Recommendation 317 (1962)[1]

Protection of private foreign investments in developing countries

Parliamentary Assembly

The Assembly,

Considering that private investments in developing countries are one of the means of promoting the economic and social progress of these countries and of improving the living conditions of their peoples;

Considering that, at present, the absence of sufficient legal protection and the likelihood of non-commercial risks limit the flow of private foreign investments;

Conscious therefore of the need to find means acceptable to both capital importing and exporting countries, which would improve the climate and conditions necessary for an expanding flow of private foreign investments;

Recalling its Recommendations 159 (1958) and 211 (1959) concerning an Investment Statute and a Guarantee Fund against political risks and noting that the proposals then made, although framed to apply particularly to investments in Africa, are equally valid in, and relevant to, the wider context of investment in developing countries in general;

Regretting that the Committee of Ministers has not seen fit to give effect to the proposals set forth in these Recommendations;

Noting that, transposed to the wider context of developing countries in general, the proposal to establish an international guarantee fund has received the support of various other bodies and organisations, including the International Chamber of Commerce;

Understanding that the proposal to draft an Investment Statute is now under study by the OECD;

Convinced that a system of compulsory arbitration of disputes arising in connection with private foreign investments should, in any case, be established and should be linked with the Guarantee Fund or incorporated in the Investment Statute,

Recommends to the Committee of Ministers :

With regard to a multilateral investment convention :

(a) that the member Governments should actively support the work of OECD for the preparation and conclusion of an international convention re-affirming the general rules of international law for the protection of foreign property and should seek to obtain the adherence to such a convention by both capital-supplying and capital-receiving States;

With regard to the International Guarantee Fund :

1. Assembly debate on 17th May 1962 (6th Sitting) (see Docs. 1419Docs. 1419, Report of the Legal Committee, and 1429, Opinion of the Economic Committee). Text adopted by the Assembly on 17th May 1962 (6th Sitting), after amendment.

(b) that it should appoint a committee of experts with instructions to examine urgently the proposal already made by the Assembly for the institution of an International Guarantee Fund against non-commercial risks and consider and report whether a second convention should be prepared which could later serve as a basis for discussion with regional groupings of interested countries, not merely in Africa, as proposed earlier by the Assembly, but, where appropriate, in other parts of the world.

With regard to compulsory arbitration :

(c) that both conventions should contain a clause providing for compulsory arbitration in the event of disputes or for their settlement by other judicial means;

(d) that similar provisions for compulsory arbitration should be included in future bilateral treaties, such as those concluded in recent years by the Governments of the United States of America and the Federal Republic of Germany, and in contracts made between investors and capital-receiving Governments;

Finally :

(e) that the long-term objective should be a world-wide investment convention; the conclusion of such an instrument, that is to say a generally acceptable convention probably stemming from the OECD Convention and providing for compulsory arbitration in the event of disputes arising over the treatment accorded to foreign property would, if feasible, constitute a valuable step forward.