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**Tax Measures in Response to the Brain Drain**

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Tax Measures in Response to the Brain Drain

RICHARD D. POMP* AND OLIVER OLDMAN†

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I. THE PROBLEM

All countries experience some loss of skilled manpower through emigration. The large-scale movement of skilled manpower from the less developed countries to the developed countries, however, has become the subject of increasing national and international concern. This loss of talent, the so-called brain drain, is deeply resented by the

1. Emigration tends to occur from relatively less developed countries to relatively more developed countries and is, therefore, a reflection of different stages of economic development. Because such differences have always existed, scholars suspect that this emigration is a deeply rooted historical phenomenon. Possibly the oldest mention of this phenomenon is the complaint by the Greek writer Athenaeus of "the drain of Greek brains to Alexandria," which referred to efforts of the Ptolemies to shift the center of learning of the classical world from Athens to Alexandria. See Dedijer, "Early" Migration, in THE BRAIN DRAIN 9, 16 (W. Adams ed. 1968) [book hereinafter cited as ADAMS]. In the case of scientists, a group that has been unusually mobile, one commentator concludes that "[f]or at least the past 2,200 years people in power have been doing something about the migration of scientists: they have had policies to promote or prevent it." Id. at 10.


3. The migration of skilled manpower can also occur between two developed countries, e.g., from the United Kingdom to the United States, or between two less developed countries, e.g., from a fourth world country to a third world country that is a member of the Organization of Petroleum Exporting Countries (OPEC). For an examination of the brain drain occurring among developing countries, see UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT [UNCTAD], CO-OPERATIVE EXCHANGE OF SKILLS AMONG DEVELOPING COUNTRIES: POLICIES FOR COLLECTIVE SELF-RELIANCE IN SKILLED MANPOWER, U.N. Doc. TD/B/C.6/AC.4/8 (1978).

A country can experience emigration and immigration simultaneously; some of its citizens may be emigrating to more developed nations at the same time that it is receiving immigrants from less developed nations. The United Kingdom, for example, loses doctors to the United States; this emigration is offset by the immigration of doctors from Pakistan and India. Adams, Introduction, in ADAMS, supra note 1, at 1, 2. Israel also experiences both emigration and immigration, but its situation is unusual in that some of its immigrants are from a more developed country, the United States. See generally P. Ritterband, Education, Employment and Migration (1978). In addition to "external" migration, that is, migration to other countries, a country may experience "internal" migration. For example, persons may migrate within a country from relatively less developed rural areas to relatively more developed urban areas. See, e.g., F. Siat, CASE STUDIES IN REVERSE TRANSFER OF TECHNOLOGY (BRAIN DRAIN): A SURVEY OF PROBLEMS AND POLICIES IN THE PHILIPPINES 15, U.N. Doc. TD/B/C.6/AC.4/5 (1977); COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH OF INDIA, CASE STUDY IN REVERSE TRANSFER OF TECHNOLOGY (BRAIN DRAIN): A SURVEY OF PROBLEMS AND POLICIES IN INDIA 15, U.N. Doc. TD/B/C.6/AC.4/6 (1977). This internal migration may be more serious for some countries than external migration.

Although this article focuses on the brain drain from the less developed countries to
less developed countries (LDCs) for two reasons. First, because skilled
and talented individuals, such as doctors, engineers, and scientists, are
perceived as key ingredients of growth, the less developed countries
fear that the brain drain is retarding their economic advancement.
Second, many of these countries, especially those which have only
recently terminated their colonial relationships, view the brain drain as
a form of further exploitation by the developed countries (DCs).
Instead of exploiting mineral and other natural resources, the devel-
oped countries are now accused of exploiting human resources. Indeed,
the brain drain has been referred to as "an 'odious bleeding' of Africa,
a continuation of the slave trade" 4 and an immoral process that is
"against the principles and purposes of international cooperation." 5

As these comments suggest, debate over the brain drain 6 from the
LDCs to the DCs 7 is frequently conducted in a highly charged atmos-
phere. Rational discussion of the causes and remedies is also impeded
by the absence of accurate, comprehensive, and uniform statistics. For
example, reliable and meaningful measures of the flow of the profes-

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4. Study, supra note 2, at 7, relating remarks attributed to the Representative of
Dahomey to the United Nations General Assembly.
5. Statement of officials of the United Arab Republic's Ministry of Education, quoted in
6. The term "brain drain" is used in this article with reluctance; it has negative impli-
cations and seems to prejudge one of the basic issues, i.e., whether the emigration of
skilled manpower is, in fact, harmful to the less developed countries. Brain drain is, how-
ever, much more convenient stylistically than "reverse transfer of technology," the cum-
berson expression thought by some international organizations to be more neutral in
connotation.
7. The terms "developed countries" (DCs) and "less developed countries" (LDCs)
have no single established definition, and no attempt is made in this article to formulate
a more precise definition. A country identified as an LDC on the basis of one set of
criteria may be characterized as a DC on another. The Organization for Economic Co-
operation and Development (OECD), the United Nations Secretariat, the UNCTAD
Secretariat, the International Monetary Fund (IMF), and the United States all use differ-
ent criteria to define LDCs. See Reisman, Developing Countries — Definitions and Data:
Or Third World, Fourth World, OPEC, and Other Countries, in 2 Studies in Taxation,
Public Finance and Related Subjects — A Compendium 483 (1978). The increasing
use of expressions such as "third world," "fourth world," and "fifth world" countries
indicates that the LDCs are no longer thought of as a homogeneous group. In fact, a third
world country may be thought of as a DC by a fourth world country. For a fourth world
country to lose manpower to a third world country may be viewed as little different in the
short term from its losing manpower to a DC. In the long term, however, emigration to a
DC is likely to be more permanent. See, e.g., Manga Institute, Case Studies in Reverse
Transfer of Technology (Brain Drain): A Survey of Problems and Policies in Sri
sional, technical, and kindred persons (PTKs), who are the heart of the brain drain, are not available. A more formidable obstacle, how-

8. The International Labour Office (ILO) has defined PTKs as follows:

Workers in this major group conduct research and apply in a professional capacity scientific knowledge and methods to a variety of technological, economic, social, industrial, and governmental problems, carry out technical tasks auxiliary to scientific research, development and practice, and perform religious, educational, legal, artistic and literary functions. Those classified in this major group perform tasks which usually require training in a specific scientific or other professional field, at a university, technical institute or similar establishment or which require creative ability in literature or art or talent in entertaining.

INTERNATIONAL LABOUR OFFICE, INTERNATIONAL STANDARD CLASSIFICATION OF OCCUPATIONS 27 (1958). Variations in this definition can be found in the immigration laws of many DCs.

For some LDCs, the brain drain may consist of businessmen, reniers, international civil servants, and employees of international organizations — persons not usually classified as PTKs. For others, emigration may be a "muscle drain" more than a brain drain. See section II(D)(1) infra; Ecevit & Zachariab, INTERNATIONAL LABOR MIGRATION, 15 FINANCE & DEV. 32 (1978). The LDCs seem unaffected by the "fame drain," that is, the emigration of actors, authors, and musicians. The fame drain is commonly associated with the United Kingdom and is said to occur in response to its high rates of personal taxation. See Hartford Courant, Sept. 25, 1977, at 9, col. 1.

9. Most reports on the brain drain stress the absence of reliable statistics. Study, supra note 2, at 4. In the LDCs themselves, reliable data are virtually nonexistent. One commentator has described the LDC statistics as ranging from "unsatisfactory to hopeless." Baldwin, Brain Drain or Overflow?, 48 FOREIGN AFF. 358, 359 (1979). To fill this gap, the establishment of manpower pools or data banks has been proposed. UNCTAD, supra note 3.

The weaknesses in the data now available are numerous. First, no records are kept on reverse migration — LDC emigrants to the DCs who subsequently return to the LDCs. This reverse migration may be substantial. Second, immigrants are identified by their place of residence, rather than by their country of birth or by their citizenship. For example, an LDC PTK entering the United States from Canada is identified as a Canadian resident, not as an LDC national. Third, the DCs fail to identify PTKs who enter as relatives of DC residents and citizens. Fourth, there is a lack of accurate data on illegal immigrants, a group that apparently includes some PTKs. Fifth, immigration records lack information on the educational level of immigrants. Sixth, the DCs have not adopted uniform definitions for their various categories of immigrants. Bhagwati, The International Brain Drain and Taxation: Survey of the Issues, in VOL. II, supra note 2, at 3, 5-6.

One scholar summarized the lack of data as follows: "When it comes to the 'brain drain,' there is indeed a great deal of ignorance and a real need for research." S. Dittrich, INTERNATIONAL EDUCATION AND EXCHANGE: A SOCIOLOGICAL ANALYSIS 31 (1970). A government official found it ironic that detailed statistics have been kept for decades on shipments of coffee, steel, and cotton but not on the flow of PTKs. See INTERNATIONAL MIGRATION OF TALENT AND SKILLS: HEARINGS BEFORE THE SUBCOMM. ON IMMIGRATION AND NATURALIZATION OF THE SENATE COMM. ON JUDICIARY, 90TH CONG., 1ST Sess. 106 (1967) (statement of Dr. D. Hornig, Special Ass't to the President and Director, Office of Science and Technology) [hereinafter cited as Senate Brain Drain Hearings].

Despite these weaknesses in the data, economists have attempted to sketch the flow of PTKs from the LDCs to the DCs. E.g., F. Sicat, supra note 3; Balacs & Gordon, The Brain Drain and Income Taxation: The U.K., in VOL. I, supra note 2, at 71; Bhagwati & Dellalfar, The Brain Drain and Income Taxation: The U.S., 1 WORLD DEV. 94 (1973), reprinted in VOL. I, supra note 2, at 33; DeVorets & Maki, The Brain Drain and Income Taxation: Canada, in VOL. I, supra note 2, at 53; Lucas, The Supply-of-Immigrants Function and Taxation of Immigrants' Incomes, in VOL. II, supra note 2, at 63; Reubens, Some

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ever, is the lack of a consensus on the costs and benefits of the brain drain. So extreme are the opinions that two polar positions can easily be identified. At one end of the spectrum is the internationalist theory or model of the brain drain; at the other is the nationalist theory or model. These two theories are particularly enlightening because they expose fundamental conflicts between the economic, cultural, and political perspectives of the DCs and the LDCs.

The internationalist theory of the brain drain, espoused primarily by DC economists, measures the effects of emigration in terms of the world economy. PTKs are seen as human capital, that is, as a factor of production. Like any other factor of production, PTKs should be free to seek out their highest rate of return. The internationalist model characterizes the brain drain as the flow of human capital from the LDCs, where its productivity is low, to the DCs, where its productivity is high. This process increases the economic welfare of the world as a whole because it results in a more efficient and productive allocation of capital. Implicit in the internationalist model is the right of PTKs to live and work in the country of their choice.

According to the internationalist theory, even the LDCs gain from the brain drain. Cases are cited in which scientists and other professionals, aided by the advanced laboratories and other sophisticated facilities of the DCs, are able to make major contributions to learning, contributions that benefit all countries, including the LDCs. The


10. The terms “internationalist” and “nationalist” are, of course, no more neutral in connotation than the term “brain drain.”

11. The internationalist and nationalist theories presented in the text are composites of the various arguments that can be identified with the respective models, and both theories may, therefore, overstate the position of individual adherents. Furthermore, because LDCs can be found at all stages of economic development, neither theory can describe the brain drain of every LDC accurately or precisely. Categorical statements, whether by the internationalists or the nationalists, are likely to have only limited relevance.

12. Professor H.G. Johnson was one of the leading exponents of the internationalist model. His theories are fully developed in Johnson, An “Internationalist” Model, in Adams, supra note 1, at 69.

13. Some internationalists recognize the social welfare effects arising from migration but dismiss them as insignificant. E.g., id. at 75–86.


16. “[W]e can cite cases — even of Nobel prize winners — who by not going home were enabled, with the aid of advanced laboratory equipment in a richer nation, to make major scientific discoveries or technical advances which will ultimately benefit all nations, their own included.” Coombs, Brain Drain from Developing Countries, in International Development 61 (H. Singer, N. deKun & A. Oroobadi eds. 1966).
greater opportunity that migration affords PTKs to exercise their skills and talents and to realize their full potential thus accrues to the benefit of the LDCs. In addition, the internationalist school points to the benefits that arise when PTKs return to the LDCs. Because of the skills they develop while in the DCs, these persons are in a better position to contribute to the advancement of their home countries. Internationalists also emphasize that the remittances sent home by PTKs living and working in the DCs supply the LDCs with sizable amounts of foreign exchange.

The internationalist model minimizes the relationship between the brain drain and the economic development of the LDCs. The brain drain is viewed not as a cause of underdevelopment, but only as a symptom or by-product of underdevelopment. Internationalists point to the surplus of educated persons in many LDCs as proof of the inability of these countries to absorb existing manpower. Indeed, the brain drain is sometimes characterized as an asset, a so-called safety valve, rather than as a liability, because it relieves the LDCs of unused personnel and thereby reduces unemployment and social discontent. In fact, some LDCs are seen as deliberately training individuals for export. Even in countries lacking a surplus of manpower, other
factors are thought to be a much greater constraint on development. These other factors typically include shortages of capital and foreign exchange, economic instability and inflation, a lack of natural resources, and the absence of a political and social infrastructure that is conducive to productivity, innovation, and efficiency. Finally, internationalists argue that even if some losses might result from the brain drain, these losses are offset by technical assistance and other forms of aid provided by the DCs to the LDCs.

The nationalist model or theory of the brain drain, which reflects the attitude of most LDCs, stands in sharp contrast to the internationalist position. In the first place, the nationalist model rejects the universalist outlook of the internationalists. From the perspective of an LDC, a skilled and educated person has an obligation to contribute to his country's development. To the nationalists, the fulfillment of this obligation is of primary importance, whether or not emigration increases the overall welfare of the world.

The nationalist school also disputes the benefits that allegedly accrue

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24. "[Development] is not likely to be promoted by concentrating attention and economic policy on the accumulation of [human] capital on the assumption that all else will follow," Johnson, supra note 12, at 86.


26. Some of our citizens will have large amounts of money spent on their education, while others have none. Those who receive the privilege therefore have a duty to repay the sacrifices which others have made. They are like the man who has been given all the food available in a starving village in order that he may have strength to bring supplies back from a distant place. If he takes this food and does not bring help to his brothers, he is a traitor. Similarly, if any of the young men and women who are given education by the people of this Republic adopt attitudes of superiority, or fail to use their knowledge to help the development of this country, then they are betraying our Union.

President Nyerere of Tanzania, quoted and reprinted in Harbison, Problems of Developing Higher Education in the Newly Developing Countries, TASK FORCE ON INTERNATIONAL EDUCATION, supra note 2, at 465, 471-72. Former Israeli Premier Levi Eshkol labeled emigrating scientists and engineers "gypsies," and a former Israeli Minister of Education called them "traitors." Adams, supra note 3, at 2. These views are shared by officials in the United Kingdom, some of whose physicians have emigrated to the United States. One of Britain's former Ministers of Health, Sir Kenneth Robinson, declared that he was not prepared to "invest thousands of pounds sterling in a medical student only to increase the membership of the American Medical Association." Quoted in H. MARGUILES & L. BLOCK, FOREIGN MEDICAL GRADUATES IN THE UNITED STATES at vii-viii (1969). Recent changes in United States immigration law may reduce the number of foreign physicians entering the United States. See note 48 infra.
to the LDCs from the brain drain.\textsuperscript{27} The LDCs argue that much of the work done by PTKs in the DCs is irrelevant to the needs of the LDCs.\textsuperscript{28} Although a PTK might be more productive in a DC, his efforts are likely to be oriented toward DC problems rather than LDC problems.\textsuperscript{29} Indeed, many PTKs never return home simply because no need exists for the skills that they have acquired in the DC.\textsuperscript{30} For example, DC-trained physicians may develop specialties in dermatology, allergies, and coronary disease but may know nothing about malaria, malnutrition, leprosy, or other diseases whose treatment may be of

\textsuperscript{27} In fact, one can go right down the line and take up nearly all of the arguments of those who consider that the brain drain generates several externalities for the native LDCs of emigration and argue that they are largely the products of arm-chair theorizing or the results of experience with intra-DC brain drain (\textit{e.g.}, from Canada to U.S.A.) where many of the important countervailing arguments are not terribly pertinent. Bhagwati, \textit{The Brain Drain Tax Proposal and the Issues}, in \textit{Vol. I}, supra note 2, at 3, 26-27.

\textsuperscript{28} In some cases, the LDCs may themselves encourage research and technology that is inconsistent with their needs. Professor Nader points to Pakistan, which allocated 10 times more money for nuclear research than it allocated for research on either the production of jute or the development of fishing resources, even though both of the latter activities generated over $300 million in foreign exchange. Nader, \textit{Technical Experts in Developing Countries}, in \textit{Science and Technology in Developing Countries} 450 (C. Nader & A. Zahlan eds. 1969).

\textsuperscript{29} An exception might be those PTKs who work for international agencies on behalf of their own governments. Professor Bhagwati, however, claims that "it is well known that many of these jobs are essentially 'prizes' awarded to civil servants who thereby get highly-paid jaunts abroad . . . ." Bhagwati, supra note 27, at 23 n.43.

\textsuperscript{30} According to one estimate, over 90\% of all Asian students in the United States never return home. Adams, supra note 3, at 1. More than 70\% of all immigrant professionals from Taiwan, Korea, India, and Iran are nonreturning students. Fortney, \textit{Immigrant Professionals}, 6 INT'L MIGRATION REV. 50, 57 (1972). The failure of these PTKs to return home is, presumably, not due solely to the nature of the skills they have acquired in the DCs. The longer a student remains abroad, the less likely he is to return home, regardless of the nature of his skills. According to Rev. W. Gibbons of Fordham University, foreign students who remain in the United States at least one year after completing their studies are inclined to stay permanently. \textit{House Brain Drain Hearings}, supra note 23, at 4. Marriage to a DC resident also lowers the likelihood that a PTK will return home. For a study of the correlation between marriage to North Americans and the brain drain to North America, see Wilson & Gaston, \textit{New Light on the Brain Drain}, \textit{New Scientist} 236 (1969).

Some LDCs offer various incentives to induce PTKs to return home. These incentives are sometimes resented by those professionals who did not emigrate. For the incentives offered by the Philippines to returning scientists, see F. SicAT, supra note 3, at 13-14; for the incentives offered by India, see \textit{Council of Scientific and Industrial Research of India}, supra note 3, at 21-23.

PTKs who choose not to return home on a permanent basis may, nevertheless, work temporarily in the LDCs under foundation grants, exchange programs, and the like. Professor Bhagwati argues that these short visits will often be resented by those professionals who remained in the LDCs and thus lead to a decrease in their productivity. Bhagwati, supra note 27, at 26.
overwhelming importance in the LDC.\textsuperscript{31} The nationalists ask how the welfare of the world will be increased if a doctor emigrates from an LDC suffering from an acute shortage of physicians and becomes a dermatologist in a DC.\textsuperscript{32}

The LDCs accuse the internationalists of misunderstanding the nature and the extent of the harm to the LDCs caused by the brain drain. The loss of the specialized disciplines and skills of such PTKs as doctors, scientists, engineers, professionals, and scholars, especially by LDCs in which these personnel are already in short supply, is felt to be a tremendous hindrance to development efforts. The nationalists argue that, for these countries, the brain drain clearly constitutes a catastrophe and an irreplaceable loss of resources. The nationalist school contends, further, that the brain drain is injurious in a less obvious way, one that is admittedly difficult to measure. Educated persons play a crucial role in terms of their contribution to an LDC’s political, social, and cultural milieu,\textsuperscript{33} and the brain drain therefore deprives an LDC of just those persons who are the most likely to “set the tone of society, establish national values and goals,”\textsuperscript{34} and bring about the “structural and institutional changes necessary if a nation is to become a modern state.”\textsuperscript{35} The brain drain prevents the creation and dissemination of a spirit of intellectualism and scientism, a spirit that is vital to economic growth.\textsuperscript{36} In LDCs having a surplus of skilled

\textsuperscript{31} “The most difficult problem relating to the training of foreign physicians from developing countries is the frequency with which the U.S. training programs lack relevance to the trainee’s future responsibilities in his own country.” West, \textit{Foreign Interns and Residents in the United States}, 40 J. Med. Educ. 1110, 1128 (1965).

\textsuperscript{32} Stated more technically, the argument is that the marginal social product of a PTK in an LDC far exceeds whatever increase in the economic welfare of the world might arise from his emigration to a DC. For a more complete discussion, see Bhagwati & Rodriguez, \textit{Welfare — Theoretical Analyses of the Brain Drain}, in Vol. II, \textit{supra} note 2, at 85; Bhagwati & Delfah, \textit{supra} note 9, at 33–34.

\textsuperscript{33} “In a profound sense, medical and other scientifically trained persons occupy pivotal positions in that they help change values, a necessary condition for changing institutions.” Nader, \textit{supra} note 28, at 457.

\textsuperscript{34} \textit{Study}, \textit{supra} note 2, at 138.

\textsuperscript{35} \textit{Committee on the International Migration of Talent, The International Migration of High-Level Manpower: Its Impact on the Development Process} 689 (1970). A number of scholars from both the DCs and the LDCs argue, however, that the brain drain can awaken a country to the need for self-examination and thus stimulate social change. \textit{House Brain Drain Hearings, supra} note 23, at 54 (statement of Professor W. Adams); A. Said, \textit{Brain Drain: The Developing Countries — Causes, Ramifications and Prospects} 26 (1970); Patinkin, \textit{supra} note 25, at 98–99.

\textsuperscript{36} Developing countries need not only specific skills but also leadership and organizing ability. A continuing drain of highly trained people can over the long run add to a sense of national frustration, . . . lower the sense of worth of those who
manpower, the loss of an educated person's political, social, and cultural contributions may outweigh the loss of his specific skills. Characterizing the brain drain as an asset because it relieves the LDC of surplus manpower thus ignores the impact of this other loss.\textsuperscript{37}

The LDCs have other grounds for challenging the internationalists' characterization of the brain drain as an asset. The LDCs argue that the opportunity to immigrate encourages individuals to obtain skills and pursue disciplines that increase their attractiveness as potential DC immigrants, regardless of whether such skills are needed in the LDCs. If the opportunity to immigrate did not exist, individuals would pursue careers that provided them with skills marketable in their home countries, skills that satisfy LDC needs rather than DC needs.\textsuperscript{38} Further, the nationalist model regards a pool of professionals, even if underemployed temporarily, as a reserve that can be tapped as the need arises in the future.\textsuperscript{39}

The nationalist model stresses the benefits accruing to the DCs from immigration: the contributions made by foreign scientists, doctors, engineers, and professionals to DC technology and learning; the savings arising from the DCs' not being fully responsible for training and educating these individuals;\textsuperscript{40} and the availability of these individ-

\textsuperscript{37} Some observers suggest that an LDC whose PTKs emigrate suffers another loss, a loss of national prestige. \textit{Study}, supra note 2, at 150. This loss is said to affect an LDC's standing in the international community. Others maintain, however, that a PTK who works abroad enhances the prestige and reputation of his country. \textit{Id.} at 150-51. Professor Bhagwati argues that PTKs abroad can create the feeling among those who remain in the LDCs that serious work and recognition are feasible only in the DCs. Bhagwati, supra note 27, at 26.

\textsuperscript{38} According to Professor Bhagwati, if PTK physicians did not have the opportunity to immigrate, many who have congregated in the urban areas in anticipation of emigrating might leave the urban areas and practice medicine in the rural areas, where a critical need for their services exists. The possibility of emigration may thus prevent this highly desirable internal redistribution of medical services from occurring. Bhagwati, supra note 27, at 16. See generally Hamada & Bhagwati, \textit{Domestic Distortions, Imperfect Information and the Brain Drain}, in \textit{Vol. II}, supra note 2, at 139.

\textsuperscript{39} \textit{Study}, supra note 2, at 131.

\textsuperscript{40} Professor Kelly M. West of the University of Oklahoma Medical School estimates that the United States would have to build and operate 12 new medical schools to produce the same manpower that is being derived through immigration. According to Professor West, this "foreign aid" that the United States receives through immigration is equal to the total cost of United States medical aid to foreign nations. Adams, supra note 3, at 4. The situation is similar in other DCs. Togo has sent more physicians and professors to France than France has sent to Togo; the number of medical specialists from the Commonwealth countries working in Britain is greater than the number of British specialists
uals to reduce DC shortages in certain key areas, such as medicine. The LDCs see themselves as making a gift to the DCs of their educated elite—persons who were trained at considerable expense as a public investment. They resent that their resources are being used to enrich the already rich DCs.

Finally, the LDCs view foreign aid, including technical assistance provided by the DCs, as an unsuccessful attempt to offset the harm caused by the brain drain. They maintain not only that a substantial portion of foreign aid is simply disguised military assistance, but also that the countries receiving economic development assistance are not the ones that suffer from the brain drain. The LDCs also fear that the DCs are retrenching on their commitments to foreign aid. Most important, however, they question whether the developmental programs instituted by the DCs can ever result in sustained economic growth as long as the brain drain reduces the pool of indigenous talent available to carry them out.

The extremes from which the nationalists and internationalists view the costs and benefits of the brain drain are also reflected in their opinions on the causes of migration. The internationalists emphasize what could be called “push” factors, that is, forces originating within the LDCs which induce emigration. Among the typical push factors are the following: (1) an educational system that fails to train students in disciplines relevant to the needs of the LDC and therefore produces a surplus of educated persons who are underemployed, frustrated, and discontented; (2) an inadequate scientific and technological infrastructure; (3) educational institutions that are rigid and tradition-oriented and that lack qualified teachers and graduate research working in the Commonwealth. *Id.* See also Cong. Rec. S11,253 (daily ed. July 1, 1976) (remarks of Sen. Beall) (D-Md.).


42. Adams, *supra* note 3, at 5.


44. For a general discussion of the push factors, see *Studv, supra* note 2, at 195–210.

45. For a discussion of the political and the economic forces that may distort educational policies in an LDC, see Myint, *supra* note 20, at 239–40.
facilities; the absence of a cultural and intellectual community; a rigid social structure that perpetuates class barriers; racial, tribal, religious, and economic discrimination; the lack of a meritocracy; resistance to innovation; a lack of upward mobility; political oppression and instability; a low standard of living and unpleasant working conditions; and the absence of career opportunities and advancement.

The nationalists, by comparison, focus on "pull" factors, that is, forces originating in the DCs which encourage immigration. Many of the pull factors are simply the converse of certain push factors, such as higher salaries, better research facilities, and greater opportunities for advancement in the DCs. Other pull factors, however, are thought to be the result of conscious policy decisions that are detrimental to the LDCs. For example, the LDCs view the shortage of doctors in the United States, a pull factor, as the result of the policy of the American Medical Association (AMA). According to this view, the AMA purposefully restricts the supply of United States-trained doctors, thereby artificially creating a shortage that is partially filled by persons from the LDCs.

Perhaps what disturbs the LDCs the most is the active competition among the DCs for skilled immigrants. As evidence of this competition, the LDCs cite statements by DC officials, such as former Secretary of State Dean Rusk: "We are in the international market of brains."
The views of Canadian officials are similar: "The high cost of training professional and skilled people—engineers, doctors, skilled technicians, etc.—is a measure of the benefit derived upon [their] arrival in Canada . . . . Other countries are in competition with us for immigrants." 50 The reformulation of immigration policies by some DCs, though not undertaken for the purpose of attracting PTKs, has nonetheless had that effect.51 Dr. Charles Frankel, former Assistant Secretary of State, admits that "there is . . . a prima facie case for the proposition that our new immigration policies may aggravate the problems of many countries that are seeking to progress, and that need leaders and trained people to show the way." 52 Some LDCs find it hypocritical that the DCs offer them technical assistance with one hand and lure away their PTKs with the other.53

The disparate perspectives of the LDCs and the DCs lead not only
to disagreement about the causes of the brain drain, but also to disagreement about remedies. In many LDCs, the individual is often viewed as existing for the good of the state and as having an obligation to contribute to the overall welfare of the country. If this attitude prevails, emigration is likely to be regarded as a privilege, rather than as a right. Under these circumstances, restricting emigration appears to be a natural solution to the brain drain. The restrictions can take many forms, the most extreme being an outright ban on the emigration of professionals. Less severe would be a requirement that newly graduated professionals work for the government for a certain period of time or a requirement that emigrants repay the costs of any publicly provided education before leaving. Still another approach is illustrated by India’s ban on the holding of the AMA’s Educational Council for Foreign Medical Graduates (ECFMG) examination, which is a prerequisite for immigration to the United States as a physician.

Restrictions on emigration are rarely implemented satisfactorily. Quite often, they are vehemently opposed by individuals within the LDCs. In more than one case, domestic protests have been successful in forcing a rescission of the restrictions. Moreover, emigration controls are denounced by most DCs because they are committed to the principle of the free movement of all individuals. Unlike the LDCs, the DCs view emigration as a right, not as a privilege. The right of an individual to self-realization and fulfillment has priority over any obligation that he might have as a member of a state. Most DCs are therefore opposed to LDC restrictions on emigration. Similarly, they

55. For examples, see Council of Scientific and Industrial Research of India, supra note 3, at 24; Marga Institute, supra note 7, at 11–13; S. Naseem, supra note 23, at 28–29.
56. An outright ban on emigration might not achieve the desired effects if, out of bitterness and frustration, a PTK refused to devote himself fully to his country’s development.
57. Apparently, many Indian doctors circumvented the law by taking the examination abroad. Bhagwati, supra note 27, at 8. The prohibition proved to be unsuccessful and was soon dropped. R. Stevens & J. Vermeulen, Foreign Trained Physicians and American Medicine 7 (1972). The Philippines also considered banning the ECFMG examination, but this proposal was never adopted. F. Sicat, supra note 3, at 9. When Sri Lanka (then Ceylon) was threatened with a polio epidemic in 1971, it did succeed in prohibiting the emigration of physicians. Bhagwati, supra note 27, at 8.
58. The Berlin Wall is one of the more blatant and visible attempts to constrain a brain drain by physical means. Data on East European salary differentials imply that the Berlin Wall has been relatively ineffective in preventing PTKs from emigrating. Bhagwati, supra note 27, at 27.
59. Id. at 9.
are unsympathetic to LDC pleas that they change their immigration laws or adopt policies designed to discourage the brain drain.

DC remedies focus on reducing the push factors that encourage the brain drain. This approach is obviously more palatable than the imposition, by either the LDCs or the DCs, of restrictions on emigration. Naturally, few LDCs would deny that improved living conditions, higher salaries, better research facilities, and greater career opportunities would encourage more PTKs to remain at home. Indeed, whether the brain drain is viewed as a symptom of underdevelopment or as its cause, economic growth will moderate the push factors and therefore attenuate the urge to emigrate. Undoubtedly, the DCs can help the LDCs reduce the push factors through international development efforts, but the effect of these efforts will obviously not be felt for some time. The LDCs fear that they are caught in a vicious circle: unless the brain drain can be reduced, development will not occur; yet without development, the brain drain will not subside.

The DCs’ lack of a specific and immediate plan of attack has reinforced LDC suspicions that the DCs are indifferent to their plight. The LDCs point out that current interest in PTK emigration centered initially on emigration from Britain to the United States and not on emigration from the LDCs. In addition, many LDCs are concerned...
about the vitality and extent of DC commitments to international development assistance. An even more cynical view is that the DCs have an interest in the continuance of the brain drain because of the benefits accruing to them as the countries of immigration. Some LDCs accuse the DCs of hypocritically arguing for unrestricted emigration while simultaneously shaping their own immigration policies to admit skilled rather than unskilled persons. The DC call is no longer give me "your tired, your poor, your huddled masses," but, rather, give me "your alert, your privileged, your brainy, your talented."

The inability of the DCs and the LDCs to agree on the causes and consequences of the brain drain has frustrated attempts at international cooperation. The DCs and the LDCs appear on a collision course. The LDCs are increasingly articulate in their unwillingness to tolerate conditions that they consider adverse to their interests, and they are no longer content to implement measures unilaterally. The DCs may not be sympathetic to LDC pleas for intervention, but the realities of international politics dictate that some satisfactory DC response be forthcoming.

A recent contribution to the brain drain literature by Professor Jagdish Bhagwati of the Massachusetts Institute of Technology has provided the DCs and the LDCs with a center of focus. Professor Bhagwati formulates the moral principle that, in a world of imperfect mobility of labor, individuals who are able to migrate from the LDCs to the DCs ought to contribute to improving the welfare of those left behind by sharing their increased income and other benefits. His argument, more fully developed elsewhere, is the strongest when university education in an LDC, which is usually required for DC immigration, is accessible only to the children of the political and

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note 1 supra, the term "brain drain" apparently made its contemporary appearance in a 1962 report by the British Royal Society, concerning the emigration of physicians and engineers from the United Kingdom to the United States. Study, supra note 2, at 11.

64. "Brain drain had never been a great national issue — not even a national issue — perhaps because the United States gained and other countries suffered the losses." Study, supra note 2, at 235-36.

65. A report by the United Nations Secretary-General described the DCs as exhibiting "a universal preference for the highly trained, the elite immigrant." Report of the Secretary-General, supra note 2, at 7. The United States, the United Kingdom, Canada, and Australia all have immigration laws that favor PTKs.


67. Professor Bhagwati's proposal was first sketched in Bhagwati, The United States in the Nixon Era: The End of Innocence, 101 Daedalus 25 (1972), and later refined in Bhagwati & Dellafera, supra note 9.

68. Bhagwati, International Migration of the Highly Skilled: Economics, Ethics and Tax Arrangements (publication forthcoming in 1 Third World Q., No. 2 (June 1979)); Bhagwati, supra note 9, at 9-12; Bhagwati, supra note 27, at 12, 14, 22.
economic elite. Indeed, in some LDCs, higher education may serve to perpetuate an inegalitarian social and economic order. If the universities in an LDC purposely conduct classes in a language not spoken by all social classes, language becomes a tool of economic and cultural oppression in that it denies certain groups access to higher education. Whatever its causes, however, the lack of equal educational opportunity is widespread in the underdeveloped world. According to Professor Bhagwati, those individuals who enjoy the privilege or advantage of higher education and are therefore able to emigrate should share their increased benefits with those lacking the same opportunities for educational and economic advancement. Professor Bhagwati’s principle is thus independent of whether losses are incurred by the LDC because of the brain drain. To the extent that such losses occur, Professor Bhagwati’s position is reinforced.

To implement his proposition, Professor Bhagwati recommends that a tax be levied on the income earned by PTKs within the DCs and that the revenue be channeled back to the LDCs. By lowering the salaries received by PTKs in the DCs, the tax would make the wages paid to PTKs resident in the LDCs more competitive and would therefore reduce one of the push factors. In addition, the revenue from the tax would to some extent compensate the LDC for any losses suffered through emigration. Professor Bhagwati also formulates the moral principle that the DCs of immigration should share their benefits with the LDCs of emigration. This principle could be implemented through

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70. Professor Bhagwati also defends his proposal on the grounds that DC immigration restrictions, in combination with the large salary differentials that exist between the DCs and the LDCs, imply that PTKs enjoy windfall gains in the nature of economic rent. These rents, according to Bhagwati, “can be taxed to social advantage without entailing any harmful effects through distortion of resource-allocational incentives.” J. Bhagwati, *supra* note 68.
72. See note 124 infra.
73. Professor Bhagwati argues that it is “somewhat self-serving and hypocritical for us to ask the rich countries to levy taxes on their own citizens to finance foreign aid to our countries, while not undertaking any direct tax burden ourselves.” J. Bhagwati, *supra* note 68. Professor Jan Tinbergen endorsed Professor Bhagwati’s proposal, observing “it is my hope that this tax might also help to convince public opinion in the rich countries that more has to be done in the field of development co-operation.” Quoted in J. Bhagwati, *supra* note 71, at 32 n.45.
74. Professor Bhagwati defends this approach on the grounds that if the rich (the DCs)
a tax or special assessment on host DCs. At a minimum, however, the gains accruing to the DCs impose an obligation on them to cooperate with the LDCs in taxing the income earned by PTKs.

Professor Bhagwati’s proposal to tax emigrant PTKs was discussed and analyzed at a conference held in Bellagio, Italy, in 1975. The conference was an interdisciplinary venture, bringing together both lawyers and economists from various countries. The authors prepared a discussion draft for use at the conference which explored not only Professor Bhagwati’s proposal, but also various other tax measures for intervening in the brain drain. An expanded version of that discussion draft was subsequently published. The United Nations Conference on Trade and Development (UNCTAD), which has been studying the brain drain for a number of years, responded by requesting a further inquiry, and, in February, 1978, the authors’ findings were debated in Geneva at an UNCTAD conference. Although no benefit because of the poor (the LDCs), they should transfer part of their gains to the poor. Bhagwati, supra note 27, at 12, 17. He contrasts this principle with the traditional justification for foreign aid — the principle of redistribution per se. Id. at 14 n.27.

75. See section II(E) infra.

76. The conference was held at the Villa Serbelloni, February 15–19, 1975, and was supported by a grant from the Rockefeller Foundation, which was administered by the Institute for World Order. Some of the papers presented at this conference were published in 3 WORLD DEV. (1975); 2 J. DEV. Econ. (1975); Vol. I, supra note 2; Vol. II, supra note 2.


78. The brain drain has been under study by UNCTAD’s Committee on Transfer of Technology. At its first session in 1975, this committee adopted resolution 2 (I), paragraph 9 of which reads: Requests the Secretary-General of UNCTAD:

(a) In pursuance of Conference resolution 39 (III) and Economic and Social Council resolution 1904 (LVII) of 1 August 1974, and in full co-operation with the Under Secretary-General for Economic and Social Affairs, to carry out studies assessing the magnitude, composition, causes and effects of the outflow of trained personnel from the developing countries;

(b) To convene a group of governmental experts to examine the studies, and to submit, if possible, recommendations to the Committee on Transfer of Technology at its second session.

UNCTAD, Report of the Group of Governmental Experts on Reverse Transfer of Technology, U.N. Doc. TD/B/C.6/28 (1978), at 2. At its fourth session, in 1976, UNCTAD adopted resolution 87 (IV) in which it recommended “that all countries, particularly those benefiting from the brain drain, should, in the light of the studies assessing the magnitude, composition, causes and effects of the outflow of trained personnel from developing countries . . . consider what measures may be necessary to deal with the problems posed by such outflow . . . .” The authors’ report, R. Pomp & O. Oldman, Consideration of Policy Issues at the International Level, Legal and Administrative Aspects of Compensation, Taxation and Related Policy Measures: Suggestions for an Optimal Policy Mix, U.N. Doc. TD/B/C.6/AC.4/7 (1977), was commissioned in accordance with these resolutions.

79. Participants at the conference included representatives from Algeria, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Colombia, Ecuador, Egypt, Finland, France,
specific action was taken at that meeting, UNCTAD is continuing its study of this report, a revised version of which is presented in this article.

II. THE PROPOSALS

Each of the proposals discussed below for intervening in the brain drain would provide revenue for use in the LDCs. The manner in which this revenue would be controlled and distributed has never been fully dealt with, either at the Bellagio conference or at the UNCTAD conference. One approach, envisioned by the authors, is the creation of a set of organizations, called brain drain funds, which are discussed in section A.

The proposals set forth are of three types. The first, which is discussed in section B, is that tax incentives be offered to encourage PTKs, their employers, and other concerned persons and organizations to make voluntary contributions for use in the LDCs. This proposal is attractive because of the ease with which it can be implemented and because participation is entirely voluntary. The second proposal is that a special tax be levied on emigrant PTKs, and two variations are presented in sections C and D: a tax levied by the LDC and a tax levied by the United Nations. The analysis in section C of an LDC tax on emigrant PTKs suggests that its enforcement may not be practicable for many countries because of administrative obstacles and that such a tax could be formulated and implemented more successfully by an international organization. This variation—an international brain drain tax levied by the United Nations—is explored in section D. The final proposal, a United Nations assessment on the DCs of immigration, is outlined in section E.

Gabon, the German Democratic Republic, the Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Italy, Japan, Jordan, Kenya, Kuwait, Lebanon, Madagascar, Malaysia, Malta, Mexico, The Netherlands, Nigeria, Norway, Pakistan, Peru, the Philippines, Romania, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States, Venezuela, Yemen, Yugoslavia, Zaire, the Department of Economic and Social Affairs of the United Nations Secretariat, the United Nations Industrial Development Organization, the United Nations Environment Programme, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the Council of Arab Economic Unity, the Intergovernmental Committee for European Migration, the Organization for Economic Cooperation and Development, the Organization of American States, the Commission of the Churches of International Affairs, the International Chamber of Commerce, and the World Federation of Free Trade Unions.
A. Brain Drain Funds

The attractiveness of the tax proposals is dependent on the articulation of acceptable goals for the use of the revenue raised and on the manner in which the goals would be implemented. The spending goals must be related to the principal motivation behind the tax proposals—concern over the brain drain. The Bellagio conference made it apparent that little support could be expected if the proposals were viewed as merely augmenting the coffers of the LDCs. Many participants were skeptical about leaving the formulation and implementation of spending objectives to the discretion of the LDCs. Once revenue is transferred to an LDC, the enforcement of restrictions on its use might become difficult. Moreover, the DCs are likely to be unreceptive to the direct transfer of funds to unpopular or oppressive LDC regimes. Instead of funds being transferred directly to the LDCs, a set of organizations, called brain drain funds (BDFs), interposed between the DCs and the LDCs, might be created. The BDFs would receive, control, and disburse on approved LDC-oriented projects the revenue raised by voluntary contributions,\(^8\) by a United Nations tax on emigrant PTKs,\(^8\) and by a United Nations assessment on host DCs.\(^8\)

No attempt is made to provide a blueprint for BDFs, because they could obviously be structured and operated in numerous ways. They could, for example, be created by the United Nations, or by a regional organization, such as the European Economic Community or the Organization of American States, or by individual countries. Although the legal characteristics of the BDFs might vary, they would all be nonprofit in the sense that the funds received would be used only for certain purposes and not for private gain. Their governing structures would be specified in their charters, and their powers to receive and disburse funds would be clearly defined. The organization of the BDFs would be tailored to promote efficient decision making and to expedite the distribution of funds in accordance with stated objectives.

The BDFs could have, as one of their objectives, the identification and reduction of the push factors that encourage the brain drain. Consistent with this objective would be the use of their revenues for

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\(^8\) See section II(B) \textit{infra.}
\(^8\) See section II(D) \textit{infra.}
\(^8\) See section II(E) \textit{infra.} Obviously, the revenue from an LDC tax on emigrant PTKs, see section II(C) \textit{infra}, would flow to the LDC directly, rather than indirectly, through BDFs.
general developmental purposes or for the support of university research facilities within the LDCs. Special programs could also be designed. One possibility would be a study directed at countering the brain drain itself. Another program might focus on training individuals to carry out that special study. The authors' preferences are for research and training that would lead to the development of new technologies by the LDCs. Often, the transfer of existing technology from the DCs is not a satisfactory solution to the problems facing the LDCs; building the capacity of an LDC to develop its own technology is of far more value in the long run.

The BDFs might be specialized by country, by type of project, or by some combination of the two. In addition, revenues flowing into them could be earmarked for specific uses and specific countries. Precedent for the earmarking of voluntary contributions, one of the proposed sources of BDF revenue, already exists in the operation of the United Nations Children's Emergency Fund (UNICEF): donors may stipulate that their contributions be used for particular objectives, projects, and countries on the UNICEF agenda. The idea of granting persons control over the use of their funds offers new opportunities for experimentation in dealing with the entire complex of brain drain problems. An additional advantage of earmarking is that the funds are not likely to flow to LDCs having reprehensible domestic policies. For this


The United Nations World Plan of Action for the Second Development Decade contains a list of specific research problems of special relevance to the LDCs, for example, the development of new sources of edible protein; the development of pest controls suitable for small farmers; the use of tropical hardwoods and fibers for pulp and paper production; and the control of bilharzia. H. Singer & J. Ansari, Rich and Poor Countries 220 (1977). In general, BDFs could promote research on the food, health, population, energy, environmental and natural resource problems of the LDCs.


85. Because the governments of these LDCs would not have control over BDF revenue, some funds might be used to counteract their objectionable domestic policies. BDFs thereby have an advantage over traditional DC foreign aid programs, which ordinarily transfer resources, directly or indirectly, to LDC governments. These governments usually seek to maintain the status quo and have no inclination to use foreign aid to effectuate fundamental changes that might threaten their own entrenched positions. Even worse, some suspect that DC foreign aid often finds its way into the pockets of the LDC's ruling elite. As Professor Richard Gardner states bluntly: "[T]he people of the United States are not interested in transferring wealth from the poor people in rich countries to the rich people in poor countries." New Structures for Economic Interdependence 53 (R. Gardner ed. 1975). To the extent that BDFs can pursue their spending objectives without the cooperation of the LDC government, they have the potential for encouraging social and economic reforms.
reason, earmarking should increase the acceptability of the different revenue-raising proposals.

Although BDFs could be organized and operated unilaterally by the DCs, their widespread creation and adoption could be stimulated by specific international action. One approach would be for an international organization, such as the United Nations, to promulgate guidelines or set forth models for the organization of brain drain funds. BDFs satisfying those guidelines could then be chartered under the domestic laws of various countries. United Nations resolutions or conventions might recommend that BDFs be created in accordance with the models or guidelines. Or, the United Nations could expand the authority of some existing group, such as UNICEF, so that it could organize a special division to operate one or more BDFs.

B. Tax Incentives for Voluntary Contributions

Because controversy surrounds the causes and effects of the brain drain, the justice of any proposal that uses the tax system in a coercive manner, such as Professor Bhagwati's tax on PTKs, will be strongly challenged. In preparing the discussion draft for the Bellagio conference and the report for UNCTAD, the authors therefore sought an alternative means of raising revenue, one that would be less controversial. Accordingly, the authors proposed that funds be raised through voluntary contributions. No doubt some individuals, in recognition of a moral obligation, could be expected to make such contributions. Similarly, business firms that actively recruit or employ LDC professionals might also donate.

The motivation to make voluntary contributions could be enhanced by offering tax advantages to donors. Two of the incentives that can be used are tax deductions and tax credits. Tax deductions are offered as an incentive for charitable contributions in some DCs.

86. Much debate has centered around the propriety of using tax incentives to encourage charitable contributions. This controversy has spawned a voluminous literature. For a small sampling, see FILER COMMISSION, GIVING IN AMERICA: TOWARD A STRONGER VOLUNTARY SECTOR, REPORT OF THE COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS (1975); S. SURREY, PATHWAYS TO TAX REFORM 223-32 (1973); TAX INSTITUTE OF AMERICA, TAX IMPACTS ON PHILANTHROPY (1972); Andrews, Personal Deductions in an Ideal Income Tax, 86 Harv. L. Rev. 309, 344-75 (1972); Bittker, Charitable Contributions: Tax Deductions or Matching Grants?, 28 Tax L. Rev. 37 (1973); McDaniel, Federal Matching Grants for Charitable Contributions: A Substitute for the Income Tax Deduction, 27 Tax L. Rev. 377 (1972).

87. Professor Andrews would object to characterizing the deduction for charitable
for example, the United States, Canada, and France (but not the United Kingdom). Individuals and corporations in those countries are allowed to deduct from their taxable income the amount contributed to qualifying charitable organizations. Under a progressive personal income tax, the greater an individual's income, the higher the rate of tax paid on marginal increments of income. Therefore, the greater the income, the larger the tax saving produced by a deduction for a charitable contribution. For example, an individual in the 20% marginal tax bracket who deducts a $100 contribution realizes a tax saving of $20, whereas an individual in the 30% bracket realizes a tax saving of $30 from deducting the same amount. In other words, the greater an individual's income, the greater the tax inducement to donate to qualifying charitable institutions.

A tax incentive may also be provided in the form of a direct reduction in the income tax otherwise due, rather than in the form of a deduction from income. Such a reduction, which is called a tax credit, might, for example, be equal to 20% of the amount donated. For any person donating $100, such a credit would produce a tax saving of $20, regardless of his marginal tax bracket. Thus, tax credits give equal tax benefits to taxpayers contributing the same amounts, whereas tax

contributions as a tax incentive. According to Professor Andrews, the deduction can be defended as a refinement of the notion of an ideal personal income tax. See Andrews, supra note 86, at 344–75.

89. [1978] CAN. MASTER TAX GUIDE (CCH) ¶ 8070.
90. L. HALPERN, TAXES IN FRANCE 67 (1974).
91. This discussion concentrates on the income tax. Once the principle of using tax incentives to encourage contributions to BDFs has been established for the income tax, similar techniques could be extended to the estate and gift tax.
92. The amount qualifying for the deduction is typically subject to a ceiling. For example, in the United States, the ceiling for contributions by individuals is 50%, 30%, or 20% of the taxpayer's contribution base (which is usually adjusted gross income), depending on the nature of the contribution, the identity of the recipient organization, the form in which the contribution is made, and the use made of the contributions by the recipient. Corporations are subject to a ceiling of 5% of taxable income (computed with certain adjustments). I.R.C. § 170. For a short summary of the complex statutory rules, see S. SURREY, W. WARREN, P. MCDANIEL & H. AULT, FEDERAL INCOME TAXATION, VOL. I, at 579–85 (1972). For a general discussion, see H. BOUVAERT, TAX PROBLEMS OF CULTURAL FOUNDATIONS AND OF PATRONAGE IN THE EUROPEAN COMMUNITY (1976).
deductions give larger tax benefits to high-income taxpayers than to low-income taxpayers.⁹⁴

Ironically, tax incentives for charitable contributions would have little impact on certain individuals who represent a significant proportion of the brain drain—employees of international organizations, such as the United Nations, the World Bank, and the International Monetary Fund. The laws of most DCs exempt the wages and salaries of these employees from taxation;⁹⁵ many of them will therefore have little, if any, DC tax liability that can be affected by the use of tax incentives.⁹⁶ Although some of these employees would contribute even without tax inducements,⁹⁷ the revenue potential of donations from this large and generally well-paid group is so great that the use of special incentives should still be explored. Perhaps the International Civil Service Commission’s complex scheme for compensating these employees could be adjusted to account for their donations. Or, if a United Nations tax on PTKs⁹⁸ is adopted and extended to these employees, then a credit could be given against this tax for a portion of their contributions. Approaches similar to these could be examined by the International Civil Service Commission.

The funds produced by voluntary contributions could be a major source of revenue for BDFs. The use of tax incentives to encourage donations has a number of appealing features. First, the contributions are entirely voluntary. In a political sense, this approach is therefore

⁹⁴ A taxpayer could be given a choice, under specified limitations, of claiming the donation as a deduction from his income or of crediting a percentage of the donation against his liability. Cf. I.R.C. §§ 41, 218 (taxpayers given choice between credit and deduction for political contributions). The deduction for political contributions has been repealed by the Revenue Act of 1978, Pub. L. No. 95-600, § 113(a), 92 Stat. 2763 (repealing I.R.C. § 218) (1977 version)).
⁹⁵ In the United States, employees of a foreign government are also exempt if the foreign government provides a similar exemption for employees of the United States government. The exemption is not available to United States citizens unless they are also citizens of the Philippines. The exemption applies only to wages, fees, and salaries received for services performed for the international organization or for the foreign government. I.R.C. § 893.
⁹⁶ The tax incentive would be valuable only to an employee who had substantial amounts of unearned income which was taxable by the DC. See note 95 supra. Although the discussion in the text focuses on tax incentives adopted by DCs, LDCs could adopt similar provisions. A PTK who emigrated to a DC would ordinarily be outside the tax jurisdiction of his former LDC, however. See section II(C)(1) infra. Therefore, unless the PTK had unearned income from LDC sources which was taxable by the LDC, an LDC tax incentive would not be effective.
⁹⁷ In Geneva, United Nations employees have formed a “1% club,” in which members pledge to donate 1% of their salaries for developmental purposes.
⁹⁸ See section II(D) infra.
more attractive than a coercive measure, such as a tax on PTK income. Second, a concerned DC can unilaterally create a BDF and adopt its own set of incentives to encourage donations, and no concerted international action is necessarily required. Third, the principle of using incentives to encourage contributions is already accepted in many DCs. These DCs can extend existing measures to BDFs without traumatic changes in their laws. Including them within the group of qualifying charitable organizations is a reasonable means of accommodating the special preferences of PTKs and other interested persons. In the United States, for example, BDFs could easily be created under existing law. Indeed, charitable organizations already exist for the purpose of channeling funds for use abroad. Fourth, the taxpayers qualifying for tax benefits need not be restricted to PTKs resident in the DCs. Any person, organization, or corporation could be eligible for the tax incentives. Non-LDC individuals and business firms, in recognition of moral obligations or of economic benefits received from the brain drain, might therefore make donations.

C. LDC Taxation of Emigrant PTKs

Professor Bhagwati's proposal to levy a special tax on the earnings of PTKs who emigrate from the LDCs to the DCs was vigorously

99. The revenue loss resulting from the adoption of a tax incentive for contributions to a BDF could be regarded as a contribution by the host DC and creditable against a United Nations assessment on the DC, discussed in section II(E) infra. Measuring the amount of revenue loss, however, is complicated. Multiplying the amount of a contribution by the donor's marginal tax bracket would overstate the revenue loss to the extent that BDFs merely divert donations that would have gone to other charitable organizations.

100. If international action were desirable, the United Nations could easily incorporate the use of tax incentives for charitable contributions into any program it adopted for encouraging BDFs. The United Nations could, for example, survey existing practices to determine the full variety of tax techniques available for inducing charitable donations. The United Nations could then recommend model legislation which countries, especially those not familiar with tax incentives for contributions, could be encouraged to adopt. See, e.g., INTERNATIONAL STANDING CONFERENCE ON PHILANTHROPY [INTERPHIL], DRAFT EUROPEAN CONVENTION ON THE TAX TREATMENT IN RESPECT OF CERTAIN NON-PROFIT ORGANIZATIONS (1971).

101. The United States is somewhat unusual, however, in allowing a deduction for charitable contributions even where the recipient organization transfers funds abroad. Most other countries require that the recipient organization use the contributions domestically in order for the donor to be eligible for tax benefits. For the United States rules, see Rev. Rul. 66-79, 1966-1 C.B. 48; Rev. Rul. 71-460; 1971-2 C.B. 231.

102. This proposal should not be confused with an exit tax, which would be paid at the time of emigration. Because an exit tax is levied on the emigrant only once, it typically involves a payment of some magnitude. In a country in which private savings are not substantial, an exit tax can effectively prohibit emigration, unless the individual has access to foreign capital through friends or relatives abroad. The proposed tax, unlike an exit
debated at the recent UNCTAD conference, where it was warmly received by the LDC participants.\textsuperscript{103} The LDCs saw the tax as a way in which a PTK can partially satisfy his obligation to contribute to his country’s development. The LDCs compared the salaries and living conditions enjoyed by PTKs in the DCs with those existing at home and concluded that emigrant PTKs clearly have the economic capacity to bear an additional tax burden. The LDCs also felt that the DCs have both the obligation and the capability to assist in administering a special tax on emigrant PTKs. These views were not shared by the DCs, however, which were concerned that the proposed tax would have an adverse effect on emigration.\textsuperscript{104} Many DCs felt that any hindrance to emigration was unacceptable if that emigration was

tax, would be levied annually, only after emigration had already occurred. If the rates were chosen carefully, the tax would probably not affect levels of emigration. See note \textsuperscript{104} infra.

\textsuperscript{103}. According to Professor Bhagwati, his proposal has been warmly received at various third world congresses and conferences. Bhagwati, supra note 27, at 4 n.8. He concludes:

\textquotedblleft The proposal appealed to the moral instincts of LDC intellectuals at many levels. Thus it seemed fair that those who were skilled and emigrated should share some of their gains with the LDC-world they came from, much the way that progressive taxation redistributed some income from the rich to the poor within a nation. Further, it seemed like an attractive “link” proposal to raise revenue for developmental spending in the LDCs when the foreign aid flows were declining . . . . \textsuperscript{[1]}It was a “global tax,” with DCs . . . and LDCs involved in a concerted tax effort under international auspices, and this made the tax proposal an eminently appropriate policy option for inclusion on the agenda for a new international economic order which recognized the interdependence of LDCs and DCs and the consequent necessity for coordinated policy measures.

\textsuperscript{104} infra.\textsuperscript{104}. Economists claim that the tax is unlikely to have any significant impact on emigration. E.g., Krugman & Bhagwati, supra note 43; Lucas, supra note 9; Psacharopoulos, supra note 43. The various restrictions that each DC imposes on entry may already reduce immigration to a level below what would have existed in the absence of all controls. Thus, the tax may affect only the size of the waiting list, that is, the excess demand for entry into a DC, not the actual level of immigration. The effect of the tax on immigration levels must be distinguished, however, from the effect of the tax on an individual’s decision to emigrate. A reduction in the size of the waiting lists would indicate that the tax had discouraged individuals from attempting to emigrate.

Regardless of its impact on a PTK’s decision to migrate, the tax may affect an LDC’s emigration policies. If, for example, the revenue from a tax on PTKs were substantial, an LDC might decide to encourage emigration, or at least not encourage PTKs who were abroad to return home.

Professor Bhagwati pointedly suggests that persons worried about the effect of the tax on immigration should address their concerns to the DC governments and their restrictive immigration practices. Bhagwati, supra note 27, at 25. To be sure, DC immigration restrictions may raise philosophical problems similar to those raised by restrictions on emigration. Emigration and immigration restrictions differ, however, in at least one important way. Because immigration laws vary from country to country, an individual prevented from entering the DC of his choice may be able to obtain entry to some other DC. That option would obviously be precluded if the tax had the effect of preventing an individual from leaving the LDC at all.
occurring in response to such push factors as political or religious persecution or a lack of career opportunities. They compared PTKs with other DC residents and questioned the ability of the PTKs to bear any additional tax liability.\textsuperscript{105}

No simple way of resolving these differences\textsuperscript{106} in perception and outlook exists, because they reflect the fundamental moral, political, and philosophical conflict between the internationalist and the nationalist models of the brain drain. Differences in perspective could, however, be minimized by a tax on emigrant PTKs which conformed to already existing patterns of taxation. Notwithstanding the novelty of advocating an income tax as a tool for intervening in the brain drain, an LDC tax on the earnings of emigrant PTKs can be so designed that it accords with international custom and practice. Such conformity should help increase its acceptability.

The following sections\textsuperscript{107} concentrate on the refinements necessary to make an LDC tax feasible and acceptable under general notions of tax equity. The first section examines the issues raised by jurisdictional rules, that is, the rules governing the extent of a country's taxing powers. That discussion provides the background necessary for understanding how the imposition of an LDC tax on emigrants would

\textsuperscript{105} But compare the reaction of Professor Saul Mendlovitz. Professor Mendlovitz did not attend the UNCTAD conference but, as President of the Institute for World Order, he was instrumental in arranging the Bellagio conference, where the tax proposals were first discussed in an international setting.

\textsuperscript{106} These differences in perspective were anticipated in Oldman & Pomp, supra note 77, at 752.

\textsuperscript{107} These sections draw upon id. at 754–61.
comport with existing practice. The remaining sections identify problems of implementation, administration, and enforcement.

1. Jurisdictional Issues

The currently observed rules of tax jurisdiction are evolved rules in the sense that certain patterns of taxation have become acceptable as a matter of international custom. These patterns are not an indication of the outer boundaries of a country's tax jurisdiction, however, because governments have not, so far, tended to assert their powers broadly. This exercise of self-restraint is attributable both to the practicalities of enforcement and to the fear that a sweeping assertion of jurisdiction might offend other nations. The full extent of national tax jurisdiction is therefore undefined.108 Some aspects of an LDC tax on emigrant PTKs involve an assertion of taxing powers which exceeds current practice and thus pose jurisdictional questions to which only sketchy and tentative responses can be given.

International custom suggests that some minimum connection or nexus should exist between the country asserting jurisdiction and the taxpayer or the income being taxed.109 The nature of this nexus varies from country to country, and a country's tax system can be classified as either schedular or global (unitary) according to the nexus employed. The most limited form of tax jurisdiction is that asserted by a country whose system is purely schedular. The only jurisdictional nexus in a purely schedular system is the source of the income;110 the personal status of the taxpayer is irrelevant. A country with a schedular system taxes income from domestic sources regardless of the taxpayer's status;111 income from foreign sources is exempt.

108. Compare Norr, Jurisdiction to Tax and International Income, 17 Tax L. Rev. 341 (1962) with Ross, United States Taxation of Aliens and Foreign Corporations: The Foreign Investors Tax Act of 1966 and Related Developments, 22 Tax L. Rev. 279, 363 (1967). Many countries are parties to bilateral tax treaties. An objective of these tax treaties is to reach agreement on the acceptable scope of each country's tax jurisdiction. Nontax conventions can also affect a country's tax jurisdiction in special situations. The Vienna Convention on Diplomatic Relations, opened for signature Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 600 U.N.T.S. 95, for example, provides a tax exemption in the country of employment for income earned by foreign diplomats.


110. Id. at 434.

111. Different types of domestic income may be taxed in different ways. Commission to Study the Fiscal System of Venezuela, Schedular and Global Income Taxes, in R. Biné & O. Oldman, Readings on Taxation in Developing Countries 132 (2d ed. 1967). The personal status of the taxpayer may also be relevant in determining the rate applied to the income.
In contrast, a country employing a global system asserts jurisdiction either on the basis of the source of the income or on the basis of the status of the taxpayer. Under most global systems, residence is the necessary personal status, but a few countries, including the United States, Mexico, and the Philippines, use citizenship. Countries that rely on citizenship do, however, tax noncitizens on the basis of residence. In other words, either status — citizenship or residence — is sufficient for the assertion of tax jurisdiction in these countries. The global approach focuses on an individual's ability to pay, which is measured by his total income, regardless of its source. Both domestic and foreign income are taxed if the necessary personal connection exists.

The differences between schedular and global systems provide a framework for analyzing the imposition of an LDC tax on emigrant PTKs. In a schedular system, the only nexus is the source of the income, and, thus, no tax jurisdiction is asserted over foreign income. An LDC that uses a schedular system will, therefore, not tax any income earned abroad by an emigrant PTK. If an LDC uses a global system, jurisdiction to tax income earned abroad depends on the personal status of the PTK. If the LDC asserts jurisdiction on the basis of citizenship, it will tax income earned abroad by PTKs who are LDC nationals. If the LDC asserts jurisdiction on the basis of residence, but not citizenship, it will tax the income earned abroad by emigrant PTKs only if they are considered LDC residents for tax purposes.

At one time, most LDCs relied on a purely schedular approach, but, today, the trend is to adopt the global approach. LDCs that have...
adopted a global approach are already able to tax those PTKs who have the necessary personal status. In practice, though, few of these LDCs tax emigrant PTKs because they rely on residence as their jurisdictional nexus. Countries vary widely in their definition of residence, some defining it on the basis of the period of time the individual has been within or without the country and others on the basis of the intent of the individual in being abroad, the nature of his contacts at home and abroad, and so forth. Despite the number of acceptable approaches to defining "resident," emigrants are not likely to fall within any of the more usual definitions. An LDC using a global system based on residence is therefore unlikely to assert jurisdiction over PTKs, who will have been abroad for some time, because the requisite jurisdictional nexus will have ceased to exist.

more efficient allocation of capital. See, e.g., P. Musgrave, United States Taxation of Foreign Investment Income: Issues and Arguments 109-10 (1969). It is tempting to extrapolate from this principle and argue that LDC taxation of PTKs abroad maintains tax neutrality and is economically efficient. See, e.g., Hamada, Taxing the Brain Drain: A Global Point of View, in The New International Economic Order: The North-South Debate (J. Bhagwati ed. 1977). The meaning of neutrality is harder to discern, however, if a PTK is living abroad (rather than living at home, and investing abroad), because the LDC's tax rates are designed in the context of the LDC's cost of living, salary levels, and distribution of income. These rates may not be appropriate for a PTK in a DC, even if the LDC provides relief from double taxation. See section (II)(C)(3) infra. It is unclear what type of LDC rate structure is required by the neutrality principle, or whether a special rate structure might have to be designed for each DC.

Despite the advantages of a global system, some LDCs continue to exempt foreign income. A handful of these LDCs deliberately exempt foreign income in order to increase their attractiveness as tax havens. Other LDCs may lack the administrative capability to tax foreign income. Still other LDCs may have limited themselves to taxing domestic income at a point in their history when few taxpayers were receiving foreign income. Although some taxpayers in those countries may recently have begun to receive large amounts of foreign income, these taxpayers, as a group, may be able to prevent a change in the law.

115. A country may have one set of rules for determining when an individual becomes a resident and another set of rules for determining when an individual ceases to be a resident. The definition of resident for citizens or nationals may also be different from the definition for aliens. For illustrations of the approaches used by some countries, see Harvard Law School, Taxation in Australia 5/1 (Int'l Tax Program, World Tax Ser. 1958); Harvard Law School, Taxation in Colombia 11/1 (Int'l Tax Program, World Tax Ser. 1964); Harvard Law School, Taxation in the Federal Republic of Germany 5/1 (Int'l Tax Program, World Tax Ser. 1969); Harvard Law School, Taxation in France 11/1 (Int'l Tax Program, World Tax Ser. 1966); Harvard Law School, Taxation in Sweden 5/1 (Int'l Tax Program, World Tax Ser. 1959).

116. Regardless of the approach a country adopts in defining resident for tax purposes, a basic question arises: at what point does a PTK working abroad cease being a resident of his LDC of origin? A PTK who was sent abroad by his employer for short-term training would clearly remain a resident of the LDC. But the PTKs whom the tax proposal is intended to reach — those who have emigrated abroad — are not likely to fall within normal concepts of residence.
In order to tax emigrant PTKs, an LDC could adopt an idiosyncratic definition of residence, one that relied heavily on a person’s prior contacts with the country, notwithstanding the severance of those contacts upon emigration. Such a definition could specify the maximum period of time (perhaps, five years) within which an emigrant would continue to be considered a resident. Although this approach might appear reasonable in some respects, it does deviate from international custom and practice and could pose two problems. First, the LDC’s assertion of jurisdiction on the basis of its idiosyncratic definition would conflict with the DC’s own claim of residence jurisdiction, and the DC would therefore probably refuse to recognize the LDC definition. The DC’s cooperation in policing the LDC tax, which is essential if the tax is to be enforced,\textsuperscript{117} will obviously not be forthcoming if the DC views the LDC’s assertion of jurisdiction as illegitimate or extreme. Second, an emigrant PTK who has severed his connections with his LDC of origin will regard the LDC’s claim of residence as unjust or unfair even before the five years have elapsed. Under these circumstances, his voluntary compliance with the tax is improbable.

To avoid the problems arising from an unorthodox definition of residence, an LDC could assert jurisdiction on the basis of citizenship,\textsuperscript{118} as the United States, Mexico, and the Philippines do.\textsuperscript{119} This

\textsuperscript{117} See section (II)(C)(4) infra.

\textsuperscript{118} In some LDCs, such as Britain’s former colonies in Africa, the brain drain may consist of PTKs who are not citizens of the LDC. Relying solely on citizenship as the basis for jurisdiction would obviously not reach such PTKs.

An LDC’s assertion of jurisdiction on the basis of citizenship might also be viewed as creating a conflict with the host DC’s jurisdiction. The short answer is that countries accept certain conflicts as legitimate and inevitable. The conflict between citizenship jurisdiction and residence jurisdiction is, by custom and practice, considered acceptable. Income tax treaties between nations with citizenship jurisdiction and residence jurisdiction, \textit{e.g.}, Convention on Double Taxation, July 28, 1967, United States-France, 19 U.S.T. 5280, T.I.A.S. No. 6518, illustrate implicit acceptance of this conflict. The conflict created by a deviant definition of resident would probably, however, be considered illegitimate.

In some countries, the taxation of the foreign earnings of a nonresident citizen may conflict with constitutional doctrines proscribing legislation having an extraterritorial effect. For example, some Canadian constitutional law scholars felt that prior to 1931, Canada was precluded from enacting legislation having an extraterritorial effect and could not tax the foreign income of nonresident citizens. In 1931, the Canadian Parliament passed the Statute of Westminster, which expressly authorized such legislation. The Statute of Westminster, IV CAN. REV. STAT. ch. 23, § 8 (1970), clearly established the power to tax nonresident citizens on their foreign income, though Canada has never chosen to exercise this power. Sherbaniuk, Hutcheon & Brisenden, supra note 112, at 316.

\textsuperscript{119} These three countries apply citizenship jurisdiction uniformly to all citizens. Limiting citizenship jurisdiction to PTKs would be unprecedented and might violate certain human rights guaranteed under international law. For a discussion of possible conflicts with rights guaranteed under international law, see Newman, \textit{The Brain Drain}
approach is risky, however, if the PTKs do not value their LDC nationality highly. An LDC’s assertion of jurisdiction on the basis of citizenship might simply induce emigrant PTKs to renounce their citizenship. Wholesale renunciations of citizenship would obviously not be in the interests of the LDC: not only would a loss in tax revenue result, but, more important, the probability of these PTKs ever returning home would also be reduced.

Formulating an approach that would minimize a PTK’s ability to avoid the LDC tax by renouncing his citizenship is difficult. Under international law, could the LDC ignore a PTK’s renunciation of citizenship? Or, could renunciation be ignored at least until the PTK had obtained a new citizenship? Should an LDC eliminate the tax incentive to renounce citizenship by levying its tax only for the period of time a PTK must normally wait before becoming a DC citizen? An immigrant to the United States, for example, must normally wait five years before becoming a citizen. If the LDC tax were to apply only for five years, a PTK immigrating to the United States would have nothing to gain from renouncing his LDC citizenship during this period. An LDC tax limited to a five-year period, however, will obviously not produce as much revenue as a tax imposed over a PTK’s lifetime. Moreover, revenues will be lower because some PTKs spend their early years in a DC in schooling or in low-income jobs. Further, a sophisticated PTK might intentionally work under a

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The United States has a provision designed to discourage tax-motivated renunciations of citizenship. I.R.C. § 877. In general, this provision allows the United States to disregard a tax-motivated renunciation of citizenship for up to 10 years. The provision applies, however, only for the purpose of taxing United States investment income and income effectively connected with the conduct of a trade or business within the United States. Foreign income, such as that earned from services performed outside the United States, is not subjected to tax by this provision. The United States rule, therefore, is not precedent for the situation discussed here which concerns income earned abroad.

Two situations can be distinguished. A PTK who renounces his LDC citizenship can either acquire a new citizenship or become stateless. The LDC’s assertion of tax jurisdiction over a PTK who has acquired citizenship in a DC would raise the same problems as an idiosyncratic definition of resident. In contrast, an LDC policy that discouraged persons from becoming stateless in order to avoid taxation would be reasonable since statelessness is generally discouraged under international law. Weis, The United Nations Convention on the Reduction of Statelessness, 11 INT’L & COMP. L.Q. 1073 (1962).

Under certain conditions, for example, marriage to a United States citizen, the waiting period may be less than five years.
deferred compensation agreement in order to reduce his income during the five-year period.

Although no single solution to the possibility that PTKs would renounce their citizenship appears satisfactory, not all LDCs would have to worry about massive renunciations. One reason is that an emigrant PTK is likely to be influenced by his native cultural and social patterns, and the strength of his ties to the LDC may therefore outweigh tax avoidance motives. Another is that some PTKs may be too uncertain about their future plans to risk surrendering their LDC citizenship. Renunciation will also be unattractive to a PTK whose family members have remained in the LDC. In addition, the financial burden of the LDC tax will directly affect the PTK's decision about maintaining his LDC citizenship. Although some PTKs would find any LDC tax offensive, a tax that imposed only a modest burden would probably not provide a strong inducement to renunciation.  

2. Necessary Adaptations of LDC Tax Law

All countries that levy an income tax must design a set of rules and principles for determining a taxpayer's liability, but no two countries employ identical rules and principles. That differences exist is not surprising, however, because the calculation of taxable income involves a great variety of transactions and types of receipts: capital gains, royalties, deferred compensation, stock options, annuities, insurance proceeds, inheritances, alimony, depreciation, charitable contributions, business expenses, and so forth. Little agreement exists, even in theory, 

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123. The United States is probably more successful in enforcing its assertion of citizenship jurisdiction than most countries would be. Many United States citizens working outside the country alternate periods abroad with periods within the United States, and their awareness that they will eventually return home is likely to offset any inclinations they have to ignore their United States tax obligations. In addition, the Internal Revenue Service (IRS) stations personnel abroad as part of its Office of International Operations, and this IRS presence encourages taxpayer compliance. Moreover, United States citizens value their citizenship highly and are unlikely to renounce it for tax reasons. In any event, the IRS is empowered, to a certain extent, to ignore tax-motivated renunciations. See note 120 supra.

124. Some of these receipts would ordinarily be classified as unearned income. It is unclear whether Professor Bhagwati, in his proposal to tax emigrant PTKs, intended to draw a distinction between earned income, i.e., income that represents compensation for services, and unearned income, i.e., income that represents a return on capital. The discussion in sections II(C) and II(D) ignore this distinction. First, the difference between earned and unearned income is often a blurry one. For example, capital gains, which are usually classified as unearned income, may result from the sale of assets that embody an element of personal services, such as patents, copyrights, or stock in small personal service corporations; the sale proceeds therefore represent, in part, compensation for
about the normative treatment of many income and expense items, but, even if agreement were to exist, political, social, economic, and administrative constraints could necessitate greatly divergent approaches.

The rules and principles for determining an individual's tax liability reflect the complexity and sophistication of a country's business transactions and employment practices. Before extending its jurisdiction to emigrant PTKs, an LDC must therefore examine its tax law carefully in order to determine whether it can cope with the sophisticated business conditions in the DCs. Because most LDCs have had little experience in taxing individuals abroad, previously unrecognized weaknesses in the LDC tax law may be exposed for the first time.

A number of potential problems can be anticipated. One is that many of the transactions and practices that are common in the DCs occur infrequently or have no parallel or counterpart in the LDCs, and their tax consequences may therefore not be specified in the tax laws of the LDCs. An emigrant PTK can be expected to interpret ambiguities or lacunae in the LDC law in his favor, and many of his transactions in the DC will therefore not enter into the determination of his liability for the LDC tax. For example, the LDC law may not treat pensions, profit-sharing plans, or deferred compensation arrangements that are available to PTKs employed in the DCs. The LDC will be forced to develop policies for dealing with these and other situations not specifically covered in its law, an effort that may not be justified in view of more pressing domestic priorities. One alternative is for the LDC to surrender complete control over defining its own tax base and to defer to the DC's definition of taxable income. Taking this approach, the LDC would levy its tax on the amount of taxable income computed by the PTK for DC tax purposes.

Second, Professor Bhagwati's proposal was clearly intended to reach at least earned income. Its rationale can logically be extended to income received as a return on invested capital if that capital was originally received as compensation for services. Third, an LDC is deprived of the use of this capital to the extent it is invested in a DC, in much the same way that the LDC is deprived of the human capital represented by the PTK himself. Fourth, the administrative effort involved in implementing the proposals, discussed in sections II(C) and II(D), is greatly reduced if there is no need to distinguish between earned and unearned income.

These problems would also be encountered if the tax on emigrant PTKs were levied by the United Nations and the United Nations chose to design a special tax base, rather than relying on the host DC's tax base. See section II(D)(2) infra. Deferring to the DC's tax base is proposed in the context of a United Nations tax on PTKs. See section II(D)(2) infra. If the PTK were to return home eventually, a difficult problem would be raised by the need to integrate LDC tax law with the prior application of DC tax law.
Although one type of problem arises if the LDC tax law does not adequately treat transactions common in the DC, a different type of problem arises if rules developed in the context of conditions prevailing in the LDC are extended to persons abroad. For example, some LDCs place a ceiling on the absolute amount of certain expenses, such as advertising, travel, or entertainment, which can be deducted for tax purposes. Because the ceiling will have been established on the basis of LDC price levels and business customs, it may be totally unrealistic for a PTK working in a DC. Even if the ceiling is expressed as a percentage of income—10% of sales revenue for advertising expenses, for example—the percentage may be grossly out of line with DC practices. The same problem is raised by provisions of LDC tax law which adjust an individual’s tax liability in recognition of the size of his family. This adjustment is often made by allowing the taxpayer to deduct a fixed amount for each member of his family. The amount set by the LDC law may, however, be inappropriate for a taxpayer and his family who are abroad, because the amount is based on living conditions at home.

The LDC tax law must be examined not only to identify provisions that are inadequate for individuals abroad, but also to identify provisions that offer them unintentional benefits. For example, many LDCs provide generous capital allowances and other incentives, with the intention of encouraging domestic investment. When these provisions were introduced, investment in capital assets abroad may have been uncommon, or the LDC may not have taxed foreign income. Consequently, no thought was given to denying these incentives to foreign investment. Provisions such as these would therefore have to be identified and redrafted in order to eliminate unintended effects.

A final problem can arise if the cost of living is much greater in the DC than in the LDC. In this case, the LDC might wish to extend PTKs resident abroad special deductions not available to taxpayers resident within the LDC. These deductions could, for example, take into account a PTK’s higher cost of housing, special costs incurred in educating his children, and so forth.127

127. Although the United States applies a global approach based on citizenship jurisdiction, its taxpayers abroad are granted a number of special reliefs not available to taxpayers resident within the country. See, e.g., I.R.C. § 911. This tax treatment was recently modified to provide relief explicitly for certain special burdens imposed on individuals abroad, such as their higher cost of living. Foreign Earned Income Act of 1978, Pub. L. No. 95–615, 92 Stat. 3097 (codified in scattered sections of the I.R.C.). For a more com-
The extent to which the LDC law requires modification will depend on the experience of the LDC in taxing individuals abroad and on differences in business and employment conditions in the DC and the LDC. It will also, however, depend on the nature of the PTK's activities in the DC and whether he is self-employed or an employee. Self-employed individuals are more likely to be involved in business transactions and practices that have no counterpart in the LDC. Moreover, those LDC tax provisions whose application to individuals abroad may be troublesome, such as provisions concerning advertising, travel, and entertainment deductions and capital allowances, will affect self-employed individuals more than employees. The problems associated with these provisions might not be significant if the LDC's brain drain consisted primarily of employees, rather than self-employed persons, but even employees can present difficulties, especially if they receive their compensation in forms uncommon in the LDC.

3. Double Taxation

International double taxation can result whenever a taxpayer or his income has jurisdictional connections with more than one country.\textsuperscript{128} Because a DC will tax income earned by a PTK within the DC, double taxation will occur if the LDC imposes a tax on the DC income of the PTK. No principle of international law requires a country to provide relief from the burden of international double taxation,\textsuperscript{129} but most countries that tax foreign income do provide relief in some manner. As a matter of custom, relief from double taxation is ordinarily achieved by the country of source being granted a prior claim to the income. In other words, the DC tax on a PTK's DC income would have priority over the LDC tax on the same income. A common mechanism for giving priority to the country of source is the foreign

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\textsuperscript{128} International double taxation often arises because one country taxes an individual on the basis of residence or of citizenship and another country taxes the individual on the basis of the source of his income. Double taxation can also occur if each of two or more countries regards the individual as its resident or its national, or regards the same item of income as arising within its territory.

\textsuperscript{129} Norr, supra note 108, at 438. Because a country need not provide relief from the burden of double taxation, an LDC could attempt to increase its revenue by not offering a credit for foreign taxes. If an LDC sought to reduce the economic incentive to emigrate, it would adopt no relief provisions whatsoever. The lack of relief provisions would be counterproductive, however, if PTKs were thereby encouraged to evade or avoid the tax. Moreover, a DC is unlikely to assist in administering an LDC tax without some assurance that problems of double taxation have been mitigated.
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tax credit.\textsuperscript{130} After satisfying his DC tax liability, the PTK would compute his LDC tax liability and claim against it a foreign tax credit for the amount of DC tax paid on income earned within the DC.

To illustrate how such a foreign tax credit would operate, suppose that, for purposes of the DC tax, a PTK has taxable income of $20,000 derived solely from employment within the DC. Assume that the DC tax is $5,000, which represents an effective tax rate of 25%. Suppose that, for purposes of the LDC tax, the PTK also has $20,000 of taxable income.\textsuperscript{131} If, for example, the LDC tax is levied at an effective rate of 45%, the PTK’s LDC tax liability is $9,000. If no relief from double taxation were provided, the PTK’s earnings would be subject to a total tax burden of $14,000 ($5,000 + $9,000), or an overall effective tax rate of 70%. If the LDC were to grant a foreign tax credit, the PTK would be able to claim a credit for the $5,000 tax paid to the DC (the country of source) and thereby lower his LDC liability from $9,000 to $4,000. The DC would not allow the PTK a credit for any LDC tax, because, from the DC’s point of view, the PTK has no foreign income over which the LDC has prior claim as the country of source.\textsuperscript{132} The final result is that the PTK would pay tax to the DC at a rate of 25% and to the LDC at a rate of 20%.\textsuperscript{133}

\textsuperscript{130} Among the countries granting a foreign tax credit unilaterally are Canada, Greece, India, Israel, Japan, Mexico, Pakistan, the Philippines, Turkey, the United Kingdom, the United States, and West Germany. Other countries may agree to grant a credit only bilaterally, that is, only as part of a tax treaty. The United States, for example, requires its tax treaty partners to grant a credit to their residents for income tax paid to the United States.

Other means of eliminating or reducing double taxation include an exemption for all foreign source income (or an exemption limited to foreign income subject to a foreign tax), a deduction for foreign taxes, or a reduced rate of tax for foreign income.

The avoidance of double taxation is just one of a number of aims that the foreign tax credit may serve. For a summary of the general rationales underlying the foreign tax credit, see Note, The Foreign Tax Credit and Treatment of Payments by the Petroleum Industry to Foreign Governments, 91 Harv. L. Rev. 844, 850–52 (1978).

\textsuperscript{131} The LDC will determine the PTK’s taxable income according to its own definition. See section II(C)(2) supra. The LDC’s determination of the PTK’s taxable income need not correspond with that of the DC.

\textsuperscript{132} If the DC wished to increase the amount of revenue collected by the LDC, it could grant a credit for the LDC tax. In the illustration in the text, a DC credit for the LDC tax would eliminate the DC tax liability and provide the LDC with revenue of $9,000, the full LDC tax liability. The credit would, in effect, transfer $5,000 from the DC to the LDC.

Granting a credit for a foreign tax levied on income having its source within the DC would be contrary to current DC practices. The granting of a credit for such taxes would be characterized not as relief from international double taxation but, rather, as foreign aid. The use of the foreign tax credit as a means of channeling foreign aid is not unprecedented, at least in the United States. Note, supra note 130, at 851–53.

\textsuperscript{133} This presentation of the foreign tax credit mechanism is a greatly simplified
As long as the effective LDC tax rate is higher than the effective DC rate, the foreign tax credit granted by the LDC results in tax being paid to the LDC at a rate equal to the excess of the LDC rate over the DC rate (20% in the illustration above). If the DC rate is higher than the LDC rate, however, the LDC credit for taxes paid to the DC will exceed, and therefore cancel, the LDC tax liability.\(^{134}\)

Ordinarily, the LDC rate will be higher than the DC rate\(^{135}\) because most LDCs employ steeply progressive rate structures that reflect a commitment to egalitarian principles. At each income level, the rate of the LDC tax will probably exceed the rate of the DC tax. Another, related factor increases the likelihood that the LDC tax will exceed the DC tax: the difference in salary levels in the DCs and LDCs. A salary that is no more than adequate by DC standards may be excessive by LDC standards. Indeed, the salary differential between the DCs and the LDCs is one of the push factors that may have inspired the PTK to migrate. A DC salary that is generous by LDC standards will thrust the PTK into the LDC's upper tax brackets and cause the LDC tax to exceed the DC tax.

The application of steeply progressive LDC rates to an emigrant PTK whose salary appears excessive by LDC standards is likely to generate a very substantial LDC tax. Although this tax might be appropriate for a PTK living in the LDC, it could become confiscatory for a PTK living in a DC in which the cost of living was much higher. Even the use of a foreign tax credit will not eliminate the inappropriate burden imposed by the LDC tax. For example, in the illustration above, the foreign tax credit granted by the LDC results in the overall tax burden on the PTK being determined by the effective LDC rate

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134. If the rates in the illustration were reversed, the PTK would pay $9,000 in DC tax and credit this amount against his LDC tax of $5,000. Because the DC tax would exceed the LDC tax, the LDC would receive no revenue. A DC credit for LDC taxes, however, would change this result. See note 132 supra.

135. Hamada, supra note 114, at 142-44, 146-47.
of 45%. Although the credit reduces the overall tax burden on the PTK from 70% to 45%, that 45% may still be onerous.

The most obvious solution is to develop a special schedule of rates for emigrant PTKs. The LDC could design the schedule so that it would always generate an LDC tax that was slightly higher than the DC tax. In combination with an LDC credit for DC taxes, this approach would produce some revenue for the LDC without subjecting the PTK to an excessive tax burden. A special rate schedule would, however, have to be designed for each host DC. An alternative, especially for an LDC that did not wish to become immersed in the complexities of granting a foreign tax credit, would be to tax the income of emigrant PTKs at low rates without providing relief from DC taxes.\footnote{136. This approach is used by the Philippines, which levies a rate of from 1% to 3% on the income of nationals working abroad. The problem of designing a special rate schedule for foreign income is discussed in the context of a United Nations tax on emigrant PTKs. See section II(D)(3) infra. If the LDC were willing to defer to the DC's definition of taxable income, see text accompanying note 126 supra, it could impose its tax as a surtax on the DC tax, which is the optimal form of a United Nations tax on PTKs. See section II(D)(3) infra.}

4. Administrative Considerations

Although the preceding discussion raises a number of problems that must be solved before an LDC can tax emigrant PTKs, by far the greatest obstacle faced in asserting global jurisdiction is the administrative effort that must be exerted to enforce a tax on individuals abroad. Policing a tax on nonresidents creates problems even for the more sophisticated tax administrations of the DCs. Because most LDCs are not yet efficient in enforcing their taxes domestically, any attempt to assert jurisdiction over emigrant PTKs will only increase their administrative burdens. An LDC's lack of experience in taxing foreign income and the low degree of voluntary compliance which can be expected of emigrant PTKs will aggravate the problems.

A country that endeavors to tax individuals abroad is confronted with two immediate hurdles. It must, first, obtain accurate information about the individual's income in order to assess his tax and, then, collect the amount of tax owed. Information about the income of an individual abroad is often difficult to obtain, especially if the individual fails to file a return.\footnote{137. Surr, "Intertax: Intergovernmental Cooperation in Taxation," 7 Harv. Int'l L.J. 179, 203 (1966).} All countries apparently experience a greater
degree of noncompliance with filing requirements by individuals living outside the country. This noncompliance is partly the result of ignorance; some individuals do not realize that their tax obligations can continue despite their absence. A larger part of this noncompliance can, however, be attributed to willful evasion. Physical distance breeds a sense of security which encourages individuals to disregard their tax obligations. Secure in the belief that his country of origin does not have easy access to his financial affairs abroad, the individual may see no need to file a return at all or may feel confident in filing a return containing false information.

The difficulties normally presented by individuals abroad may be compounded if the individuals are emigrant PTKs. Although some PTKs will feel a moral obligation to comply with LDC tax law, perhaps in recognition of educational and other opportunities afforded them by the LDC, many will fail to see the justice of being subjected to a tax burden in excess of that of their DC colleagues. Moreover, those PTKs who emigrated to escape political or social oppression may feel no inclination to contribute to the costs of a government with whose policies they disagree. PTKs who have emigrated because of a lack of professional opportunities in the LDC may also be bitter. Thus, the willingness of emigrant PTKs to comply with an LDC tax will depend on the circumstances leading to their emigration and the loyalties that they feel toward the LDC.

Even if the LDC obtains enough information to assess a PTK’s tax liability, it is still faced with the problem of collecting the tax owed. Collection is simplified if the PTK has assets within the LDC which can be liquidated by the tax administration and the proceeds credited against the PTK’s tax liability. If, however, the PTK has removed all

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138. The administrative problems of locating a taxpayer and of verifying his income and deductions become more difficult the longer he is outside the country. For a country asserting citizenship jurisdiction, these administrative problems continue no matter how long the taxpayer is abroad. A country basing jurisdiction on residence faces a less formidable task, however, because a person will usually cease to be considered a resident after he has been abroad for a prolonged period of time. See section II(C)(1) supra.

139. In order to obtain the information necessary to assess a noncompliant PTK, the LDC may engage in some form of unilateral action. An LDC tax administrator could, for example, go to the DC and conduct his own investigation. This approach, however, is not only expensive, but also one which the DC might regard as an intrusion on its national sovereignty. Moreover, the tax administrator from the LDC would not have any special investigatory powers in the DC, since he would be operating outside the LDC. For these reasons, unilateral action is rarely taken unless large amounts of revenue are involved. Surf, supra note 137, at 182.
of his assets before emigrating, the LDC has little recourse in obtaining payment.\textsuperscript{140} The LDC may be able to overcome both administrative hurdles—obtaining accurate information about a PTK's income and collecting any tax due—with the assistance of the host DC. The DC tax administration may already have information on the PTK's income, or, if it does not, it can make the necessary investigation. In addition, since the DC will have jurisdiction not only over the PTK, but also over his assets in the DC, the DC tax administration is in a position to help collect the LDC tax. A PTK's knowledge that the DC is cooperating with his LDC should encourage him to comply with the LDC tax law in the first place.

Precedent does exist for DC cooperation in the furnishing of tax information and, to a lesser extent, in the collection of foreign taxes. The United States, for example, will supply other countries with tax information on individuals but not on an informal basis. It will agree to furnish tax information only under carefully delineated conditions contained in a tax treaty. These conditions vary from treaty to treaty. Information that is readily available, such as a list of foreign taxpayers receiving investment income from which United States taxes have been

\textsuperscript{140} The LDC may have to resort to nontax means of encouraging PTKs to pay the tax. For example, a PTK might need to renew his passport or his medical or engineering license, and the LDC could refuse to cooperate unless the PTK's tax liability had been satisfied. Professor Bhagwati reports that the Philippines enforces its tax on nationals abroad by refusing to renew an individual's passport unless the tax has been paid. Bhagwati, supra note 68. In order to obtain foreign exchange, Sri Lanka once required emigrants to remit a part of their earnings to a special government account. To enforce this requirement, emigrants received passports valid only for one year. The passport would not be renewed unless the remittances were made. 40 CEYLON NEWS 1 (1975). Contrast the Venezuelan use of certificates of solvency in Shoup, Due, Fitch, McDougall, Oldman & Surrey, The Fiscal System of Venezuela, in READINGS ON INCOME TAX ADMINISTRATION (P. Kelley & O. Oldman eds. 1973).

An LDC could attempt to collect its tax through the DC courts. The British, Canadian, and United States courts, however, do not recognize foreign tax judgments, apparently on the grounds that a tax is an assertion of a foreign country's sovereignty which another, independent country should not tolerate within its borders. Another argument sometimes advanced is that taxes are closely connected with public policy and foreign relations; by ruling on the validity of foreign taxes, the judiciary might embarrass its own country or the foreign country. Surr, supra note 137, at 222. For criticism of this doctrine, see Robertson, Extraterritorial Enforcement of Tax Obligations, 7 ANZ. L. REV. 219 (1966); Stoel, The Enforcement of Foreign Non-Criminal Penal and Revenue Judgments in England and the United States, 16 INT'L & COMP. L.Q. 663 (1967).

The LDC could, of course, ignore the tax liability as long as the PTK were abroad, but this approach would discourage the PTK from ever returning. Even if he were to return, his accumulated tax bill might exceed his resources. Furthermore, a PTK might be able to negotiate a lower tax liability in exchange for returning.
withheld, may be routinely provided. Information about a PTK's income would ordinarily not be provided, however. In limited circumstances, such nonroutine information can be requested by a foreign government, but the number of individuals about whom information is actually provided is not large. The type of information which an LDC would normally need in order to assess PTKs effectively far exceeds not only current United States practice, but also that of all other DCs.

Tax treaties may also contain pledges to cooperate in the collection of taxes. Usually, however, cooperation is limited to situations in which a taxpayer wrongfully seeks to obtain treaty benefits and would therefore not extend to a PTK who refused to pay his LDC tax. Although one recent United States treaty does provide for cooperation under more general circumstances, cases in which foreign taxes are actually collected under such an agreement are rare.

141. The IRS makes little use of the routine information that it obtains from its treaty partners. Panel Discussion, Extraterritorial Effects of United States Tax Law, 12 Int'l Law. 581, 614 (1978) (remarks of Mr. J. Guttentag).
142. Each year, the United States receives about 150 requests for information from foreign governments. Id. at 614-15. "Fishing expeditions are not allowed. The foreign government must show specifically why they need the information, why they think we have it and that they have exhausted their attempts to get it over here, or in their home country." Id.
143. At a minimum, the LDC would want information on the income and deductions of any PTK who had failed to file a return. Ideally, the LDC would also want corroborative information on PTKs who had filed returns.
145. The United States has not, as yet, entered into collection assistance agreements or exchange of information agreements which are not part of a more extensive tax treaty.
146. For example, the United States-Japan income tax treaty provides that "each of the Contracting States shall endeavor to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits." Convention on Double Taxation, Aug. 14, 1962, United States-Japan, art. 27, 16 U.S.T. 697, T.I.A.S. No. 5798. This article reflects the Treasury's current negotiating position. See United States Model Income Tax Treaty of May 17, 1977, [1978] (CCH) Tax Treaties ¶ 1019.
147. "The two Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which the present Convention relates ... in the cases where the taxes are definitively due according to the Laws of the State making the application." Convention on Double Taxation, July 28, 1967, United States-France, art. 27, 19 U.S.T. 5280, T.I.A.S. No. 6518.
148. IRS officials who were consulted could not remember any case in which the IRS collected a tax on behalf of a foreign government. They stated repeatedly: "Let them fight their own battles, we're overworked as it is." Conversations between the authors and IRS officials, 1976.

The use of collection assistance provisions is a relatively undeveloped area. Over and above taxpayer resistance to such agreements, which is undoubtedly an obstacle to their
The limited amount of international intergovernmental cooperation which exists at present\textsuperscript{49} would clearly be inadequate if more than just a handful of PTKs failed to comply voluntarily with LDC tax laws. Even if one DC were inclined to offer broader assistance than it does now, it still might not be willing to do so without some assurance that other DCs were similarly inclined. Otherwise, a DC that was competing with other DCs for specific types of PTKs, such as doctors, might fear that its efforts to assist the LDC would only divert immigration to those DCs which were not willing to cooperate in enforcing the LDC tax.

5. Summary

The proposal that LDCs impose an income tax on the earnings of emigrant PTKs is compatible with existing concepts of tax jurisdiction. Any country is free, as a matter of international custom, to assert jurisdiction over the worldwide income of an individual abroad provided that some minimum connection exists between the country and the individual or the income being taxed. At present, most LDCs that assert global jurisdiction rely on the residence of the individual as the relevant connection. In other words, the LDC asserts jurisdiction over the worldwide income of an individual only if he is a resident of the LDC for tax purposes. Because emigrants do not fall within usual definitions of residence, emigrant PTKs are not being taxed by the LDCs at present. Mexico and the Philippines, however, assert global jurisdiction on the basis of citizenship and are therefore able to reach the worldwide income of emigrants who have remained citizens, if not

\textsuperscript{49} Some tax administrations have refused to engage in intergovernmental tax collection assistance of any kind. Surr, supra note 137, at 220. A country that felt it would gain very little through such cooperation would not wish to expend limited administrative resources in collecting taxes on behalf of a foreign country.
residents. To the extent that these countries are successful in enforcing their claim to jurisdiction, they are already taxing the brain drain.

In a jurisdictional sense, other LDCs are free to follow Mexico and the Philippines and assert global jurisdiction on the basis of citizenship, but some of them may find enforcement an obstacle. Each LDC will have to evaluate whether or not it can successfully assert jurisdiction on the basis of citizenship. Among the factors that the LDC must consider are: (1) the adequacy of its tax law for application to persons abroad; (2) the overall efficiency of its tax administration; (3) its previous experience with taxing foreign income; (4) the conditions that led to the emigration of its PTKs; (5) the expected level of voluntary compliance by its emigrant PTKs; (6) the likelihood that its emigrant PTKs will renounce their citizenship in order to avoid the tax; (7) its access to assets of emigrant PTKs; and (8) the host DC's attitude toward assisting in enforcement.

D. United Nations Taxation of Emigrant PTKs

The UNCTAD conference held in February, 1978, made it apparent that many of the issues raised by the divergent interests of the LDCs, DCs, and PTKs are best discussed in an international setting. Moreover, the serious problems that would be encountered in assessing and enforcing a tax on emigrant PTKs suggest that implementation could probably occur only under the auspices of an international organization, such as the United Nations. Although the involvement of the United Nations is no assurance that agreement would be reached on the need for a tax and the form it should take, the imprimatur of the United Nations is clearly crucial to the political and moral attractiveness of any proposal to tax the brain drain.

The United Nations could participate in a number of ways. At the least, it could inform the LDCs that they have the right under international law to assert tax jurisdiction over their residents and citizens abroad. The United Nations could also sponsor research that would distill and analyze the experience of LDCs that already assert tax jurisdiction on the basis of citizenship, such as Mexico and the Philip-

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150. For a brief time, Pakistan attempted to tax the foreign earnings of its nationals who had emigrated but found that it could not enforce this broad assertion of jurisdiction. J. BHAGWATI, supra note 71, at 40.

151. Professor Mendlovitz perceives the involvement of the United Nations as providing an affirmation of the interdependent nature of the global community and of the need for coordinated and cooperative conduct between the LDCs and the DCs. See note 105 supra.
The United Nations could also play a more active role, serving both as a catalyst, by establishing a dialogue between the parties, and as an intermediary, by eliminating the need for each LDC to obtain from each host DC a commitment to assist in assessment and enforcement. One approach would be for the United Nations to sponsor a multilateral convention on the enforcement and collection of foreign taxes which would call for greater intergovernmental cooperation. Support for such an approach might come not only from those who are sympathetic to the needs of the LDCs, but also from those who saw it as a desirable change in international tax practice.

Certain concerns of the DCs suggest that the United Nations must serve as more than just a catalyst if a tax on PTKs is to be implemented effectively. The DCs will demand some guarantee that the tax will not impose an inequitable burden on a PTK and that it will not be administratively difficult to enforce. Also, the DCs will obviously be unsympathetic toward participating in the enforcement of a tax on a PTK who emigrated in order to escape religious or political oppression or harsh social conditions. In addition, the DCs will be concerned that adequate relief from double taxation has been provided and that the tax is reasonable in amount and therefore unlikely to deter a PTK from emigrating. Moreover, because of the existing competition for PTKs, each DC will require some assurance that other DCs will conscientiously enforce the tax so that it need not worry that its own enforcement activities will divert PTK immigration to the other DCs. Finally, with the active support of the United Nations, a DC need not fear the adverse public reaction that might occur if it were to cooperate unilaterally with an LDC.

One way in which the United Nations could respond to these DC concerns would be to promulgate a set of guidelines for the imposition of LDC taxes. An LDC would have to adhere to these guidelines before it could obtain administrative assistance from a host DC. This approach would be feasible if guidance were limited to technical and

152. Expertise would be readily available from the United Nations Group of Experts on Tax Treaties Between Developed and Developing Countries. This group has been meeting for over 10 years to explore ways in which tax treaties can better accommodate the interests of the LDCs and the DCs. It is composed of tax experts and administrators from both groups of countries and represents a body of expertise that can be tapped for areas other than tax treaties.
structural issues involved in the design of a tax, because the United Nations is capable of developing acceptable parameters for relief from double taxation, appropriate rate schedules, and so forth. But a ticklish problem would be encountered in dealing with the taxation of political or religious refugees. The most obvious solution, exempting this group from taxation, would probably be difficult to administer fairly and effectively.153 Even if practical, however, such an exemption might not satisfy those DCs which would refuse to cooperate with certain LDCs under any conditions. For instance, it is difficult to imagine the United States agreeing to assist in assessing or collecting a Ugandan or a Cambodian tax on PTKs, no matter what the circumstances that led to their emigration.

The most promising solution to this sensitive problem, as well as to the others previously identified, is for the United Nations to design and levy a tax and for the proceeds to be turned over to BDFs.154 A United Nations tax would relieve the inequities and hardships that might result if each LDC were to levy its own tax on emigrant PTKs. The replacement of numerous LDC taxes by a single United Nations tax would contribute to administrative simplicity and to uniformity. Because the collection of the tax would be under the supervision of the United Nations, no DC need fear that other DCs would be purposely careless in enforcing the tax in order to attract PTKs. The United Nations is also in the best position to develop rules for taxing persons who have renounced their citizenship.

The use of BDFs, especially if they are structured to allow for the earmarking of revenues155 should significantly increase the appeal of a United Nations tax. A PTK should favor the use of a BDF, even if hostility exists between him and his LDC of origin, because he could earmark his tax revenue for use on a project or in a country of his choice. Earmarking would also reassure the DCs that the funds they had assisted in collecting would not go to countries with oppressive social, religious, or political regimes, because the PTKs would not be likely to select these countries as the beneficiaries of their tax revenue.

The remainder of this section deals with three major structural ele-

154. The United Nations does not possess the inherent power to tax individuals. In order to implement the proposal in the text, such a power would have to be delegated to the United Nations.
155. See section II(A) supra.
Tax Measures in Response to the Brain Drain

The measures involved in designing an international brain drain tax (IBDT): (1) the class of persons subject to the tax; (2) the rules and principles governing the calculation of a taxpayer’s liability; and (3) the rate structure. The conclusion is that the optimum form of an IBDT is a tax levied on the DC tax, that is, a surtax. The problems encountered in administering this type of tax are considered at the end of this section.

The topics selected for treatment are by no means exhaustive. The goal at this point in the evolution of the brain drain proposals is simply to provide broad outlines for an IBDT and, therefore, a framework within which debate may proceed.

1. The Taxpayer

As it was originally conceived, the proposal to tax the brain drain was directed toward such professionals as scientists, engineers, technicians, and doctors, and the acronym PTK has been used to refer generally to this group of individuals. A precise definition of PTK would be necessary, however, in order to determine exactly which persons would be subject to the IBDT.

Drafting a workable definition of PTK poses a challenge because of the great variety of situations in which an individual from an LDC will be present in a DC. Some come on short business trips, others come to teach for a year or more, and still others come initially as students and remain after completing their education. Skills and jobs also vary tremendously. Since many professionals will have considerable flexibility in describing their skills, jobs, or reasons for being in the DC, the adoption of a precise definition of PTK will create the administrative burden of drawing fine distinctions among potential taxpayers and invite maneuvers to circumvent the definition. Furthermore, the nature of an individual’s employment, as well as his reasons for being in the DC, may vary from year to year. Determining his status only at the time of immigration would therefore not be sufficient; his status would have to be scrutinized afresh each year.

These definitional problems can be avoided by taxing all LDC citizens present in the DC. In some cases, little difference may exist

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156. These issues are inherent in the design of any tax and thus mirror some of the issues discussed in section II(C) supra.

157. Bhagwati & Dallafar, supra note 9, at 33.

158. These definitional problems would also be encountered by an LDC that extended its tax to emigrant PTKs, see section II(C) supra, and the discussion in the text is equally relevant to this situation.
between levying an IBDT on all of an LDC's citizens who are abroad and levying one only on an LDC's emigrant PTKs. For example, the brain drain experienced by some LDCs consists primarily of doctors or scientists—professionals who would obviously be included in any definition of PTK. Other LDCs, however, may experience a migration of rentiers and businessmen or of persons employed by international agencies and multinational corporations. These individuals are not normally thought of as PTKs, but their emigration does result in a loss by the LDC of managerial, leadership, or entrepreneurial abilities. In view of the rationale for taxing the brain drain and the administrative considerations in favor of applying an IBDT on the basis of citizenship, little reason exists for limiting the tax to PTKs.159

Levying an IBDT on all LDC citizens abroad, rather than just on emigrant PTKs, would increase the number of taxpayers, and such a tax could therefore be levied at a lower rate and raise the same amount of revenue. Keeping the rate low has four advantages: (1) tax avoidance and evasion would be reduced; (2) the tax would be less likely to affect an individual's decision to emigrate; (3) inequities and hardship would be reduced; and (4) the problem of double taxation would be less severe.

One objection that might be raised to imposing an IBDT on all LDC citizens abroad is that it would apply not only to the brain drain, but also to the "muscle drain"—that is, to the unskilled or semi-skilled individuals who are euphemistically referred to in Europe as "guest-workers."160 Any attempt to exempt the muscle drain from the IBDT by adopting a functional definition would raise many of the same problems discussed in defining PTK. The muscle drain could be excluded, however, by levying the IBDT only on income above a certain level. For any country in which members of the brain drain are more highly paid than members of the muscle drain, this approach should be effective in distinguishing between the two groups. A different minimum income level could be set for each DC to take account of prevailing salary differentials.

A final problem is whether an emigrant's renunciation of LDC

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159. Although levying the IBDT on all LDC nationals would be preferable, at times the term PTK will be used as shorthand to refer to those individuals who would be subject to the tax.

160. For a discussion of the muscle drain, see Ecevit & Zachariah, supra note 8. Although the muscle drain has become associated with the emigration of labor from the Mediterranean countries to Europe, the migration of semi-skilled manpower has been traditional in Africa and elsewhere. H. Singer & J. Ansari, supra note 83, at 222–23.
citizenship should be recognized in applying an IBDT. Although the United Nations is in a better position than the LDCs to develop rules for dealing with the possibility of renunciation which are acceptable to the international community, the solution seems to be the same in both cases: a time limitation on the imposition of the tax. This approach would reduce the tax incentive to renounce. Moreover, once a PTK has been abroad for a substantial period of time, the justice of continuing to subject him to the IBDT is questionable, even if he does not renounce his citizenship. Therefore, except for the revenue loss, limiting a person's liability to, say, five years, or perhaps fewer appears to be desirable regardless of the renunciation problem. A five-year limit on taxation would also make it more acceptable to disregard any renunciation that might occur within the period.

2. The Tax Base

Once the group of persons subject to the IBDT is selected, the next task is to define the tax base—that is, the amount of income that will be subject to this tax. Two major choices are available: the host DC's tax base or a specially designed tax base.

Administrative considerations favor the adoption of the host DC's tax base. With the exception of employees of international organizations, most PTKs would presumably be paying DC taxes and would have to compute their DC taxable income anyway. Using this taxable income as the base for the IBDT would therefore impose little additional administrative burden on the PTK. Moreover, using the DC tax base would reduce the need for the United Nations to create an elaborate new bureaucracy to enforce the tax.

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161. See section II(C)(1) supra.
162. A time limit would reduce the number of idiosyncratic situations in which the imposition of a tax might be perceived as unfair. For example, the tax would be unfair to a person who was an LDC national only because his DC parents had been temporarily resident in the LDC at the time of his birth. Similarly, the tax might be unfair to an LDC national who grew up in a DC because his LDC parents had emigrated to the DC shortly after his birth. In each case, the LDC national's five-year period of exposure to the IBDT would expire before he had any earned income. Thus, a time limit on the tax, in conjunction with the use of BDFs, see section II(A) supra, would seem to reduce the unfairness in the situations posited by Professor Partington. See Partington, The Brain Drain Tax Proposal: A Lawyer's Analysis, in Vol. 1, supra note 2, at 115, 146-47.

A ceiling could also be imposed on the aggregate amount of tax paid by a PTK. This ceiling could be determined separately for each PTK, perhaps as a function of the amount of education he had received at LDC expense. The PTK's liability for the IBDT would be extinguished either as soon as his five-year period had expired or as soon as his ceiling had been reached.
on DC taxable income, the DC tax administration’s normal audit and administrative activities, though directed at enforcing the DC tax, would automatically be enlisted on behalf of the IBDT. In addition, any controversy over the amount of a PTK’s taxable income for purposes of the DC tax would be resolved through the DC’s normal appellate procedures. In most cases, the DC’s self-interest in safeguarding the integrity of its own tax would eliminate the need for special IBDT enforcement machinery.

The employees of international organizations pose a special problem. Because the earned income of these employees is generally exempt from DC taxation, many of them do not ordinarily compute their DC taxable income. These employees could, of course, be required to compute their income for purposes of the IBDT as if they were taxable under DC law. Special arrangements would have to be made, however, for ensuring that these computations were accurate because they would not be verified by the DC tax administration.

The rules for calculating taxable income obviously vary from one DC to another. Because of these differences in DC tax laws, PTKs who have the same economic income, after adjustment for differences in purchasing power, may have very different amounts of DC taxable income. The adoption of DC taxable income as the base for the IBDT would therefore require PTKs who have identical amounts of economic income to pay different amounts of IBDT. The question therefore arises whether certain provisions of DC tax law could or should be ignored in determining a PTK’s liability for the tax. The answer depends on the nature and extent of the provisions in each DC’s tax law. No doubt, certain alterations in DC taxable income could be made with little effort. For example, a PTK in the United States could easily add the nontaxable portion of his capital gains to his United States taxable income to obtain a truer measure of his economic income. Other adjustments, however, such as those which would be necessary to offset the use of tax shelters and the availability of sophisticated tax avoidance arrangements, might be too complicated to be practical.

Instead of using the DC tax base as its starting point, the United Nations could define a completely independent tax base for the IBDT.

163. See section II(B) supra.
164. Those employees who are required to file a DC tax return because they have unearned income that is taxable by the DC could, for purposes of the IBDT, amend this return to reflect their tax-exempt earned income.
165. I.R.C. § 1202.
A specially designed base, one not dependent on DC tax laws, would ensure that PTKs having the same economic income would have the same amount of IBDT income, regardless of where they were working or living, or for whomever they were working.

Whatever the merits of designing a special IBDT base, ease of implementation is not one of them. First, the United Nations would be required to resolve a host of both substantive and technical issues. In effect, the United Nations would have to sit as an international tax reform commission in order to determine in detail the appropriate treatment of capital gains, business deductions, inheritances, and so forth. Even if an adequate set of rules were to be developed, serious administrative problems would then be encountered. No country or group of persons would have any experience with the new IBDT rules, and some means of educating taxpayers, accountants, and lawyers would have to be developed. An even more serious problem, however, is that a DC tax administration would no longer enforce the IBDT base automatically, as part of its normal domestic activities. Instead, an organization with IBDT expertise would have to be created to answer taxpayer questions, to perform audit, intelligence, and collection functions, and to provide some type of appellate procedure.

The problems of designing and implementing a special tax base are substantial, but not insurmountable. Similar problems are faced by any country that introduces an income tax for the first time. As a practical matter, however, support for this tax will depend on how easily it could be implemented without seriously disrupting existing practices. The specter of a new international bureaucracy, which would probably be required if a special IBDT tax base were adopted, would dampen enthusiasm for the tax. For these reasons, DC taxable income emerges as the logical choice of tax base for this tax. Adjustments to this base can be made country by country, and, to this extent, some of the benefits of a specially designed tax base would be realized.

3. The Rate Structure

The final step in calculating the IBDT liability of a PTK is to apply some tax rate to his taxable income. Again, two major alternatives are available: (1) the use of a specially designed rate schedule, applicable
uniformly to all taxpayers, or (2) the adoption of the host DC's rate schedule.\textsuperscript{167}

The choice of an IBDT rate schedule is closely linked to the choice of an appropriate tax base. If a specially designed IBDT base were used in order to ensure the uniform treatment of all PTKs, then a special IBDT rate schedule would also have to be designed. In other words, if uniformity is the goal, then PTKs having identical IBDT income must pay the same amount of tax, and satisfying this goal would require not only an independent tax base, but also an independent rate schedule. Indeed, the effort involved in designing a special tax base would be lost unless a special rate schedule were applied. For the same reasons, if DC taxable income were used as the IBDT tax base, a specially designed rate schedule would not produce uniformity. That is, the rationale behind applying the same, specially designed rate schedule to all PTKs would vanish if the IBDT tax base were not uniform.

If DC taxable income were used as the IBDT tax base, the IBDT rates could be a certain percentage of the DC tax rates, say 5%. In other words, the rate would be equal to 5% of whatever DC tax rate were applicable to the PTK. This approach is the same as levying a 5% surtax, that is, a 5% tax levied on the DC tax. In order to calculate his IBDT liability, a PTK would compute his DC tax base under the DC's regular rules, apply the DC's regular rate schedule, and multiply his DC tax liability by 5%.

Although other ways of relating the IBDT rates to the DC rates obviously exist, the surtax approach has a number of desirable characteristics. First, the surtax automatically relates the additional IBDT burden to the DC tax. Presumably, the DC tax base and rate structure produce a tax burden that is regarded as fair and equitable in terms of conditions in the DC; a modest surtax would therefore ensure that the additional burden was reasonable. A 5% surtax, for example, would be unlikely to deter immigration to the DC or to result in wholesale renunciations of LDC citizenship. Second, because the mechanics of a

\textsuperscript{167} For a theoretical discussion of how a tax rate might be chosen in order to minimize an LDC's loss from the brain drain, or to maximize the revenue potential of the tax, see Bhagwati, \textit{infra} note 9, at 24-25. The rates of tax suggested by this theoretical discussion could, however, generate a tax burden on the PTK which far exceeded the tax burden on non-PTKs at the same income level. Because the fairness, and thus the political attractiveness, of the IBDT is likely to be judged in part by comparing the tax burden on a PTK with the burden on non-PTKs, the only realistic choice is a rate of tax which produces a burden on the PTK which is not greatly out of line with the burden on non-PTKs, even though a higher rate might produce more IBDT revenue.
surtax are easily understood, little confusion should accompany debate over this version of an IBDT. The additional tax burden of the IBDT at any income level in any DC could be calculated easily, and fears of undue hardship would be dispelled. A third advantage of the surtax approach is that the burden of double taxation is minimal and resort to a special relief mechanism, such as a foreign tax credit, is therefore unnecessary.

The surtax approach assumes that the IBDT liability will be a function of the DC tax base. A special rate schedule could be designed, however, if the IBDT were levied on an independent tax base. Although the use of an independent IBDT tax base does not seem feasible in the short term, it might be helpful to sketch two of the options available in designing a special rate schedule.

To begin with, consider two PTKs, one working in the United States and the other working in the United Kingdom. The United Kingdom PTK pays a United Kingdom income tax equivalent to £8,000, and the United States PTK pays a United States income tax of $4,000. Assume that both PTKs have the same taxable income for purposes of the IBDT (although their DC taxable incomes may be very different).

Under the first option, the IBDT rates would be designed so that, at any level of IBDT taxable income, the tax would be substantially lower than either the United States or the United Kingdom tax. For the PTKs under consideration, the IBDT tax rate might be designed to produce a $200 tax. Although each PTK would pay the $200 in addition to his regular United States or United Kingdom income tax, the IBDT burden would not be substantial, and the problem of double taxation could be ignored.

Both PTKs have the same amount of IBDT taxable income and would therefore pay identical amounts of IBDT. As a percentage of the DC tax liability, however, the additional burden of the IBDT would be heavier for the PTK in the United States. His additional IBDT burden would be equivalent to a 5% surtax, whereas the addi-

168. Demands for progressivity would be satisfied since an IBDT surtax would reflect the progressivity of the DC tax rates. If, however, progressivity were not essential, the tax could be a fixed percentage of income. The administrative considerations, discussed in section II(D)(4) *infra*, would be generally applicable to a flat-rate tax, as well as to a surtax.

169. See section II(C)(3) *supra*.
tional IBDT on the PTK in the United Kingdom would be equivalent to a 2.5% surtax.

Under the second option, the IBDT rates would be set so that this tax would be greater than the United States income tax but less than the United Kingdom income tax. Assume that the IBDT rates were designed to generate a tax of $4,500 for the two PTKs under consideration. Although the additional IBDT burden under the first option was modest, and lower than either the United States or the United Kingdom tax, the IBDT liability under the second option would be substantial and therefore would require that some relief mechanism be provided. The United States and the United Kingdom could, for example, allow the PTKs to credit the IBDT of $4,500 against their respective income taxes.\(^{170}\) The credit granted to the PTK in the United States would exceed his United States tax liability of $4,000, and he would owe no tax to the United States. The credit allowed the PTK in the United Kingdom would be less than his United Kingdom liability, and his net United Kingdom tax liability would be $3,500, or the difference between his before-credit United Kingdom tax and the IBDT ($8,000 - $4,500).

The second option would generate more revenue than the first. The level of revenue would be higher because of the credits provided by the United Kingdom and the United States, which would forgo all or a part of the tax they would otherwise collect: $4,500 and $4,000, respectively.\(^{171}\) The revenue potential of this second approach has its limits, however. As a practical matter, the IBDT tax liability could not be too much higher than the United States liability without the total burden on the United States PTK becoming excessive, even with the credit.

Although the second option has a greater revenue potential than the first option, it may be perceived as unfair because it would impose an additional burden only on the PTK in the United States. He would experience a $500 increase in his overall burden, but the PTK in the

\(^{170}\) The granting of a credit for the IBDT, which was levied on income having its source within the United Kingdom or the United States, would be contrary to either country's current practice. See note 132 supra.

\(^{171}\) Because the amount of revenue forgone can be viewed as a form of foreign aid, see note 132 supra, an objection can be made to the difference in amounts that the United Kingdom and the United States "contribute" ($4,500 versus $4,000). This difference could be eliminated, however, if the amount of revenue given up by granting a credit for the IBDT were allowed as an offset against each country's United Nations assessment on host DCs, discussed in section II(E) infra.
United Kingdom would have the same overall tax burden, $8,000, with or without the IBDT. The dilemma presented by the second option is that the combination of a DC credit and a high IBDT liability would have a great revenue potential, but it would leave some PTKs totally unaffected by the IBDT. In other words, any PTK whose before-credit DC liability exceeded his IBDT liability would not bear any increase in overall tax burden as a result of the IBDT. Some persons would find this result acceptable, because those PTKs who were not affected by the IBDT would, after all, be those who already had the highest DC tax liabilities, but any DC whose PTKs would bear a higher burden because of the IBDT might be concerned that the IBDT would divert immigration to other DCs.

4. Administrative Considerations

At first glance, an IBDT levied as a surtax on the DC tax appears easy to implement; no more would seem to be involved than adding a line to the DC tax return.\textsuperscript{172} This simplicity is superficial, however, because the application of a surtax to a select group of DC taxpayers, rather than to all DC taxpayers, would be equivalent in many respects to the adoption of an entirely separate tax. Each DC tax administration would be required (1) to modify its tax forms or prepare special forms; (2) to update its roll of persons subject to the tax or compile a new roll; (3) to design special withholding tables and instructions; (4) to develop or modify current payment programs for the self-employed and other taxpayers not subject to withholding; (5) to plan or expand taxpayer information efforts, such as descriptive pamphlets and mass education programs about filing requirements; (6) to write new regulations and rulings interpreting the statute; and (7) to train officials to answer questions from taxpayers and to deal with disputes on appeal. Most of these administrative tasks are manageable but must be thought through in a new context.

For example, consider the need to establish and maintain the tax roll. Both the DC tax administration and the withholding agents or other payors must have some means of easily identifying individuals subject to the IBDT. It is unrealistic to expect PTKs to volunteer information about their status or to expect employers to make the necessary inquiries unless sanctions exist for their failure to do so.

One way of building up the tax roll would be through information provided by immigration authorities. If the IBDT were levied on all LDC nationals, for example, the immigration bureau could, without great difficulty, generate a list of newly entering individuals subject to the tax. If, however, the IBDT were levied only on certain categories of LDC professionals, rather than all LDC nationals, the immigration bureau would face the far more difficult task of verifying the professional status of each immigrant. In addition, obtaining information about individuals who immigrated before the introduction of the IBDT would be troublesome because the data in the files of the immigration bureau would probably not be up-to-date or organized in a readily usable manner. Although some information might be gathered if aliens were required to register annually, it would probably not be as accurate or reliable as the information obtainable for new immigrants. The question therefore arises whether the IBDT should be applied to all PTKs, and the likelihood of evasion by those already in the country ignored, or whether it should be applied only prospectively, that is, to new immigrants.

Information compiled by the immigration authorities could be transmitted to the tax administration. Computerization of this information seems essential but would require that a taxpayer identification number be assigned to each PTK at the time of immigration. Without identification numbers, correlating the information from the immigration bureau with the tax returns being filed would be nearly impossible. Assigning a taxpayer identification number to an immigrant at some point after arrival would be possible only if aliens were required to register annually.

Once PTKs were identified, the tax administration could send each of them information on his special tax obligations, including, perhaps, his duty to inform his employer of his status for withholding purposes. The PTK’s failure to inform his employer would be detected by the computer at the time of filing and could result in the delinquent PTK’s being subject to fines or other penalties. An alternative, possible in some countries, is for the tax administration to notify employers directly of the PTK’s status.

This brief description of just one aspect of the administrative problems indicates that an IBDT, even if levied in its simplest form, a surtax, would require numerous changes in DC practices. These changes in

173. As explained in note 3 supra, a brain drain can occur between two LDCs, as well as from an LDC to a DC. The arguments that underlie the IBDT suggest that an emigrant PTK should be taxed whether his country of immigration is a DC or an LDC. The administrative considerations discussed in the text, however, raise doubts about the ability
procedure would be both costly and time-consuming and would therefore require a serious commitment on the part of the DCs.\textsuperscript{174}

\textbf{E. A United Nations Assessment on Host DCs}

The reaction of the DC participants at the UNCTAD conference suggests that a lengthy period will be required before DC support for a tax on emigrant PTKs can be expected. Certainly, in the short term, the justice of a tax on PTKs will remain controversial, even if its proceeds are used to finance BDFs. At the Bellagio conference, the authors proposed that, instead of a tax on PTKs, an assessment on the host DCs could be levied by the United Nations, in recognition of the benefits that accrue to them from PTK immigration. Because most students of the brain drain readily concede that the DCs are enriched by the immigration of PTKs, such an assessment should be less controversial than a tax on emigrants. Moreover, in contrast to a tax, a United Nations assessment on host DCs will not affect a PTK's decision to emigrate.\textsuperscript{175}

The amount of the United Nations assessment on a host DC could be determined in a number of ways but should be related to the benefits accruing to the DC. Measuring the actual benefits would not be practical because they are diffused and not easy to quantify; the necessary analytical tools do not exist. A more practical approach would be for economists to attempt to identify easier-to-measure factors that are an indication of the benefits accruing to a host DC and, then, to develop a formula incorporating these factors. Among the factors the economists might consider are the amount of income earned by PTKs within a DC, the amount of tax paid by PTKs to the DC, the relative scarcity of a

\textsuperscript{174} A DC would be unlikely to make this commitment to each LDC that unilaterally levied a tax on emigrant PTKs, even if that tax were imposed as a surtax to the DC tax. See notes 126 & 136 supra.

\textsuperscript{175} A PTK's decision to emigrate will not be affected because the assessment is paid by the host DC. The PTK's ability to enter a DC could be affected, however, if DCs tightened their immigration restrictions in order to reduce the amount of their United Nations assessments.
PTK’s skills in the DC, the level of education attained by a PTK before entering the DC, and so forth.\footnote{176}

The administrative problems that would be encountered in adopting a formulary approach to a United Nations assessment are less formidable than those encountered in levying a tax on individual PTKs. For example, a formula based on the amount of income earned by all PTKs within a DC would require only aggregate income data, rather than specific data from each PTK. The information necessary to compute the assessment could therefore be obtained through sample surveys and cross-sectional studies.\footnote{177} Some studies of this sort have already been made by economists investigating the brain drain. Updating these studies periodically would be far easier than levying and collecting a tax annually from PTKs, even if the formula for the United Nations assessment incorporated variables in addition to income.\footnote{178}

### III. CONCLUSION

The DCs and the LDCs differ widely in their opinions on the costs and benefits of the brain drain. So far, they have been unable by themselves to establish areas of agreement which could become the foundation for fruitful discussion of their differences. Lacking this foundation, the DCs and the LDCs have tended to dwell on their antagonisms and to dismiss each other’s views of the brain drain as unfounded, misconceived, or self-serving.

Until more of a consensus can be reached, it is unrealistic to expect the DCs to embrace any of the proposals presented at the recent UNCTAD meeting. This meeting was, however, a significant step towards

\footnote{176} The assessment could be reduced to reflect any technical assistance programs, foreign aid, or other similar transfers of resources from a DC to any of the LDCs. See notes 99 & 171 supra. If an offset were not allowed for these transfers to the LDCs, a DC might simply reduce the amount of its existing foreign aid by the amount of its United Nations assessment. If this reduction took place, the amount of revenues flowing to the LDCs would not change in the aggregate, but the revenues would now be transferred through the United Nations or BDFs, rather than to the LDCs directly.

\footnote{177} Since the administrative problems of implementing an assessment on a country are less severe than those of imposing a tax on individuals, a United Nations assessment could conceivably be extended to LDCs that were attracting PTK emigrants from other countries. An adjustment in the assessment on such an LDC could be made to reflect any loss suffered by the LDC through the emigration of its own PTKs.

\footnote{178} Any host DC is obviously free to adopt a foreign aid program based on these principles without the participation of other DCs or the United Nations. For example, this unilateral approach would recognize the large flow of PTKs to the United Kingdom or to France from a former colony, or between various contiguous countries. The United Nations could, of course, encourage such a program through a combination of technical assistance, statistical information, and moral suasion.
toward developing that consensus. In the context of a specific set of proposals, the DCs and the LDCs were able to place their rhetoric and hyperbole aside and to gain an understanding and appreciation of the fundamental moral, economic, and cultural differences that shape each other's perceptions of the brain drain. The conference thus established a new dialogue between the parties.

This dialogue, as well as the discussion and analysis in this article, has centered on Professor Bhagwati's proposal to levy a tax on emigrant PTKs. His proposal has led the DCs and the LDCs to reconsider the entire brain drain problem and has provided a fresh perspective on the underlying issues. In order to nurture this dialogue, UNCTAD should consider focusing on those proposals which are the least controversial and which are the easiest to implement. This narrower orientation would appear to eliminate a tax on emigrant PTKs from consideration, at least in the short term. Not only would such a tax require numerous changes in existing administrative practices, but its justice and fairness will be strongly challenged by the DCs and the PTKs. In the view of the authors, however, a United Nations assessment on host DCs and tax incentives for voluntary contributions to BDFs merit further inquiry. Neither of these proposals has received the same consideration as has the taxation of emigrant PTKs, even though both are less controversial and easier to implement.

Appendix. Selected Works on the Brain Drain