation (LIPETCO), promulgated 5 of March 1970, proved by RCC 25 of March 1970.

share in AGIP, and no interest in minor operators with little or no production.¹⁸

1.4. Incentives for Foreign Investment

As already above-mentioned (1.1.) Art. 1 IFCL provides that the Council of Ministers may be grant exemptions from customs duties and income taxes.

1.5 Applicable Law and Dispute Settlement

The law governing the Deeds of Concession is determined in the deeds themselves; the deeds contain an expressed choice of law provision,¹⁹ that specifically regulates the law of contract.

In case of instituting arbitration, however, the law governing the arbitration itself was an issue: The respective Sole Arbitrator in the three Libyan nationalization arbitrations²⁰ had to decide which legal order constituted the standard for determining whether and to what extent the deeds were binding sources of rights and obligations.²¹

Libya is not a party to ICSID, but production sharing or service contracts normally include arbitration clauses.

For example, in the three Libyan expropriation arbitrations clause 28 of the Concession Deeds, as prescribed by the Libyan Petroleum Law of 1955, stipulated that if at any time during or after the period of concession any difference or dispute arising between the parties concerning the

¹⁸ Source: Wright, J.: Libya: A Modern History, p. 248 f.

¹⁹ Clause 28/7: This concession shall be governed by and interpreted in accordance with the principles of law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals (source: Varma, p. 277).

²⁰ LIAMCO v. Libya, TOPCO/CALASIATIC v. Libya, British Petroleum v. Libya.

²¹ The Sole Arbitrators decided differently (compare v. Mehren, R.B. and Kouridis, P.N.: International Arbitration Between States and Foreign Private Parties).

interpretation or performance of the agreement (or anything contained in or in connection with it), or the rights and liabilities of either party, and the parties should fail to settle this dispute by agreement, the dispute shall be referred to arbitrators.² Each party appoints an arbitrator. Should one party refuse to appoint an arbitrator, the other party could request the President of the International Court of Justice to appoint a sole arbitrator whose decision shall be binding on both parties.³

In another case, the "Continental Shelf Dispute" Libya concluded a special agreement for submission to the International Court of Justice.⁴

Finally, there is an arbitration clause in the "Petroleum Code", which stipulates that every dispute between the "Petroleum Commission" and the holder of a concession granted in accordance with the provisions of this law shall be settled by arbitration.⁵

2. Other Relevant Legislation

2.1 Technology Transfer Legislation, Industrial Property

The Import and Export Law of 1957 permits the Ministry of Economy to make the importation of competitive foreign goods subject to licence. Import and Export licences are issued by the Comptroller of Trade and Supplies at the Ministry of Economy, and registered traders are usually able to obtain necessary licences. Most imports are under an open general licence and do not require an individual import licence.⁶

² Fisher, J.M./Golbert A./Maghame B.: British Petroleum v. Libya: A preliminary comparative analysis of the international oil companies response to nationalization.

³ Sole Arbitrators Lagergren (British Petroleum) Depuy (TOPCO/CALASIATIC) and Mahmassani (LIAMCO) were appointed by the President of the ICJ.

⁴ Agreement done at Valetta 23 May 1976, entered into force on 20 March 1982.

⁵ Commercial Laws of the World, Libya, p. 68.

⁶ Commercial Laws of the World, Libya, p. 87.

The term of patent protection is 15 years from the effective date of the application. A patent may be extended to 20 years if the invention is especially important. Processes for making foodstuffs, medicines or pharmaceutical products are patentable only for 10 years and are not renewable. An invention, to be considered solely for purposes of patentability must not have been publicly used or published in Libya within 50 years preceding the application filing date. There is no search and examination procedure.⁷

Trademark registrations are valid for 10 years from the effective filing date of the application and are renewable for similar periods. The first applicant is entitled to registration and exclusive use of the mark. Applications are examined relative to their registerability and if acceptable are published for opposition for 3 months. If a registered mark remains in valid use for five years after its registration date, the registrant's exclusive rights cannot be challenged. If a registered mark is not used for five consecutive years without justification, any interested party may file a cancellation position with the Court of First Instance. Assignments must be recorded in the Trademark Register.⁸

There presently are no laws or regulations in force in Libya which deal with copyrights.

Libya has concluded an "Agreement for Granting Technical Aid against Payment" with the Federal Republic of Germany in December 1975.

2.2 Real Estate Transactions by Foreigners

The ownership of real property is restricted by law. Non-Libyans, whether natural persons or corporate bodies not 100 % Libyan-owned, are prohibited from gaining title to real estate by the "Law Prohibiting Non-Libyans to Own Real Estate in Libya" (May 24 of 1960)⁹

⁷ Commercial Laws of the World, Libya, p. 87.

⁸ Commercial Laws of the World, Libya, p. 88.

⁹ Commercial Laws of the World, Libya, p. 86.

2.3 Company Law, Commercial Law

The "Royal Decree Law on Industrial Organizations No. 5" of 1965 and the pursuant regulations¹⁰ are the basic source in this sector, stipulating the legal powers of the Government to regulate local industry.

Commercial agencies are governed by the "Royal Decree Organizing Commercial Agencies" of July 27, 1967¹¹. The law stipulates that all agencies must be completely Libyan-owned.

On December 11, 1969 the RCC issued the Constitutional Declaration ("The Bill") which included the basic principles for the society in various fields including the economic field. "The Bill" related to certain provisions pertaining to merchants and commercial companies and their control. I.a. "The Bill" limits the founding of stock companies and simple partnerships by share to Libyan nationals, introduced new conditions for the sound establishment of joint stock companies and provided for 49 % as the maximum limit for foreign capital participation in joint stock companies and partnerships by shares, thus securing the majority of 51 % for national capital and safeguarding national economic interests. Moreover "The Bill" stipulates several provisions concerning the rights and obligations of the Board of Directors of the company and finally it specifies the fields of operation where foreign companies are allowed to open branches. It restricted such operations to engineering consultations, technical work supporting the companies exploiting petroleum and gas, and other sectors of activities that may be determined in a Cabinet Decree.¹²

The "Company and Commercial Law" and the "General Rules Concerning Merchants, Commercial Companies and Their Supervision" (Law no. 65 of May 2nd, 1970)¹³ brought major changes to the organization of business in the Libyan Arab Republic. The most significant provisions among others are: Only Libyans will be registered in future in the Commercial Register. Non-

¹⁰ See Commercial Laws of the World, Libya, p. 25 ff.

¹¹ Text see Commercial Laws of the World, Libya, p. 43. Published in Official Gazette no. 43, dated November 1st, 1967.

¹² Commercial Laws of the World, Libya, p. 3 ff.

¹³ Text Commercial Laws of the World, Libya, p. 9 ff.

Libyans are not permitted to be partners in any form of partnership. New joint stock companies must have at least 5 Libyan founder-members and one person may not own more than 10 % of the shares of a joint stock company. Libyan labourers shall be no less than 90 % of the total number of workers employed by joint stock and limited liability companies and partnerships and must receive no less than 20 % of the wages paid by the companies.

2.4 Taxation, Fiscal Stimulants, Tax Treaties

The "Federal Income Tax Code" for Libya was enacted by Royal Decree on April 14, 1968. It was amended by Law No. 64 of September 19, 1973, by Law Nos. 76 and 77 of October 21, 1974 and Law No. 2 of January 1st, 1975, which also amended Petroleum Law No. 25 of 1955 and raised royalty of 14 % to at least 16,67 % and income tax to 60 %.

Thus companies engaged in petroleum activities pay (1) royalties of 16,67 % of total field production valued at posted prices, (2) income tax (60 %) and (3) a surtax. The surtax is 65 % of profits over the total annual amount of fees, rents, income tax, other direct taxes and royalties (except 16,67 % of the value of crude oil exported).⁴

Production sharing contractors are exempt on their share of production from all Libyan income tax and surtaxes.

As already mentioned, there exists the possibility of exemption from payment of customs, duties, income taxes and other fees or taxes, if the enterprise is judged to be useful to the economic development and improvement of Libya by the "Foreign Capital Investment Committee".⁵

On the other hand the "Import-Export Law" of 1957 provides that the Minister of Finance may, upon recommendation of the Minister of Economy,

⁴ Barrows, H.: Petroleum Legislation and Concession Contracts, p. 172.

⁵ Art. 4 IFCL.

increase the customs duties on goods, competitive with locally produced products.⁶

There exists a "Treaty To Avoid Double Taxation" with Malta; negotiations concerning the conclusions of such contract with Sweden and the Federal Republic of Germany have not yet been successful.

2.5 Foreign Exchange Control Regulations

The 1961 IFCL grants to the foreign investor the right to repatriate his capital investment and fair profit and grants to his expatriate employees the right to transfer a portion of their salaries abroad (art. 6). The terms and conditions are laid down in the Implementing Regulations. According to Art. 17 of the Banking Law no. 4 of 1963⁷ the Central Bank called "Bank of Libya" shall assume the control of exchange and supervise transfer operations.

⁶ See Commercial Laws of the World, Libya, p. 86.

⁷ The law was published in the Libyan Official Gazette no. 7, dated April 15, 1963.

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PART B: ECONOMIC VIEW (Peter König)

1. Direct Investment in Libya

1.1 Direct Investment and the Capital Account

Direct Investment in Libya exhibited a very peculiar structure over the last 15 years as compared with other countries of the world: since 1973, Libya's current account surpluses due to increased oil revenues were accompanied not by Libya investing those surpluses in foreign countries' assets, but by foreigners disinvesting in Libya by an amount of 300 to 1000 million US-Dollars per year. Also, in years showing Libyan current account deficits, capital exports strengthening the deficit situation took place, mainly from the Libyan oil sector¹. This development should not be surprising with regard to the political situation in Libya, and the nationalization of foreign oil-producing companies starting in 1971/72, yet, a persistent capital export of this kind is of an outstanding uniqueness in the world.

¹ See Table 1 and 4.

Table 1: Direct Investment Flows to and from Libya (in million US-\$, Libyan Capital Export indicated by Minus Sign)

	1979	1980	1981	1982	1983	1984	1985

LIBYAN DIRECT INVESTMENT ABROAD, TOTAL	-21	-46	-24	-19	--	--	--
EQUITY CAPITAL	-21	-46	-24	-19	--	--	--
REINVESTMENT OF EARNINGS	--	--	--	--	--	--	--
OTHER LONG-TERM CAPITAL	--	--	--	--	--	--	--
SHORT-TERM CAPITAL	--	--	--	--	--	--	--

FOREIGN DIRECT INVESTMENT IN LIBYA, TOTAL	-596	-1071	-732	-391	-321	-17	-339
EQUITY CAPITAL	--	--	--	--	--	--	--
REINVESTMENT OF EARNINGS	94	140	140	125	134
OTHER LONG-TERM CAPITAL	-690	-1211	-872	-516	-456	-17	-339
IN OIL-SECTOR	-690	-1236	-872	-516	-491	-44	...
OTHER	--	25	--	--	-36	27	...
SHORT-TERM CAPITAL	--	--	--	--	--	--	--

Source: International Monetary Fund, Balance of Payments Statistics.

1.2 Direct Investment in Libya (Sectoral)

Direct Investment in Libya has largely taken place in the oil sector, reflecting this sector's dominance in the Libyan economy in general.¹

In March 1970 the Libyan Government established the National Oil Corporation (NOC) as the successor to a General Petroleum Corporation which had been set up in April 1968, the NOC being provided with its own financial resources and empowered to engage in all aspects of the oil industry, including joint ventures with foreign companies. Then, in July 1970 the Libyan distribution and marketing interests of Exxon, Shell and Agip were transferred to the NOC together with the interests of Petro-Libya (hitherto a Libyan private sector company).

Nationalizations of Libyan oil producing operations commenced on Dec. 7, 1971, when the Government formed the Arabian Gulf Exploration Co. (AGEC) to take full control of BP's Libyan subsidiary. This action was stated to

¹ See for the following Evans, J., OPEC, Its Member States and the World Energy Market, London, 1986, pp.262.

have been taken on the political grounds that the British Government had failed to prevent Iran's recent occupation of the Tunb islands in the Persian/Arabian Gulf. Agip, which (as a sole concessionaire) had discovered oil in Libya in 1971, agreed in September 1972 to sell a 50 per cent interest in its producing operations to the NOC following negotiations in which the Italian company was threatened with an export ban. In October 1972 Libya sought a similar participation agreement with the Bunker Hunt Company. Bunker Hunt rejected this approach on Dec. 9, causing the Libyan Government to halt the company's operations on May 24, 1973, and to order their full nationalization on June 11, 1973, when AGEC took over Bunker Hunt's share of the former BP/Bunker Hunt concession areas.

Both BP and Bunker Hunt received compensation from the Libyan Government, and on Jan. 31, 1975, BP formally withdrew various legal actions which it had taken in support of its claims against Libya. BP then sued Bunker Hunt to recover part of what was claimed to be the US company's disproportionately large share of the benefits arising from the former Libyan joint venture, and was awarded 17 million £ sterling by Law Lords when the case completed its final appeal stage in London on Feb. 4, 1982.

Following the Bunker Hunt nationalization, several other US independent companies, faced with the prospect of a 100 per cent state takeover of their operations, accepted 51 per cent state participation - Occidental Petroleum on Aug. 11, 1973, and Conoco, Marathon and Amerada Hess on Aug. 16,. However the major oil companies - whose offer to concede 25 per cent state participation (on the model of their October 1972 agreement with the Arabian peninsula producers) had been rejected by Libya - resisted Libya's campaign for 51 per cent participation, and Shell was accordingly banned from exporting its share of the Oasis consortium's output. Shell's interest in Oasis was subsequently fully nationalized on March 30, 1974.

After the expiry on Aug. 25, 1973, of a deadline for the voluntary acceptance of 51 per cent state participation in the operations of the main producing companies in which there was no existing state interest, Libya unilaterally took 51 per cent control under legislation introduced on Sept. 1, 1973. Texaco, Chevron, Mobil, Exxon, Shell and Atlantic Richfield issued a joint statement on Sept. 7 refusing "to accept terms imposed unilaterally in contravention of valid agreements", but Gelsenberg AG and Grace Petro-

leum each accepted the Government's action. The operations of Amoseas (which had been ordered to reduce its production by half in mid-August) were fully nationalized on Feb. 11, 1974, as was Atlantic Richfield's holding in Esso Sirte. Control over the operations of Amoseas was transferred to a new NOC subsidiary, the Umm al-Gawabi Petroleum Co.

Exxon and Mobil each accepted 51 per cent state control of their interests on April 16, 1974. All of the companies whose Libyan assets were nationalized received compensation based on the net book value, and those companies which retained minority shareholdings were entitled to a guaranteed profit margin (calculated on the basis of a figure between the tax-paid production cost and the official government selling price) in respect of their equity crude production. Minor producers whose Libyan concessions were not nationalized included the West German company Wintershall AG.

In November 1981 Exxon announced its withdrawal from its Libyan operations, and on Dec. 1, a new NOC subsidiary, the Sirte Oil Co., took over all of Exxon's production concessions and pipeline assets in Libya, as well as its 49 per cent shareholding in the Marsa el Brega gas liquefaction plant. Grace Petroleum continued to hold a 12 per cent interest in the former Esso Sirte concessions. The NOC agreed on Dec. 17, 1981, to pay Exxon a total of 95 million US-\$ for its relinquished assets (compared with their estimated net book value of more than 120 million US-\$). Following Exxon's withdrawal Mobil indicated its intention to terminate its Libyan operations, and entered into negotiations to secure agreed compensation terms from the Government. Having failed to reach agreement Mobil handed over its Libyan operations to the NOC on Dec. 31, 1982, leaving the question of compensation to be determined by arbitration. Veba Oel AG, which had succeeded Gelsenberg AG as the West German participant in Mobil's Libyan concession areas in 1978, continued to hold a 17.15 per cent interest in these areas. Exxon and Mobil each said that their main reason for leaving Libya was a serious deterioration in the profitability of their local operations.

Now the principal producing companies and fields are as follows:¹

¹ See for the following OPEC, Opec Member Country Profiles, Vienna 1983, pp.74-76, and Evans, J., OPEC, Its Member States and the World Energy Market, London, 1986, pp.262.

- Oasis Oil Company (originally one-sixth each Amerada and Shell, one third each Continental and Marathon; since March 30, 1974: NOC 59.2 per cent, Continental and Marathon, 16.3 per cent each, Amerada Hess 8.2 per cent). Production is conveyed by the Sidrah pipeline system to a terminal at Es Sider. Originally built to transport production from the Dahra field in Concession 32, the system was subsequently extended to other fields for a total length of around 850 km of trunk line, with a capacity of one million b/d.

- Esso Libya (since April 16, 1974 NOC 51 per cent, Exxon 49 per cent; since Dec. 1, 1981: NOC 100 per cent) was responsible for the first export of Libyan crude oil (October 1961) from its important Zelten field in Block 6, via a 172 km 30-in pipeline to a terminal at Marsa Brega on the Gulf of Sirte. Other smaller fields have since been linked in.

- Esso Sirte (originally Exxon 50 per cent, Atlantic Richfield, 25.5 per cent, Grace 24.5 per cent, since April 16, 1974: NOC 63.5 per cent, Exxon 24.5 per cent, Grace 12 per cent; since Dec. 1, 1981: NOC 88 per cent, Grace 12 per cent). Production from the company's Raguba field is evacuated by means of a 90 km 20-in spur to the Zelten-Brega system.

- Occidental of Libya (since Aug. 11, 1973: 51 per cent NOC, 49 per cent Occidental, since June 30, 1985: NOC 51 per cent, Occidental 36.75 per cent, Oesterreichische Mineraloelverwaltung 12.25 per cent) produces oil chiefly from the Intisar and Augila fields in Concessions 102 and 103. A pipeline network of approximately 270 km joins the fields and evacuates crude to a terminal at Zuetina on the Gulf of Sirte. The main 217 km 40-in trunk line has a potential capacity of one million b/d. Occidental also has a production sharing agreement with the State company under which it obtains 19 per cent of output from certain small fields.

- Agip Libya (since Sept. 1972 50 per cent NOC, 50 per cent Agip) produces crude from the Abu Tiffel field in Concession 100A. The oil is evacuated by a 110 km 30-in spur to the Occidental pipeline system.

- Mobil-Gelsenberg (originally Gelsenberg) had a 25 per cent interest, subsequently increased to 35 per cent, but following nationalization ownership was since April 16, 1974: NOC 51 per cent, Mobil 31.85 per cent, Gelsenberg 17.15 per cent; since Dec. 1, 1982: NOC 82.85 per cent, Veva Oel AG 17.15 per cent. Production is taken from the Hofra and Ora fields by a 160 km branched pipeline to the Ras Lamuf terminal on the Gulf of Sirte, and from the Amal fields in Concession 12 by a separate 282 km line to Ras Lamuf.

- Umm al-Gawabi is the name of the State (NOC) company which operates the nationalized Nafoora field discovered by Amoseas. Output is conveyed by a double 52 km spur to Mobil's Amal-Ras Lanuf system. Arabian Gulf Exploration Company is the title of the State concern which took over the nationalized Sair field belonging to BP and Nelson Bunker Hunt. Crude is evacuated by a 512 km 34-in line, with a capacity of 400,000 b/d, to a terminal at Marsa Hariga. A second field is also in production at Musalla.

- The Aquitaine consortium (Elf-Aquitaine 42 per cent, Hispanoil 42 per cent, Murphy 16 per cent) evacuates its small production by a 90 km spur, to the Amal-Ras Lanuf system. Elf-Aquitaine has also a 15 per cent production sharing interest (NOC 85 per cent) in the Meheiriga field.

- Small volumes are also produced by Wintershall in Concession 96 and by the NOC from fields in Concessions 92 and 93, relinquished respectively by Phillips in 1971 and Amoco in 1976. Crude from these fields is evacuated via spurs to the Ras Lanuf system.

A large liquifaction plant completed by Esso at Marsa El Brega in 1968 was scheduled to supply 235 million cu ft/day of LNG over 20 years to ENI in Italy and 110 million cu ft over 15 years to Catalana de Gas in Spain. Deliveries began in 1971, producing 3.6 billion cu m in 1979 (2.4 to ENI and 1.2 to Catalana de Gas). In 1980, due to disagreements over pricing, volume exported fell to 2.3 billion cu m (1.5 to ENI and 0.8 to Catalana de Gas). The gas is transported from the Zelten field by a 175 km 36-in pipeline, originally built to carry sea-water to repressure the field, and by a

98 km 20/22 in spur to this line from the Raguba field. Gas is also derived from fields belonging to Oasis and (formerly) Amoseas via pipelines to Zelten. There are special reception facilities at Barcelona and Panigaglia (La Spezia). An LPG plant (33,000 b/d) has been built by Occidental on the Intisar field, together with a 20 in pipeline to carry the product to Zuetina; exports began in 1972. Reserves of natural gas were estimated in 1981 at 675 billion cubic metres.

1.3 German Direct Investment in Libya.

German Direct Investment in Libya has - as well as Italian - developed differently from the world's investment structure as described in chapter 1. German companies have increased their stocks of investment by absolute figures as well as relative to German total investment abroad until 1984. Thus, the development of German Direct Investment in Libya was very similar to German Direct Investment in other OPEC member countries.

1.4 German Direct Investment in Libya (Sectoral).

German oil-producing companies (Wintershall AG and Gelsenberg AG/Veba Oel AG) could be identified as owners of stocks of investment accounting to 298 million DM at the end of 1984, and 234 million DM at the end of 1985. Also, during 1985, a German electro-technical company started investing in Libya. The investment of the German oil-producing companies was solely in the Libyan oil-producing sector, whereas the electro-technical company's investment was directed towards merchandising.

Table 2: German Direct Investment in Libya from 1979 to 1985

	Year	World	OPEC ¹	Libya ⁴
GERMAN DIRECT INVESTMENTS ABROAD (MILLION DM),	79	70330	2024 (2.87)	78 (0.11)
END-OF-PERIOD STOCKS	80	84485	2215 (2.62)	137 (0.16)
	81	101918	3013 (2.95)	198 (0.19)
	82	109234	3269 (2.99)	258 (0.23)
	83	123497	3707 (3.00)	271 (0.21)
	84	145605	4179 (2.87)	313 (0.21)
	85	147794	2445 (1.65)	262 (0.17)
NUMBER OF FIRMS	79	11188	269 (2.40)	7 (0.06)
	80	12256	282 (2.30)	8 (0.06)
	81	13084	311 (2.37)	8 (0.06)
	82	13618	319 (2.34)	10 (0.07)
	83	14044	314 (2.23)	9 (0.06)
	84	14657	325 (2.21)	9 (0.06)
	85	14964	313 (2.09)	9 (0.06)
BALANCE-SHEET-TOTAL, EXCLUDING BANKING SECTOR ⁵ (MILLION DM)	79	235500	6900 (2.92)	300 (0.12)
	80	281500	8000 (2.84)	400 (0.14)
	81	337500	10500 (3.11)	400 (0.11)
	82	353500	11300 (3.19)	500 (0.14)
	83	387500	11500 (2.96)	600 (0.15)
	84	453000	12800 (2.82)	700 (0.15)
	85	459400	9200 (2.00)	600 (0.13)
ANNUAL TURNOVER-SALES (MILLION DM)	79	275300	6300 (2.28)	700 (0.25)
	80	325300	7100 (2.18)	900 (0.27)
	81	400500	10100 (2.52)	1000 (0.24)
	82	419400	9900 (2.36)	600 (0.14)
	83	436100	8700 (1.99)	700 (0.16)
	84	522900	9000 (1.72)	900 (0.17)
	85	562200	9500 (1.68)	1500 (0.26)
EMPLOYEES (THOUSANDS)	79	1651	58 (3.51)	0 (0.00)
	80	1743	61 (3.49)	1 (0.05)
	81	1762	66 (3.74)	1 (0.05)
	82	1690	49 (2.89)	1 (0.05)
	83	1617	47 (2.90)	0 (0.00)
	84	1697	44 (2.59)	0 (0.00)
	85	1785	42 (2.35)	0 (0.00)

Source: Deutsche Bundesbank, Die Kapitalverflechtung der Unternehmen mit dem Ausland nach Ländern und Wirtschaftszweigen 1979 bis 1985

¹ Percentages of world in paranthesis.

⁵ No detailed data available for Banking Sector.

2. Macroeconomic Development

Libya is significantly characterized by a "dual economy". Agriculture and stock-breeding have lost their leading position which has been taken over by the petroleum sector which makes up for all of Libyan exports, thus for 47 per cent of GDP in 1982. Consequently, all macroeconomic aggregates as private consumption, government consumption, gross fixed capital formation and imports were largely determined by nominal (oil-)exports following the development of the oil price (until 1982)⁶.

2.1 The Role of the Government⁷

The First Development Plan (1963/64-1967/68), ratified in 1965, providing for estimated expenditure at LD 337 million, was extended for a sixth year. Communications and public works took priority: water, electricity and roads were introduced into the interior. Under the Second Plan (1969/70-1973/74) expenditure was undertaken at LD 1,1495.5 million and priority assigned to agriculture transport and communications, housing and local government. The Second Plan was superseded by a Three-year Development Plan (1973-75) providing for investment of LD 2.2 billion, of which total 34 per cent was allocated to industry, petroleum and electricity. The ambitious Five-year Development Plan (1976-80), known as the "economic and social transformation plan", invested LD 7.5 billion, affording priority to agriculture, housing, industry and communications. The next Plan (1981-85), gives priority to industrial development, providing for total investment of LD 18.5 billion.

⁶ See Table 4.

⁷ See for the following OPEC, Opec Member Country Profiles, Vienna 1983, p.72.

Table 3: Expenditure under the Development Plan

	1969-74	1972-75	1973-75	1976-80	1981-85
TOTAL	1.150	1.165	2.200	7.500	18.500
of which					
AGRICULTURE	160	165	159	1.604	3.000
INDUSTRY	91	174	262	1.334	4.000
PUBLIC WORKS	177	125	295	1.131	-
COMMUNICATIONS	163	164	199	930	-
EDUCATION	116	108	186	522	-
HEALTH	53	47	70	276	-

Source: OPEC, OPEC Member Country Profiles, and Middle East Economic Survey.

2.2 Libyan Trade

Libyan exports consist basically of Petroleum, Petroleum Products and Petroleum Related Materials (SITC 33, 9369.7 million US-\$ to OECD in 1984). Total exports accordingly developed along the lines of OPEC's oil-exports over the recent years¹.

As sulphur-free light crude of high quality, Libyan oil commands top prices. The price of Zuetina and Brega light crude to established customers rose from US-\$ 12.32 a barrel in 1975 to US-\$ 14.25 and US-\$ 14.20 respectively in 1977, declined slightly in 1978 to US-\$ 13.85, and was sharply increased in 1979 to US-\$ 26.27 and US-\$ 26.22 and to US-\$ 41 in early 1981. Principal markets are in Western Europe and North America. Total oil revenues were US-\$ 15.22 billion in 1979 and US-\$ 22.53 billion in 1980. There are five export terminals in the Gulf of Sirte and a sixth is planned in the west.

Libyan imports consist of Manufactured Goods (SITC 6, 928.8 million US-\$ from OECD in 1984), and Machinery and Transport Equipment (SITC 7, 1962.0 million US-\$ from OECD in 1984, of which: 268.9 million US-\$ SITC 72 (Machinery Specialized for Particular Industries), 343.7 million US-\$ SITC

¹ See OPEC, Opec Member Country Profiles, Vienna 1983, OECD, Foreign Trade by Commodities, Paris 1986, and Table 4.

74 (General Industrial Machinery and Equipment), 266.4 million US-\$ SITC 77 (Electrical Machinery, Apparatus and Appliances))⁹.

The Euromoney Trade Finance Report advises "fully secured terms although not always obtainable" and states "considerable delays in settlements; 'Confirmed Irrevocable Letters of Credit' not affected; external financing now required for larger contracts"¹⁰. Moreover, in 1986, "Increasing friction with European trading partners; licenses needed for all imports and restricted categories of importers"¹¹ were established. Also for 1985, a tendency towards oil barter deals could be identified¹², as with

- Italy (Agip, Oct.1985, 25000 b/d on netback basis as payment to Italian firms for construction debts).
- Turkey (March/July 1985, 90 million US-\$ as payment to Turkish firms for construction debts).
- South Korea (Jan.1985, as part payment for construction work on water pipeline).
- Nicaragua (May 1985, 15 million US-\$ as payment for coffee, cotton, sesame seeds and bananas).

2.3 The Role of the Banking Sector

The Libyan banking sector consists of 10 home and 1 foreign banks. 7 of the home banks are general banking institutes, 3 are special development banks¹³. The most important banks in 1983 were the

- Umma Bank (Tripolis, net assets of estimated 5774 million US-\$)

⁹ OECD, Foreign Trade by Commodities, Paris 1986.

¹⁰ Euromoney Trade Finance Report, Payments Survey, April 1985.

¹¹ Euromoney Trade Finance Report, Payments Survey, Dec.1986.

¹² Euromoney Trade Finance Report, Feb.1986.

¹³ See IfO, IfO-Schnelldienst 10, Die Arabischen Banken, Fata Morgana oder erwachende Konkurrenz, 11/86.

- National Commercial Bank (Tripolis, net assets of estimated 3404 million US-\$)
- Jamahiriya Bank (Tripolis, net assets of estimated 2632 million US-\$)
- Libyan Arab Foreign Bank (Tripolis, net assets of estimated 2482 million US-\$)

The Libyans, headed by Abdulla Saudi, then chairman of the Libyan Arab Foreign Bank and now chief executive of ABC, promoted a number of institutions after 1973, but they were either geared to the requirements of specific countries or remained low key. Libya and Algeria set up the Banque Intercontinentale Arabe in Paris and joined with the U.A.E. in the Arab Bank for Investment and Foreign Trade in Abu Dhabi. Libya also combined with Kuwait in creating with Spanish institutions the Banco Arabe Espanol (Aresbank) in Madrid. Like the Arab-Hellenic Bank in Athens and Arlabank, these institutions thrived on commercial banking business between the two blocs. They attracted no deposits from the surplus oil states.¹⁴

2.4 Foreign Exchange

Currency is the Libyan Dinar (= 1000 Dirhams). It is pegged to the US-Dollar at an exchange-rate of 3.3778 US-\$/Dinar¹⁵.

¹⁴ See Field, P., Moore, A. (eds.), Arab Financial Markets, Euromoney Publications, London 1981, p.33.

¹⁵ See Table 4.

Table 4: Macroeconomic Development

	1973	1974	1975	1976	1977	1978

FOREIGN EXCHANGE						
PAR/MARKET CONVERSION FACTOR (US-\$/DINAR)	3.37780	3.37780	3.37780	3.37780	3.37780	3.37780
LIBYAN TRADE ACCOUNTS AND OIL SECTOR (MILLION DINAR)						
EXPORTS	1197.8	2447.2	2026.6	2832.9	3385.4	2936.7
IMPORTS, CIF, VALUE	539.9	817.8	1048.7	950.8	1117.1	1362.6
CRUDE PETROLEUM EXPORTS	1035.8	2109.7	1786.9	2456.7	2885.8	2752.0
CRUDE PETROLEUM EXP. VOL (1980=100)	128.1	87.8	84.3	109.1	114.4	109.2
CRUDE PETROLEUM PROD. (1980=100)	121.3	84.9	82.5	108.3	115.1	110.3
PETROLEUM PRICE, ES SIDRA (US-\$/BARREL, 1980=100)	4.80	13.84	11.59	12.31	13.87	13.71
LIBYAN CURRENT AND CAPITAL ACCOUNTS (MILLION US-\$)						
CURRENT ACCOUNT INCL. EXCEP. FINANCING	66	2700	392	2844	2159	738
DIRECT INVESTMENT	-148	-241	-616	-521	-512	-720
PORTFOLIO INVESTMENT	--	--	--	--	-220	-45
OTHER LONG-TERM CAPITAL	-362	-182	-908	-987	-334	-303
OTHER SHORT-TERM CAPITAL	485	388	305	348	548	-236
LIBYAN NATIONAL ACCOUNTS (MILLION DINAR)						
EXPORTS OF GOODS & SERV.	1240	2490	2053	2881	3458	2978
GENERAL GOVT. CONSUMPTION	465	865	1044	1185	1383	1692
GROSS FIXED CAP. FORMATION	636	979	1055	1226	1383	1532
INCREASE IN STOCKS	28	50	100	-50	58	20
PRIVATE CONSUMPTION	703	927	1194	1337	1498	1665
IMPORTS OF GOODS & SERV.	826	1428	1666	1671	1959	2200
GROSS NATIONAL EXPENDITURE	1928	3444	3380	4390	5304	5183
GROSS DOMESTIC PRODUCT	2246	3883	3780	4907	5821	5688
NATIONAL INCOME	1816	3296	3214	4198	5096	4933
GROSS DOM. PROD. 1975 PRICES	5555	6788	7062	8661	9430	9672
MONEY (M1)	54.0	753.8	867.6	1139.4	1443.8	1687.8
POPULATION (MILLIONS)	2.24	2.33	2.43	2.56	2.67	2.79

Source: International Monetary Fund, International Financial Statistics.

Table 4: continued

	1979	1980	1981	1982	1983	1984	1985

FOREIGN EXCHANGE							
PAR/MARKET CONVERSION FACTOR (US-\$/DINAR)	3.3778	3.3778	3.3778	3.3778	3.3778	3.3778	3.3778
LIBYAN TRADE ACCOUNTS AND OIL SECTOR (MILLION DINAR)							
EXPORTS	4762.6	6492.0	4612.2	4131.0	3283.0	3298.0	3235.2
IMPORTS, CIF, VALUE	1572.4	2006.2	2481.4	2124.3			
CRUDE PETROLEUM EXPORTS	4414.7	6054.8	4441.7	4128.0	3371.2	3295.4	3234.2
CRUDE PETROLEUM EXP. VOL. (1980=100)	115.8	100.0	62.6	64.1	60.0	60.0	58.9
CRUDE PETROLEUM PROD. (1980=100)	114.9	100.0	61.9	64.1	60.0	60.0	58.9
PETROLEUM PRICE, ES SIDRA (US-\$/BARREL, 1980=100)	58.7	100.0	111.0	98.9	86.1	84.1	82.7
LIBYAN CURRENT AND CAPITAL ACCOUNTS (MILLION US-\$)							
CURRENT ACCOUNT INCL. EXCEP. FINANCING	3771	8214	-3963	1560	-1643	-1524	1890
DIRECT INVESTMENT	-609	-1136	-769	-411	-327	-18	-316
PORTFOLIO INVESTMENT	-23	-113	-421	-243	-98	-250	--
OTHER LONG-TERM CAPITAL	-298	-123	-514	372	-132	50	--
OTHER SHORT-TERM CAPITAL	-369	-331	1203	-331	658	404	90
LIBYAN NATIONAL ACCOUNTS (MILLION DINAR)							
EXPORTS OF GOODS & SERV.	4801	6737	4868	4105			
GENERAL GOVT. CONSUMPTION	2007	2351	2721	2966			
GROSS FIXED CAP. FORMATION	1855	2424	2811	2362			
INCREASE IN STOCKS	110	95	120	-50			
PRIVATE CONSUMPTION	1895	2328	3127	3384			
IMPORTS OF GOODS & SERV.	2822	3399	4306	3920			
GROSS NATIONAL EXPENDITURE							
GROSS DOMESTIC PRODUCT	7846	10535	9341	8846	8531	7921	
NATIONAL INCOME							
GROSS DOM. PROD. 1975 PR.	10472	10535	8930	8551			
MONEY (M1)	2247.3	2898.9	3512.2	3232.3	2884.4	2711.3	3492.2
POPULATION (MILLIONS)	2.91	3.04	3.18	3.33	3.47	3.62	3.60

Source: International Monetary Fund, International Financial Statistics.

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