

Opinion 39 (1963)¹

OECD Draft Convention on the Protection of Foreign Property

Parliamentary Assembly

The Assembly,

Recalling its Recommendations 159 (1958) and 211 (1959), concerning an Investment Statute and a Guarantee Fund against political risks, and 317 (1962), concerning the protection of private foreign investments in developing countries ;

Recalling that, in [Recommendation 317 \(1962\)](#), it advocated inter alia the conclusion of a multilateral convention which would reaffirm and consolidate the general principles of international law in the matter of foreign investments and that, on that occasion, it recommended that the member Governments of the Council of Europe should actively support the work of OECD in the preparation and conclusion of such a convention ;

Having regard to the draft Convention on the Protection of Foreign Property which, in accordance with instructions given by the Council of the Organisation for Economic Co-operation in April 1960, was prepared by a Committee of the Organisation for Economic Co-operation and Development and was subsequently sent to the Council of Europe for an Opinion ;

Understanding that, although the Council of OECD have not taken a decision on the principle and content of this draft Convention, they will, when they resume consideration of the draft, do so on the basis of that draft as it now stands ;

Considering that other measures are indispensable, complementary to the OECD draft Convention, in order to stimulate the flow of private investments from the industrial countries to the developing countries, in particular by the means of an international institutional arrangement providing guarantee against the non-commercial risks involved,

Adopts the following Opinion :

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A. With regard to the legal aspects of the draft Convention

1. The Consultative Assembly of the Council of Europe is grateful for the opportunity given to it to formulate its comments on the OECD draft Convention on the Protection of Foreign Property. The promotion and protection of foreign investments is indeed a topic of great interest to the Assembly ; its Legal Committee, in particular, has on previous occasions examined at great length the legal aspects thereof and has, inter alia, come out in favour of a multilateral Convention which would reaffirm and consolidate the general principles of international law with regard to the protection of private foreign investments. In point of fact, [Recommendation 317](#), which the Assembly adopted on 17th May 1962, advocated that the member Governments of the Council of Europe should actively support the work of OECD in the preparation and conclusion of such a Convention.

The recognised principles

1. Assembly debate on 20th September 1963 (13th Sitting) (see [Docs. 1648](#) Docs. 1648 and [Doc. 1642](#), draft Opinions presented by the Legal and the Economic Committees), Text adopted by the Assembly on 20th September 1963 (13th Sitting).



2. The object of the draft Convention on the Protection of Foreign Property is, in the words of the Preamble, "the strengthening (of) international economic co-operation on a basis of international law" which would, in turn, promote the flow of capital for economic activity and development. The draft Convention states therefore four basic principles of international law relevant in the matter of the protection of foreign property, namely :

1. Fair and equitable treatment without discrimination (Article 1) ;
2. The observance of undertakings given in relation to foreign property : *pacta sunt servanda* (Article 2) ;
3. No expropriation except in the public interest and under due process of law and subject to just and effective compensation (Article 3) ;
4. Full reparation for any breach of the Convention and non-recognition of measures which violate the rules set out in (1) and (2) above.

The Assembly agrees with these principles and considers that their restatement and observance would undoubtedly improve the international climate for investments. In particular, the Convention will have an effect on the flow of investments towards those developing countries which accede to it. Apart from the above principles, the Convention also contains provision for the arbitral settlement of disputes arising in connection with its terms (Article 7).

The Assembly notes that the Convention is intended to be declaratory of existing customary international law in the matter of the protection of foreign property. This field of law is, of course, one about which there has been, and still is, much controversy, reflecting particularly the diverse interests of capital-exporting and capital-receiving States.

New, or relatively new, forms of expropriation, such as nationalisation or measures of a confiscatory nature in the guise of taxation, have emerged, which in turn have given rise, even among Western international lawyers, to a divergence of opinion, which demonstrates the complexity of the problem. While there may be universal recognition of the maxim *pacta sunt servanda*, and of the rules that payment of appropriate compensation is due when foreign property has been taken, and that there should be no discriminatory treatment, different and often opposite views obtain with regard to important questions such as the following : the legal significance, if any, of the distinction between expropriation and nationalisation ; whether and when to treat certain instances of State interference in the rights of private ownership, including taxation of a confiscatory nature, as constituting a *de facto* expropriation ; the criteria to be respected by the expropriating State, if expropriation is to be regarded as lawful ; whether there are situations in which payment of partial compensation is justifiable, such as in the case of nationalisation of certain sectors of the economy ; the legal effects of global compensation agreements ; whether different treatment of nationals and aliens is always discriminatory, etc. To give an example, a dispute over what is known as "creeping expropriation" (for instance, the progressive rise of taxation over several years on one particular product) cannot simply be solved by referring to a general principle of law. Such heavy taxation may well be regarded by the investor as virtually expropriation ; yet it is by no means certain that, given circumstances relating to economic or financial necessity, such fiscal legislation by the country where the property is situated will necessarily be regarded as confiscatory.

Seen against this factual background, the consolidation of certain guiding principles of customary international law by means of a Convention restating these principles must be considered a step forward, in particular where such a restatement is accompanied by a system of the judicial settlement of disputes which may arise as to what is the scope of these principles when applied to individual cases. An additional advantage of judicial settlement is also that the case law of the Arbitral Tribunal will help to reshape and develop further the general principles in the light of modern circumstances.

The Assembly notes that the application of the principles restated in the Convention is confined to the property of the nationals of the Contracting Parties only. This limitation is found throughout the Convention : in Article 1 regarding the treatment of foreign property, in Article 2 regarding the observance of undertakings, in Article 3 regarding the freedom of transfers and in Article 7 regarding the arbitral settlement of disputes. This differentiation established by the Convention between nationals of Contracting Parties and nationals of other States is, however, more apparent than real. It goes without saying that the Contracting Parties will remain bound by the principles of customary international law, according to which they must extend the protection of foreign property to every alien.

The question is therefore not so much one of substance as of policy. Indeed, if the Convention were made applicable to the property of aliens in general, capital-importing States would be reluctant to accede to such a Convention because they would not wish, in the absence of some reciprocal commitment by the national State of the individual concerned, to make available to nationals of non-contracting Parties the procedural remedies provided for by the Convention which those nationals would not otherwise enjoy.

The Convention must primarily be seen as the engagement of Parties to apply inter se certain basic principles of international law and to submit disputes arising between them to arbitral settlement. As already stated above, this does not and cannot limit the scope of customary rules of international law, and the Assembly can therefore express its agreement with this particular aspect of the Convention.

The arbitral settlement of disputes

The Assembly has considered the provisions of the draft Convention dealing with arbitration, which appear in Article 7 and in the Annex relating to the Statute of the Arbitral Tribunal.

The fact that the draft Convention provides for an arbitral procedure is to be welcomed ; indeed, the effective international protection of foreign property hinges in the last resort on the neutral arbitration of disputes, and there are those who believe that an adequate system of arbitration would in itself suffice to improve the investment climate.

The draft Convention provides for the compulsory jurisdiction of an Arbitral Tribunal which is to be established on an ad hoc basis in accordance with the Annex, unless the Parties to the dispute have decided by common agreement to submit their dispute to the jurisdiction of any other international tribunal. The compulsory jurisdiction of the Arbitral Tribunal is, however, confined to disputes between Parties (i. e. States), and then only to disputes as to the interpretation or application of the Convention. This is the kind of clause normally found in international treaties, but it is regrettable that, in view of the fact that the Convention avoids certain matters relevant in the context of foreign investments, the range of issues which can be decided upon by the Arbitral Tribunal is correspondingly reduced. In this context, the Assembly notes with regret that the freedom of transfer of current income from invested property is not dealt with in the Convention on an obligatory basis.

The position with regard to the jurisdiction of the Arbitral Tribunal is different in the case of claims brought by a national of one Party against another Party. In this event, the jurisdiction is optional ; that is, it depends on whether the Party against which the claim is lodged has accepted the optional clause contained in Article 7, sub-paragraph (b) (i). Furthermore, the acceptance of the Tribunal's jurisdiction here may be limited in time, in substantive scope and in the range of nationals who may benefit under it.

The distinction thus established between disputes between Parties, on the one hand, and between a Party and a national on the other, is not unlike that made in the European Convention on Human Rights between State applications (compulsory jurisdiction of the European Commission of Human Rights) and applications lodged by individuals (optional jurisdiction).

Taking into account the present stage of international law, as well as other considerations of a practical nature, it is no doubt desirable to leave the acceptance of the jurisdiction of the Arbitral Tribunal, with regard to claims by individuals, to some extent to the discretion of the Contracting Parties. Yet the Assembly feels that the arbitral system established by the draft Convention may well lead, in actual practice, to some real restriction of the functioning of the Arbitral Tribunal.

Reference has already been made to the fact that, in the case of claims by individuals, Parties can refuse the jurisdiction of the Arbitral Tribunal altogether, and that even their acceptance of this jurisdiction can be limited in time, in substantive scope and in the range of nationals who may benefit under it ; they may further limit their declaration to one specific claim and also, if they wish, "make it a pre-condition of a claim that the individual concerned should have first exhausted the possibilities of redress that may be open to him under, for example, the Protocol to the European Convention on Human Rights."²

The Assembly has doubts about the wisdom of such limitations and possible pre-conditions.

2. Cf. Draft Convention on the Protection of Foreign Property (OECD, Paris, December 1962), "Notes and comments to Article 7", paragraph 7 (b), page 37.

It is difficult to see why, in a field of law where the principle of non-discrimination is so often the test of legitimacy, the draft Convention should provide an opportunity for discrimination with regard to the protection of foreign property between nationals of one Contracting Party and those of another. Such differentiation could conceivably be justified on grounds of reciprocity ; and it would, in the view of the Assembly, be better if this would clearly be indicated.

It may also be questionable in law whether an individual whose case has been deemed ill-founded by, for example, the European Court of Human Rights³, could again bring the same case before the Arbitral Tribunal whose jurisdiction has been accepted by the respondent State concerned. At any rate, the Assembly finds some difficulty in supporting the suggestion that such "international" remedies as there may be, must be exhausted first, if the Party concerned should wish it.

It must be constantly kept in mind that, in matters such as the Convention is dealing with, arbitration is an essential element, and it will largely depend on the effectiveness of the arbitral system whether investments will be made. In practice, not very much reliance can be placed on the use by States of their right to espouse the claims of their nationals. In the eyes of the investor, this is not a good enough guarantee. Much depends, therefore, on the real possibility for an individual to bring his claim before an Arbitral Tribunal, should the State of which he is a national not institute proceedings on his behalf. Seen against this background, it is regrettable that Contracting Parties should be given a margin as wide as that afforded by the Convention for reducing the scope of their declarations of acceptance. Although these may encourage States to adhere to the Convention, the Parties may well, by having recourse to them, defeat the very purpose of the Convention, which is, in the last resort, to increase the flow of capital.

The Assembly is, however, aware of the fact that in actual practice there will probably be a correlation between the measure of acceptance by a Party of the jurisdiction of the Arbitral Tribunal and the making of investments in that Party's territory, so that it may be hoped that the community of interests which in some respects binds the State and the foreign investor will induce States not to avail themselves of the reservations with regard to the jurisdiction of the Arbitral Tribunal in cases brought by individuals.

In addition, the provision of Article 7, paragraph (d), according to which the State of the national who has brought a claim before the Arbitral Tribunal may espouse that claim, should, in the view of the Assembly, be omitted. An individual may only bring his claim if the Party of which he is a national has indicated that it will not itself institute proceedings under Article 7, paragraph (a) or if, within six months of receiving a written request from its national for the institution of such proceedings, it has not instituted them (cf. Article 7, paragraph (b) (ii)). This provision gives a State ample opportunity to exercise its right of diplomatic protection, and it is undesirable that, once the claim brought by the individual is before the Arbitral Tribunal, the State of which he is a national should be able to intervene for, e.g., political reasons ; unless of course the individual concerned has no objection to the espousal of his claim by the State of which he is a national.

On these grounds, the Assembly, whilst expressing its agreement with the arbitral system laid down in Article 7 of the draft Convention, submits the following suggestions :

1. If it is desired to maintain the possibility of differentiation between nationals of Contracting Parties, as regards their right to submit claims to the Arbitral Tribunal, this differentiation should be based upon reciprocity.
2. The reference in the Commentary on the Convention (page 37, para. 7 (b) and page 38, para. 10) to the exhaustion of international remedies , as a possible precondition of access by individuals to the Arbitral Tribunal, should be omitted. There can, of course be parallel remedies, but recourse to one of them should be a bar to a subsequent action before another international judicial body if the subject-matter of both actions is fundamentally the same (*res judicata*).
3. For the reasons stated in paragraph 13, Article 7 (d) of the Convention should be omitted or, alternatively, should contain the additional provision that a State may only espouse the claim of its national if the latter does not object.

Exhaustion of local remedies

The retention of the rule whereby local remedies must be exhausted before a claim is presented to the Arbitral Tribunal might usefully be re-examined. Submission to arbitration usually excludes local remedies, in particular where the wrongful act has originally been committed by the Government or its agents, and arbitration becomes then the sole and agreed remedy. This is notably the case where an investment is

3. Article 52 of the European Convention on Human Rights : "The judgment of the Court shall be final."

regulated by a contract between the capital-importing State and the investor which contains a clause to the effect that disputes arising in connection with its terms will be submitted to arbitration. It may perhaps be suggested that the local remedies rule should be considered to have been waived unless a Party has made an express declaration to the contrary.

Additional observations

It is stated in Article 9, paragraph (c) of the draft Convention, that "... no claim shall be made under this Convention in respect of the interest of a member of a company : ... (ii) in the case of a company which is a national of a Party by whose measures its property is affected, if the interest of the member of the company does not arise out of and, at the time of such measures, does not represent either an investment of foreign funds made by him or his predecessor in title or an investment of compensation or damages paid in accordance with the provisions of this Convention." (Italics not in original text).

Difficulty may arise in connection with the word "represent", since it will not always be clear to what investment reference is being made. For example, if £ 100,000 is invested in a factory which makes an annual profit of £ 10,000, all of which is ploughed back, does the enhanced value after ten years "represent" an investment of foreign funds ?

B. With regard to the economic aspects of the draft Convention

OECD is to be congratulated on its achievement, which is the product of much hard work by experts from our countries working for OECD and, before that, for OEEC. As it stands, the OECD draft Convention represents definite progress towards the adoption by the international community of a code of good conduct with regard to the treatment of foreign property. Any instrument capable of defining a little more clearly the general principles of international law and their significance, and of embodying them in international legislation and agreements, is of the greatest value.

The Legal Committee having made some very pertinent comments aimed at improving the draft Convention at several points, and in particular, at making the arbitration procedure, which is one of its most important features, less unwieldy and more effective, the Economic Committee has concentrated on the extent to which the OECD Convention is likely to stimulate the flow of private investments towards newly-developing countries. As stated in the preamble, this is one of the aims of the Convention, and in the view of the Assembly the problem of private investment in newly-developing countries is, for obvious economic and political reasons, the most important one.

The effect of a convention of the type drafted by OECD - which seeks to codify a number of general principles of international practice and jurisprudence and to formulate the regulations they call for - will undoubtedly be favourable in so far as it fixes the legal foundations. However, on a practical basis, this kind of convention does not sufficiently overcome the investors' reserves. It is not enough to lay down general principles of law : machinery must also be established to ensure their application.

For all that, the OECD draft Convention represents a first and essential step in the direction of a system that will make foreign investments safe, and consequently increase their volume.

The draft restates and amplifies certain generally accepted legal principles. Its wording seems calculated to secure the adherence of many developing countries in that it avoids anything which could detract from their national sovereignty. For example, the draft recognises the right of nationalisation subject to compensation ; it also recognises the right of any Contracting Party to allow or prohibit the investment of capital within its territory by nationals of another Party

Potential investors will regard the provisions relating to the transfer of capital and income, and those relating to arbitration, as declarations of principle which are no doubt valuable but are of limited scope.

The draft submitted constitutes a most important declaration of intentions and principles, and it is desirable that it should be adopted. Nevertheless, a substantial increase of private investments in developing countries will only be achieved when agreements creating an effective system of guarantees for such investments, based on the principles set out in the draft, have been concluded.

Other means of protecting private investments in newly-developing countries

In discussing forms of protection, it must be realised that the terms of the problem have changed a great deal since the war, mainly under the influence of decolonisation which increased the political risk for foreign investors. Furthermore - and this is only one aspect of the problem - the new countries have not yet

succeeded in placing their international credit on a secure political and economic footing and therefore cannot raise public loans on the capital markets ; that is why it has been necessary to increase financial aid between States and multilateral public aid through international bodies. In the face of the growing needs of the new countries such public aid, which is at present indispensable, cannot, however, replace private investment. Above all, it cannot render the same services to new countries as effectively as private investment, which not only brings capital and currency into the country, but also furnishes techniques, engineers and the spirit of enterprise, which are equally lacking.

It must be recognised that the effort demanded of investors by Governments and public opinion is founded on thoroughly valid political considerations which our Assembly endorses. The risk they are asked to take is clearly disproportionate to the profits which they can reasonably expect - especially since private investments in industrialised countries are generally more profitable than in developing countries. The increase of the flow of private capital towards developing countries can only be assured by an effort, on the part of the public authorities of our own and of the developing countries, designed to facilitate and encourage foreign investment.

The best approach to the problem would appear to be the practical one of insuring investments against non-commercial risks. This approach has the advantage, for the developing countries, of not committing them politically in any way. Then, too, it satisfies the investor's first concern, which is to be certain of receiving effective and speedy compensation for any losses due to non-commercial causes.

Multilateral guarantee fund against political risks

This solution was advocated by the Economic Committee in its report on an Investment Statute and Guarantee Fund against political risks ([Doc. 1027](#), September 1959). [Recommendation 211 \(1959\)](#) was adopted unanimously by the Consultative Assembly. It may be recalled that, although the Assembly's proposals were partly modelled on a national guarantee scheme for private investments _ that of the United States _ they included one new feature, namely the institution of a multilateral insurance scheme. This innovation may be the reason why the Governments have not hitherto adopted this approach. In business circles, however, it has undoubtedly made considerable headway; and a number of projects are now in existence, each of which is some form of multilateral investment guarantee scheme.

Despite the considerable interest they present, the Economic Committee does not propose to discuss all these projects in detail ; they are summarised in a study made by the Secretariat of the World Bank⁴ at the request of the OECD Development Assistance Group. It would be useful, however, to outline the analysis of the question given in this study, which is based, among other sources, on an enquiry in the private circles concerned carried out jointly by the World Bank and the International Chamber of Commerce⁵.

It should be pointed out that the Secretariat of the World Bank refrained from drawing any conclusions as to whether a multilateral insurance scheme would in fact improve the investment climate, on the grounds that practical experience alone could determine this. Moreover, the preface to the study states that the views contained therein do not in any way commit the Executive Directors of the Bank or its member Governments. The Assembly accordingly assumes full responsibility for the following remarks.

In the first place, it seems established that a multilateral insurance scheme is technically feasible and could operate effectively. The survey mentioned above also shows that a majority of the business circles concerned are in favour of a multilateral scheme and believe that it could help to promote increased private investment in under-developed countries. What is more, despite the difficulties inherent in multilateral arrangements, such a scheme would appear to offer definite advantages over the alternative of increasing the number of national investment insurance schemes. Not only would the administrative problems of such a maze of bilateral agreements be insurmountable, but national schemes as such do not seem to be fruitful, or even viable, except in countries which are actual or potential "big investors".

Another advantage of the multilateral over the bilateral system is that it would not provoke competition between national schemes, and would tend to harmonise the conditions governing investments, which might otherwise continue indefinitely in their present state of diversification.

4. Multilateral Investment Insurance, Washington, DC, March 1962 ; Appendix B to the report analyses the various projects which have been proposed, including that of the Council of Europe.

5. Appendix C to the report contains an analysis of the replies obtained during the enquiry.

With regard to the main points of a multilateral scheme, the World Bank's study has led the Assembly to the following observations :

1. The risks to be covered should be those listed in the Assembly's report mentioned above (Doc. 1027), namely :
 1. failure or delay of transfer;
 2. undue loss by investor as a result of dispossession (nationalisation, expropriation) or complete or partial spoliation;
 3. losses by the investor as a result of complete or partial destruction by act of war, insurrection, riot or civil war.
1. Replies to the enquiry, and likewise certain features of other projects, indicate that this list would meet with fairly wide approval in the circles concerned.
2. The investor could insure against one, some or all of these risks ; and his premium would vary according to the risks covered.
3. The amount of the investor's established loss eligible for compensation should not exceed 80-90% of the total investment at the time the contract is signed. This principle seems to be generally accepted.
4. Only new investments and re-investments would be insurable. This principle, which aroused such opposition when first advocated by the Assembly, now seems to be generally accepted in the circles concerned.
5. The guarantee would be given by the body administering the scheme in the form of a contract specifying the nature and extent of the risks covered ; authority would rest with the administrative body to decide whether loss had occurred and to pay compensation for any such loss ; in so doing it would act for the investors concerned, who would not themselves play any part in the settlement procedure.
6. The insurance contracts should be secured by a fund made up of the premiums paid by investors and by contributions from Governments.
7. It is widely agreed that the institution of a multilateral insurance scheme and its administration would require the creation of an international organisation. Many of those concerned also seem to have accepted the Assembly's Recommendation that the scheme should cover only Members of the organisation ; in other words every country which wishes to benefit under the scheme must – whether it is a country which provides or one which receives investments – belong to the organisation.

This latter condition is based on two considerations. Firstly, financial participation in the Guarantee Fund would help to create the community of interests essential to the smooth running of the operation. Secondly, countries receiving investments would have to participate in order to exercise the right to be consulted about the investments proposed to them within the framework of the insurance scheme. The guarantee scheme should apply solely to investments made with the approval of the countries concerned, so that they may be held liable if need be. In the event of any loss, the initial liability for compensation would lie with the country in which the investment had been made ; but, if necessary, the joint liability of the other countries contributing to the insurance scheme might be invoked. This condition is vital to the rational integration of investments in these countries' development programmes and also to the removal of their fears as to the domination, however imaginary, of their economies by foreign investments.

The smooth running of a system of insurance against non-commercial risks depends upon the acceptance of compulsory arbitration in all disputes as to the reality of any loss for which compensation is claimed, and as to its extent.

To summarise the theory behind the Assembly's Recommendations - which now seem to be far more widely understood than a few years ago - it must be accepted that the foreign investment in question is governed, in the first place by the laws and regulations in force in the country where the investment is situated at the time when it was made, and then by individual agreements between the Government of that country and the foreign investor. In the light of the legal provisions applying initially to each investment the arbitral tribunal to be set up should be empowered to base its ruling on the general principles of law recognised by civilised nations, or, failing that - and provided that the parties are agreeable - to make its award *ex aequo et bono*. Any question as to whether the legal provisions applying initially to an investment have been infringed in such a way as to cause unwarranted loss to the investor, must be settled by reference to those legal provisions, determined as stated above.

It should be added that the establishment of an insurance scheme against noncommercial risks of the type described briefly above would be facilitated if it were on a regional basis, as the Consultative Assembly proposed in connection with its work on African development. It is natural for a group of countries working together for their mutual benefit to develop a certain similarity of attitude and a degree of unity which would do much to simplify the problem. Chances of success are still further increased when relations between a regional group seeking to attract investments and a group of "investor" countries are well-developed, as is the case, for example, between the European Economic Community and its associated countries and, in a broad sense, between Europe and Africa.

Recent suggestions

At the 11th Round Table, held in Berlin at the end of May 1963 by the Association for the Study of European Problems on the subject of private investments in developing countries, many new and stimulating ideas were put forward. Three of them deserve special attention.

The first, which is in a sense an ingenious variant of the multilateral guarantee, is to set up an international reinsurance body to which countries providing and receiving investments would both belong and with which national guarantee funds could reinsure themselves. Although this proposal offers the great advantage of providing for the examination of all investment projects jointly with the capital-receiving countries, it does not avoid the administrative and other complications stemming from the need for setting up a voluminous and multifarious network of bilateral agreements.

The second idea, in no way contradictory to the multilateral guarantee described in the preceding section, is to couple such a guarantee with a joint guarantee by the receiving countries. This would contribute to the growth, alongside the community of interest arising from the multilateral guarantee between investing and capital-receiving countries, of a parallel community of interest among the developing countries themselves, who stand to gain by a co-ordination of their national economic policies. This would also enable them to concert their policy, and strengthen their position, at the same time encouraging the self-discipline which is indispensable in the treatment of foreign investments. This idea could most easily be carried out, of course, within a regional framework, and that is precisely why the multilateral guarantee scheme could also be most profitably and simply organised at the regional level. In any case the capital-receiving countries would have to take the initiative in this scheme, and such a supplementary guarantee seems a most sensible idea from their own point of view.

The third suggestion made at the Round Table turns away from the multilateral guarantee scheme, seeking a solution to the problem of transfers, and the creation of a solid basis for the credit of under-developed countries with the World Bank by means of a novel banking mechanism. First, according to this plan, national development banks would be founded in all countries concerned, and each bank would set up a fund into which would be paid the whole or part of the sums which foreign private companies wish to transfer and for which they request the equivalent in foreign currency. After obtaining the currency from its central bank, the national development bank, instead of turning it over directly to the private companies, would purchase bonds issued by an international development bank specially created for the purpose, say by the World Bank ; the bonds would be given to the foreign companies in exchange for their deposits, and the companies might either keep them or trade them on international stock exchanges, thereby effecting a de facto transfer of currency. The advantage of this transaction for the under-developed countries is that the international bank would be empowered to grant, to countries purchasing bonds, a development loan approximately equal to the amount subscribed, so that in practice, if the loan is granted, the national development bank would continue to have the currency at its disposal on condition that it be used for the country's economic development. By associating themselves in this way with a country's economic growth, private companies could freely export their dividends and redeemed capital in the form of bonds guaranteed by an international bank, without involving any immediate pressure on the balance of payments of the under-developed countries other than the payment of interest on the loan and any difference between the amount of the bonds purchased and that of the loan granted.

This system, based on international credit, deserves special study, for it may contribute to solve the serious problem of transfers ; but it clearly does not answer the need for a multilateral guarantee mechanism.

Final Remarks

The Assembly approves the OECD draft Convention subject to the amendments proposed by the Legal Committee, this approval signifying that the draft represents an advance towards the establishment of a general investment statute and will make Considering that the Convention, if it is not followed by other measures, will not resolve the strictly economic aspect of the problem - which is to furnish countries which so desire with private capital to assist them in their development - the Assembly asks OECD :

1. to keep the question on its agenda ;
2. to reconsider, among other things, the Assembly's past work on a guarantee scheme, which would seem to be a necessary adjunct to the draft Convention on the protection of foreign property ;
3. to consult the Assembly over the final draft when it is prepared.

e possible some degree of harmonisation of legal practice in this field.