

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/2546
19 February 1954

ORIGINAL: ENGLISH

Seventeenth session
Item 3 (c)

ECONOMIC DEVELOPMENT OF UNDER-DEVELOPED COUNTRIES

INTERNATIONAL FLOW OF PRIVATE CAPITAL FOR THE ECONOMIC
DEVELOPMENT OF UNDER-DEVELOPED COUNTRIES

Memorandum by the Secretary-General on Action Taken to
Stimulate the International Flow of Private Capital

FOREWORD

When considering the financing of economic development, the General Assembly at its seventh session referred in resolution 622 C (VII) to the importance of stimulating the international flow of private capital to under-developed countries. It noted that certain governments had taken action designed to stimulate the flow of private capital for economic development and that action had been taken and studies made on this subject by the United Nations and the specialized agencies and by a number of non-governmental organizations. The Secretary-General was requested to prepare a memorandum for the Economic and Social Council "summarizing the work done, the studies conducted and the action taken ..."

The present memorandum, presented in accordance with this request, has been prepared in conjunction with a study entitled The International Flow of Private Capital, 1946-1952 (United Nations publication 1954.II.D.1), which has been transmitted to the Economic and Social Council pursuant to a further request made by the General Assembly in resolution 622 C (VII). The latter report contains an analysis of the volume, direction, types and fields of application of private international investment and the reasons for its continued inadequacy in the under-developed countries.

Most of the national and international action summarized in this memorandum is designed to exert a direct influence on the international flow of private capital. Accordingly, general measures for the promotion of economic development are dealt with only incidentally, even though their influence on the inflow of private capital may be actually or potentially significant. Thus, in respect of international action, no reference is made to the proposed Special United Nations Fund for Economic Development recently under consideration by the Economic and Social Council and the General Assembly, and only general reference to action under the United Nations expanded programme of technical assistance. The same limitation applies to financial and technical assistance supplied to under-developed countries by national agencies.

While the summary of international action provided in the memorandum is relatively comprehensive, the information relating to national action is limited in scope; it may be regarded as a survey of the main types of measures taken in a selected number of countries. The account of work carried out by specialized agencies and non-governmental organizations is, in most cases, based on information supplied by them on request.

In requesting the present memorandum and the analysis of the international flow of private capital to under-developed countries, in resolution 622 C (VII), the General Assembly called on the Economic and Social Council, when considering the question of financing economic development in the light of the two reports requested, "to give attention at an early session to the steps which the United Nations, the specialized agencies and the governments of Member States might take to stimulate the steady flow into under-developed countries of private capital in adequate amounts".

CONTENTS

I. INTERNATIONAL ACTION

	<u>Page</u>
1. The United Nations	7
Economic and Social Council	7
General recommendations	7
Fiscal recommendations and studies	11
International code concerning private investment	13
International Finance Corporation	16
Other activities	19
The General Assembly	22
2. International Bank for Reconstruction and Development	24
3. International Monetary Fund	29
4. Other inter-governmental agencies	31
Specialized agencies of the United Nations	31
Other international organizations	33
5. Non-governmental organizations	39

II. NATIONAL ACTION

6. Capital importing countries	45
Obstacles to inflow of private capital	45
Policies and measures affecting entry and operation	47
Investment laws and related policies	48
Bilateral treaties	53
Foreign exchange regulation	56
Fiscal incentives	59
Other measures to encourage capital inflow	62

CONTENTS
(continued)

	<u>Page</u>
7. Capital exporting countries	65
Regulation of capital export	65
Exchange control	65
Other regulation of capital export	67
Tax policies	68
Investment guarantees	72
Other measures to encourage investment	74

APPENDIX

Official statements concerning private foreign capital in India

I. INTERNATIONAL ACTION

1. THE UNITED NATIONS

The question of the flow of private capital for the economic development of under-developed countries has been under consideration in the United Nations since 1947.^{1/} The following account relates to action taken by various organs of the United Nations.

Economic and Social Council

General recommendations

The Economic and Social Council has adopted a number of resolutions containing recommendations for national and international action with respect to private foreign capital and requesting studies by the Secretariat and the specialized agencies on the subject.^{2/}

^{1/} Various committees of the League of Nations also considered the question of private foreign investment. A summary of the action taken and reports prepared may be found in Conditions of Private Foreign Investment, report of a special joint committee of the Economic, Financial and Fiscal Committees of the League of Nations (1946.II.A). Among other reports by the League of Nations on the subject may be mentioned Report of the Committee for the Study of International Loan Contracts (1939.II.A.10) and Model Conventions for the Prevention of International Double Taxation and Fiscal Evasion (1945.II.A.3).

^{2/} The relevant resolutions of the Economic and Social Council are the following: 222 (IX), 14 August 1949; 268 (X), 2 March 1950; 294 (XI), 12 August 1950; 368 (XIII), 22 August 1951; and 416 (XIV), 23 June 1952.

In resolution 222 D (IX) the Economic and Social Council expressed the belief that "consideration of measures to expedite . . . an expanded flow [of international capital] requires careful study and discussion by the Council of many problems, such as the effective mobilization of national savings, the creation of a favourable investment climate, the fuller utilization of existing sources of international funds, measures to avoid extreme fluctuations in earnings of foreign exchange and others". Reference was also made to action by Governments to stimulate the international flow of capital, particularly through guarantees to private investors and tax concessions. The Secretary-General was requested to make several studies in preparation for "a comprehensive discussion of actions necessary to stimulate capital investments" and subsequently reported to the fifth session of the Economic and Employment Commission on the steps being taken with respect to these studies. One such study was to contain "a survey of the more important types of laws, regulations and economic policies affecting the operations of private foreign capital which are most prevalent in capital exporting countries on the one side and in less developed countries on the other ..."^{3/} The Secretary-General was also requested to make "a study of the possibilities of establishing an international clearing-house of information by which potential investing entities or private investors can be brought together with entities or private persons requiring funds in under-developed countries". The deferment of this study was noted by the Economic and Employment Commission in its report to the Economic and Social Council, which at its eleventh session adopted a comprehensive resolution, 294 (XI), on the financing of economic development, including a recommendation that certain further studies be undertaken. It may be noted that among the activities envisaged for the proposed International Finance Corporation subsequently considered by the Council was that of serving as a source of information regarding opportunities for private foreign investment in under-developed countries (see section on proposed International Finance Corporation, below).

^{3/} The study requested was submitted to the tenth session of the Economic and Social Council under the title "Survey of Policies Affecting Private Foreign Investment", E/1614/Rev.1, 8 March 1950.

In connexion with the foreign financing of economic development resolution 294 (XI), adopted on 12 August 1950, contained several recommendations with the object "of encouraging effective methods of increasing the flow of international capital for the economic development of under-developed countries". It recommended that:

"...governments establish through domestic measures and, if necessary, through bilateral or multilateral agreements, conditions to encourage participation of foreign private capital in desirable economic developments either in the form of direct investment or in the form of investment in bonds of governments or of private and public corporations..."

and that:

"...governments of the more developed countries seek to encourage by appropriate means the investment of private capital by their nationals in under-developed countries..."

The resolution referred to "the great importance for the promotion of private foreign investments of assurances of ability to transfer earnings and withdraw capital in the currency in which the original investment has been made", and requested the International Monetary Fund to make a study of the capacity of under-developed countries to service investments of foreign capital, and of statutory and administrative measures designed to provide for servicing foreign investment in times of exchange stringency.^{4/}

The Council also adopted comprehensive recommendations on private foreign investment in resolution 368 B (XIII) of 22 August 1951.^{5/} With respect to national action, recommendations were addressed to both developed and under-developed countries. The Council recommended in paragraph 5 of the resolution that "countries able to export capital":

^{4/} The study requested was presented to the thirteenth session of the Economic and Social Council in a document (E/2404) containing two memoranda, entitled "Investment Service of Under-developed Countries" and "Statutory and Administrative Measures Designed to Provide for Servicing Foreign Investments in Times of Exchange Stringency in Under-Developed Countries".

^{5/} This resolution was based partly on the discussion of recommendations contained in a report prepared by a group of experts pursuant to resolution 290 (XI) under the title Measures for the Economic Development of Under-developed Countries (United Nations publication 1951.II.B.2). It also took account of discussion by the Economic, Employment and Development Commission at its thirteenth session (August 1951) and of General Assembly resolution 400 (V), recommending that the Economic and Social Council "...consider practical methods, conditions and policies for achieving the adequate expansion and steadier flow of foreign capital, both private and public..."

"(a) Provide potential investors with the fullest possible information on foreign investment opportunities;

"(b) Undertake measures for the avoidance of double taxation, such as the negotiation of appropriate tax treaties;

"(c) Be prepared to negotiate treaties with under-developed countries to ensure conditions favourable to the investment of private foreign capital, including the importation of modern equipment and techniques and other specialities necessary for economic development, and, in particular, to ensure the conditions set forth in paragraph 6(b) below; [see below]

"(d) Supplement, whenever found desirable and feasible, assurances given by recipient countries with guarantees to or insurance of potential investors against certain non-business risks affecting foreign enterprise;

"(e) Impress on investors the importance: (i) of adhering to proper standards of conduct in the operation of their foreign enterprises, and in particular of having due regard to the economic and social welfare of the capital receiving countries; and (ii) of ensuring, wherever feasible, opportunities for participation of nationals of the under-developed countries in the administrative and technical services in industry, and for their training;"

Countries "seeking to attract private foreign capital" were recommended in paragraph 6 of the resolution to:

"(a) Examine domestic laws and administrative practices affecting private foreign investment with a view to removing deterrents to the inflow of private capital;

"(b) Provide adequate assurances, through treaties or otherwise, with respect to the treatment to be accorded foreign investors: (i) in the operation, management and control of their enterprises; (ii) in the remittance of earnings and withdrawal of capital; (iii) in the protection of their persons and property; (iv) in the matter of compensation in case of expropriation of their property; and (v) in respect of any other questions which may arise;

"(c) Undertake, through legislative or administrative measures and the negotiation of tax treaties, to safeguard foreign investors against discriminatory taxation and to resolve other taxation issues, including the issue of double taxation,

"Provided that the provisions of sub-paragraphs (b) and (c) will be without prejudice to the right of the government of a Member State to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies;

"(d) Develop information services and other means for informing potential foreign investors of business opportunities in their countries, and of the relevant laws and regulations governing foreign enterprise."

In the same resolution the Council also requested the International Bank for Reconstruction and Development to explore the possibility of establishing "an international finance corporation to promote the financing of productive private enterprise either through loans without government guarantee, through equity investments or by other methods intended for the same purpose". This proposal is discussed separately below.

Fiscal recommendations and studies

Several recommendations concerning fiscal aspects of international investment have been made by the Economic and Social Council and the Council's Fiscal Commission. In resolution 226 (IX), adopted on the suggestion of the Fiscal Commission in the report of its second session, the Council, with a view to promoting international trade and investment, recommended that governments "actively pursue a policy of negotiating bilateral agreements, wherever appropriate, for the avoidance of double taxation". Subsequently, the taxation of foreign investments, with particular reference to foreign investments in under-developed countries, was the subject of resolutions 378 B (XIII), 416 D (XIV), and 486 B (XVI).^{6/}

In resolution 378 (XIII) the Council stated its recognition that, in the relations between under-developed countries and countries in a more advanced state of development, "the main burden of relief of double taxation must fall on the country where the income is also taxable as part of the income of a resident or national person or corporation". The Council recommended, further, that "there is normally no need or justification for countries seeking to attract capital and enterprise from abroad to offer as an incentive specially favourable tax treatment compared with the treatment accorded their own national enterprises".

^{6/} Adopted on 10 August 1951, 1 July 1952 and 4 July 1953, respectively.

Resolutions 416 D (XIV) and 486 B (XVI) grew out of proposals by representatives of capital importing countries that the Council recommend that capital exporting countries grant full tax exemption to income from foreign investments. The Council did not make such a recommendation but requested the Fiscal Commission to continue to study the effectiveness of such exemption and report to the Council on this subject. Meanwhile, the Council recommended in resolution 486 B (XVI) that "the highly developed countries, acting unilaterally or when concluding tax agreements, should give special consideration to the feasibility of taking action to ensure that such income is taxable only or primarily in the country in which the income was produced".

The following studies relating to the taxation of international investments have been prepared by the Secretary-General in response to resolutions of the Economic and Social Council:

International Tax Agreements, volumes I to III^{7/}

Replies to Questionnaire on Taxation of Foreign Nationals, Assets and Transactions ^{8/}

Comparative Studies on the Taxation of Foreign Taxpayers and Foreign Income ^{9/}

Study on Corporate Tax Problems^{10/}

-
- ^{7/} United Nations publications 1948.XVI.2, 1951.XVI.1, and 1951.XVI.5. An additional volume is in preparation, and the series is expected to be continued biennially. These reports were prepared pursuant to resolutions 67 (V), 226 (IX), 378 (XIII) and 486 (XVI). They contain the texts of international treaties for the avoidance of double taxation, full information on the present status of such agreements and an evaluation of recent trends.
- ^{8/} Prepared pursuant to Economic and Social Council resolutions 67 (V), 226 (IX), 378 (XIII) and 486 (XVI). The text of the questionnaire is contained in E/CN.8/W.19 of 5 August 1948. Replies received from thirty-one governments are reproduced in E/CN.8/46 of 6 January 1949, and addenda. This programme is continuing pursuant to resolution 486 (XVI).
- ^{9/} E/CN.8/68, 22 December 1952, and addenda. These studies contain a description of the tax treatment of foreign taxpayers and foreign income resulting from national legislation and international tax agreements.
- ^{10/} E/CN.8/66, 25 November 1952. An annex to this report contains an analysis of the treatment of corporate profits and dividends in international tax agreements.

The Effects of Taxation on Foreign Trade and Investment^{11/}

Studies of the taxation of foreign private investment in capital importing and capital exporting countries of Latin America ^{12/}

In resolution 378 G (XIII), the Economic and Social Council, referring to the importance of a "modern tax structure" in attracting foreign trade and investment and in promoting national development, recommended that the Secretary-General consider the publication of a "world tax service, providing a continuous service of information on national tax laws and administration..." While considerable information of this nature is currently being published through the continuation of several studies listed above, the proposal for a comprehensive world tax service has not yet been implemented.

International code concerning private investment

In 1947 the Economic and Employment Commission instructed the Sub-Commission on Economic Development:

"To commence a study, in co-operation with the other commissions of the United Nations and the specialized agencies concerned, with a view to making recommendations regarding the need for an international code relating to foreign investment which will cover among other things the protection of economic and social interests of the countries in which investments are to be made, as well as the protection of investors, both public and private..." ^{13/}

^{11/} 1950.XVI.1; prepared in response to Council resolutions 67 (V) and 226 (IX).

^{12/} Prepared pursuant to Economic and Social Council resolutions 378 (XIII) and 416 (XIV) and resolution 3 (IV) of the Economic Commission for Latin America. A first study was published in January 1953 under the title United States Income Taxation of Private United States Investment in Latin America (1953.XV.1). See also "Taxation of Private Investment in Mexico" (E/CN.8/69/Add.2, 3 April 1953). In other studies now in preparation special consideration is to be given to the potential effect of tax exemption in the principal capital exporting countries on the flow of private capital to under-developed countries.

^{13/} See the report of the first session of the Economic and Employment Commission, Official Records, Economic and Social Council, Second Year, Fourth Session, Supplement No. 4. See also E/CN.1/Sub.3/4, memorandum by the Secretary-General, 14 November 1947.

The inclusion of this subject in the agenda of the Sub-Commission on Economic Development was approved by the Economic and Social Council.^{14/} The proposal relating to an international investment code was considered specifically by the Sub-Commission on Economic Development at its third session, in connexion with a discussion of the foreign financing of economic development.^{15/} The Sub-Commission did not, however, include a specific recommendation on such a code in its report.^{16/} The report contained the following statement:

"With regard to the suggestion that bilateral treaties on foreign investments should be drawn up, to which capital importing and capital exporting countries should be parties, the Sub-Commission considers that the whole question of private foreign investments should be a matter for negotiation between the individual or groups of investors concerned and individuals or the national governments of the countries wherein they want to make investments, with the proviso that the conditions arrived at would be consistent with the rights and obligations of Member nations under the United Nations Charter and help to promote the economic development of the under-developed countries. The Sub-Commission, however, is of the opinion that an internationally agreed statement of the principles governing the import and export of private capital may serve a useful purpose and hopes that such a statement will follow the lines set out in this report." ^{17/}

^{14/} See the report of the Economic and Social Council to the second regular session of the General Assembly, Official Records, General Assembly, Second Session, Supplement No. 3 (A/382, 9 September 1947).

^{15/} The Sub-Commission had before it a report submitted by the Secretary-General, International Capital Movements During the Inter-War Period (1949.II.D.2). This report was prepared in response to a request of the Sub-Commission at its first session (see "Report of the First Session of the Sub-Commission on Economic Development", E/CN.1/47, 18 December 1947). The report contained general observations on the role of private foreign investments in the promotion of economic development.

^{16/} See summary record of the seventy-third meeting of the Sub-Commission on Economic Development (E/CN.1/Sub.3/SR.73, 11 April 1949), pages 12 to 15.

^{17/} See the report of the third session of the Sub-Commission on Economic Development, Official Records, Economic and Social Council, Fourth Year, Ninth Session, Supplement No. 11B.

The Economic and Employment Commission, when considering the Sub-Commission's report, did not refer to the proposal concerning an international code relating to foreign investments. It did, however, express the following views:

"As regards the financing of economic development from foreign sources, the Commission considered that the report [of the Sub-Commission] failed to establish a proper balance between the responsibilities of governments of countries desirous of attracting foreign investments and the responsibilities of the foreign investors themselves. The Commission recognized that, given appropriate safeguards for the investor and for the receiving country, private foreign capital might contribute considerably as a means of financing economic development. It consequently felt that due attention should have been paid to the ways and means of removing barriers that now interfere with the international flow of capital, especially those arising from lack of security felt by the private foreign investors ready to invest in the under-developed countries." 18/

The Economic and Social Council, at its ninth session, took note of the report of the fourth session of the Economic and Employment Commission, including the paragraph quoted.^{19/} At its tenth session, in March 1950, the Council referred to the Sub-Commission a request for the formulation of practical recommendations for financing economic development.^{20/} It did not, however, refer to the proposal for an international investment code, and the question of such a code has since then not been on the Council's agenda, though it has been referred to by several representatives from time to time.^{21/}

18/ "Report of the Fourth Session of the Economic and Employment Commission" (E/1356 (E/CN.1/74), 27 May 1949), paragraph 29.

19/ Economic and Social Council resolution 222 D (IX), 14 August 1949.

20/ Resolution 268 B (X), 2 March 1950.

On 14 September 1949 the International Chamber of Commerce, a non-governmental organization, transmitted to the Secretary-General the draft of an "International Code of Fair Treatment for Foreign Investments". See section below concerning this organization

21/ The Council at its tenth session also had before it a report prepared by the Secretariat entitled Methods of Financing Economic Development of Under-Developed Countries (United Nations publication 1949.II.B.4). Chapter II of this study dealt with methods of foreign financing, including various methods of stimulating the international flow of private capital. The study was prepared in response to resolution 179 (VIII) of the Economic and Social Council, requesting a report on "methods of financing economic development of under-developed countries, including methods of stimulating the international flow of capital for this purpose..."

The question of principles governing private international investments was also considered by the United Nations Conference on Trade and Employment.^{22/} Articles 11, 12 and 72 of the Havana Charter for an International Trade Organization, prepared by the Conference, contain several provisions relating specifically to international investment, both public and private. Article 11 provided "that no member [of the Organization] shall take unreasonable or unjustifiable action within its territory injurious to the rights or interests of nationals of other members in the enterprise, skills, capital, arts or technology which they have supplied". Article 12 contains parallel provisions of a general nature relating to the rights of capital importing countries. It also contains an undertaking on the part of members to enter into consultations or participate in negotiations directed to the conclusion of bilateral or multilateral agreements relating to "the opportunities and security for investment which members are prepared to offer..." Other provisions authorized the organization to "formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices and treatment of foreign investment" and to make recommendations for and promote bilateral or multilateral agreements designed, inter alia, to assure just and equitable treatment for capital brought from one member country to another. The Havana Charter was incorporated in the Final Act of the Conference and was signed by the representatives of fifty-three countries on 24 March 1948. It has not entered into force; the General Agreement on Tariffs and Trade which was concluded in 1947 among a number of the countries in question is in the main confined to commercial policy provisions similar to those contained in the Havana Charter and does not include the investment provisions referred to above.

International finance corporation

The Economic and Social Council, by resolution 368 (XIII) of 21 August 1951, requested the International Bank for Reconstruction and Development to prepare a report exploring the possibility of establishing a new type of international

^{22/} The Conference was called pursuant to a resolution of the Economic and Social Council of 18 February 1946. See Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (United Nations publication 1947.II.4) and United Nations Conference on Trade and Employment, Final Act and Related Documents (United Nations publication 1948.II.D.4).

agency to promote the external financing of economic development.^{23/} The resolution envisaged the creation of an "international finance corporation" designed to help finance productive private enterprises in under-developed areas through methods not available to the Bank under its articles of agreement, namely, equity investments and loans without the guarantee of the government of the capital importing country.

In response to this resolution, the Bank prepared a Report on the Proposal for an International Finance Corporation (E/2215). In transmitting the report, the president of the Bank noted that it did not constitute an expression of opinion on the merits of the proposal by the Executive Directors of the Bank or the governments they represent. The report was transmitted by the Bank to its member governments for their consideration.

The proposal discussed in the report envisaged an agency affiliated with the Bank, having an initial capital of about \$400 million to be subscribed by governments. The report suggested that the agency be given a large measure of discretion concerning the methods it would use in making equity investments and extending loans to private enterprises. The agency's investments would normally be made in conjunction with private foreign capital, with the agency taking a minority interest. It was indicated, further, that the agency might perform the function of bringing information regarding opportunities in under-developed countries to the attention of potential private investors abroad, thus becoming an effective instrument for bringing investment opportunities, private foreign capital and management together.^{24/}

^{23/} The Council's action followed consideration of a recommendation by a group of experts appointed by the Secretary-General. Their report, Measures for the Economic Development of Under-Developed Countries (United Nations publication 1951.II.B.2) recommended that "the United Nations should explore the possibility of establishing an international finance corporation to make equity investments and to lend to private undertakings operated in under-developed countries". An agency of this nature had been proposed previously in a report to the President of the United States by the International Development Advisory Board, Partners in Progress (Washington, March 1951), which recommended that the proposed agency be established as an affiliate of the International Bank for Reconstruction and Development.

^{24/} See E/2215, pages 14, 15 and 23.

The report expressed the belief that an agency of the type proposed would fill a gap in the existing international machinery for financing economic development. Private investors, both domestic and foreign, would be able to undertake promising projects which are now held back by lack of adequate capital. The activities of the international finance corporation would be in the nature of pilot operations, but the experience gained would encourage additional investments not directly associated with the corporation.

The report was discussed at the fourteenth session of the Economic and Social Council. In resolution 416 (XIV) of 23 June 1952, the Council noted that the Bank was continuing its examination of the proposed international finance corporation and requested that the Council be kept informed of the results of the Bank's further exploration. The Second Committee of the General Assembly, at its seventh session in 1952, noted with satisfaction the Council's resolution on the proposal and requested the Council, in resolution 622 (VII), to report on its progress to the General Assembly at its eighth session.

In compliance with resolution 416 (XIV) of the Economic and Social Council, the Bank submitted on 20 May 1953 a Report on the Status of the Proposal for an International Finance Corporation (E/2441). The Bank informed the Council that the proposal had been the subject of informal discussions between its officers and representatives of a number of its member governments; it was also discussed at the seventh annual meeting of the Bank's Board of Governors in September 1952.

The views expressed with respect to the proposed international finance corporation, both by governmental and private spokesmen, were summarized in an appendix to the Bank's report. The Bank emphasized that since the countries on which the proposed corporation would depend for the greater part of its funds had not as yet indicated their willingness to subscribe to its capital, it was not desirable to formalize the project at that time. Nevertheless, the Bank indicated that it would continue to explore the matter with its member governments and would present concrete proposals to them for consideration, should circumstances be favourable.

The Bank's report of May 1953 was considered by the Economic and Social Council at its sixteenth session and by the General Assembly at its eighth session. The resolutions adopted on those occasions called on the Bank to

continue further exploration of the matter with its members, and urged governments which had not yet done so to make known to the Bank their views on the possibility of supporting the proposed agency.^{25/} The General Assembly asked the Economic and Social Council to review the reports of the Bank on the question at its eighteenth session and to report to the General Assembly at its ninth session.

Other activities

Economic Commission for Latin America. At its second session the Commission adopted a resolution (E/CN.12/132 of 10 June 1949) requesting the Executive Secretary to prepare studies on conditions affecting foreign investments in the region on a country-by-country basis, including the legal, administrative and juridical provisions governing such investments. In response to this resolution and to resolution E/CN.12/198 of 19 June 1950, a series of reports was prepared under the general title, Economic and Legal Status of Foreign Investments in Selected Countries of Latin America.^{26/} Pursuant to resolution 8 (IV) of 16 June 1951, a revised and consolidated report is in preparation covering each country in the region.

^{25/} Council resolution 482 B (XVI) of 4 August 1953 and General Assembly resolution 724 C (VIII) of 7 December 1953.

^{26/} E/CN.12/166, April 1950, and addenda. Studies relating to fifteen countries were issued. The resolution of 19 June 1950 requested member governments to supply information periodically concerning the amount, origin and nature of foreign investments in their countries and also concerning legal and administrative measures and practices that affect such investments. A questionnaire for this purpose was transmitted to member governments by the Executive Secretary of the Commission in December 1950 (E/CN.12/222/Rev.1).

The question of the taxation of foreign investments has also engaged the attention of the Economic Commission for Latin America. It recommended that consideration be given to the abolition of international double taxation on investment income, with special reference to the stimulation of the investment of private foreign capital in under-developed countries.^{27/} The Commission also expressed the belief that "it is essential to continue creating favourable conditions both in the capital exporting and capital importing countries for investments abroad of private capital" (resolution 52 (V), 25 April 1953).

Economic Commission for Asia and the Far East. At its fourth session in December 1948, the Commission adopted a resolution on financing economic development^{28/} and one on measures to promote trade.^{29/} In the former, the Commission recommended inter alia "that countries of the region needing external financial accommodation formulate specific projects of development with a view to utilizing the facilities available from private investors, the International Bank for Reconstruction and Development and other credit agencies". In the latter, the Commission requested member governments to supply to the secretariat information regarding laws and regulations governing the treatment of foreign investment in their territories, and entrusted the secretariat with the dissemination of such information. Pursuant to this request the Executive Secretary circulated a questionnaire to governments in the region requesting information regarding government measures affecting foreign investment; the report summarizing the replies was entitled Foreign Investment Laws and Regulations of the Countries of Asia and the Far East.^{30/} The work programme

^{27/} Resolution 3 (IV), 16 June 1951.

^{28/} Resolution E/CN.11/173, 10 December 1948.

^{29/} Resolution E/CN.11/172, 10 December 1948.

^{30/} United Nations publication 1951.II.F.1.

of the Commission contemplates the preparation of an up-to-date revision of this report. A project for the "compilation of existing regulations governing the mineral development of the region" has been recommended for inclusion in the secretariat's work programme.^{31/} This project may provide information of interest to potential foreign investors in extractive industries in the region.

In connexion with the financing of economic development, reports on certain aspects of international investment in the Far East were submitted to the second Working Party on the mobilization of domestic capital.^{32/}

Other Secretariat reports. In addition to the reports referred to above, dealing with special aspects of international investment, current reporting on international capital flow is regularly undertaken in the various annual economic reports issued by the Department of Economic Affairs at United Nations Headquarters as well as by the secretariats of the regional economic commissions. Various aspects of the question of stimulating the international flow of private capital have also been dealt with in Secretariat reports concerned with economic development and related subjects.

Pursuant to resolution 290 (XI) of the Economic and Social Council, an annual questionnaire on full employment and other topics is addressed to governments by the Secretary-General, dealing, inter alia, with trends and prospects in the balance of payments and related policies. Included in the questionnaire transmitted in 1953 is the following request:

"Indicate any changes that have occurred during 1953 or are expected to occur during 1954 in the policies of your country influencing the flow of international investment funds (such as changes in the restriction on the movement of such funds or on the outward transfer of interest, dividends and profits, or in other legislative or administrative action affecting the status of foreign capital)".

Analyses of the replies to the questionnaire have been transmitted periodically to the Economic and Social Council.^{33/}

^{31/} Document ECAFE/L.75, project 36-C6.

^{32/} See E/CN.11/I and T/81, 3 October 1952.

^{33/} See Balance of Payments Trends and Policies, 1950-1951 (1951.II.D.3); Governmental Policies Concerning Unemployment, Inflation and Balance of Payments, 1951-1952 (1952.II.A.2); and "Analysis of Replies of Governments to Questionnaire on Full Employment, Balance of Payments and Related Policies, 1952-53" E/2445/Add.1, 12 June 1953.

Reference may also be made to several reports prepared at the request of the Council by independent groups of experts; while dealing mainly with other questions, these reports discuss particular aspects of the international flow of private capital. Problems associated with instability in capital flow are discussed in the following studies: National and International Measures for Full Employment (1949.II.A.3) and Measures for International Economic Stability (1951.II.A.2). Certain problems of international economic instability are also discussed in a report entitled Commodity Trade and Economic Development (1954.II.B.1). The role of external capital, both public and private, in economic development is considered in Measures for the Economic Development of Under-Developed Countries (1951.II.B.2).

Technical assistance programmes. Assistance specifically concerned with the stimulation of private foreign investment has not thus far been rendered under United Nations technical assistance programmes. However, the provision of technical assistance in planning and promoting economic development, surveying industrial possibilities, disseminating technological information, training labour, organizing and improving fiscal and financial institutions, advising on public administration, and the like, tends to prepare the way for investment of foreign private capital in under-developed countries.^{34/} It should also be noted that technical assistance measures, through their general effect in strengthening the economy of under-developed countries, tend to increase the potential scope for private investment, both domestic and foreign.

The General Assembly

Two recent resolutions of the General Assembly concern the question of private foreign investment. The first is resolution 622 C (VII) of 21 December 1952, referred to in the foreword of the present report. The second, resolution 626 (VII) of the same date, refers to "the need for encouraging the under-developed countries in the proper use and exploitation of their natural wealth..." and to "the right

^{34/} A summary of the programmes carried out under the auspices of the United Nations Technical Assistance Board is contained in Expanded Programme of Technical Assistance for Economic Development, Fifth Report of the Technical Assistance Board, E/2433, June 1953.

of peoples freely to use and exploit their natural wealth and resources"; it recommends, however, that, in the exercise of the right referred to, all Member States "have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic co-operation among nations". Adoption of the resolution followed consideration of several draft resolutions expressing divergent principles regarding the status of private foreign investment, with particular reference to the question of nationalization.^{35/}

^{35/} The draft resolutions and the proposed amendments are summarized in the Report of the Second Committee to the General Assembly, A/2332, 18 December 1952.

2. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ^{1/}

One of the major purposes of the Bank, as provided in its articles of agreement, is to promote private foreign investment (Section ii, Article I). In a sense, all of the Bank's lending activities may be regarded as promoting private foreign investment, since the Bank's loanable funds are derived in large and increasing measure from placing its own securities in the private capital markets of its member countries. More specifically, the Bank's activities have stimulated private foreign investment through loans for basic public service facilities which either remove obstacles to investment by private capital or create new productive opportunities for private capital, whether foreign or domestic.

In addition, the Bank has encouraged borrowing countries to adopt economic and financial policies conducive to development, such as measures to achieve economic and monetary stability and to remove unnecessary or discriminatory exchange restrictions; these measures also directly affect the climate for foreign private investment. Moreover, the Bank takes into account, in connexion with all loan applications, the willingness of the borrowing country to provide fair treatment to investors and to rehabilitate its credit standing where necessary. Through its technical assistance and advisory services the Bank has given its member countries advice designed to strengthen their economies, emphasizing the role which private investment, foreign as well as domestic, can perform in each country, and the conditions which must exist if private investment is to fulfil this role. In several instances the Bank has assisted in establishing development banks designed to promote private investment. The Bank has also arranged for the direct participation of foreign private investors in some of its loans, and has made a number of sales of securities from its

^{1/} This account is based on information supplied by the Bank.

portfolio to private investors both with and without its guarantee. The Bank continues to give attention to measures which might foster conditions under which foreign private investment will be attracted to under-developed countries. Among these is the proposal for an international finance corporation, referred to above.

Mobilization of Private Savings for Foreign Investment

A substantial portion of the funds available to the Bank for lending have been derived from the sale of its securities in the private market. Late in 1953, the Bank had outstanding securities amounting to the equivalent of US \$653.5 million, distributed by currencies as follows (in millions of United States dollars): United States dollars, 575.0; Swiss francs, 50.9; pounds sterling, 14.0 and Canadian dollars, 13.6. While the holders of the Bank's obligations are protected by its constitutional authority to call on its members for proportionate shares of their unpaid capital should these funds ever be needed to meet the Bank's obligations, the Bank can secure funds from the private market only if private savers and intermediaries choose to purchase its securities. The guarantee provided by the capital subscriptions of member countries in the Bank is essential to the sale of Bank securities under present conditions, but experience has indicated that private investors will not entrust their money to the Bank unless they are convinced it follows sound lending policies.

It is estimated that investors in the United States held over 70 per cent of the Bank's obligations on 30 June 1953. This percentage has since declined. Almost all of the Bank's bonds held by United States investors are purchased by life insurance companies, mutual savings banks and other institutional investors; the sale of Bank bonds to these investors was made possible by amendments to various state laws and regulations which restrict the securities eligible for purchase by such institutions. Legislation or decrees authorizing investment by institutional investors of one kind or another have been adopted in many other member countries, including Australia, Canada, Chile, Colombia, Cuba, India, Italy and Mexico. The Bank's bonds are traded on the New York Stock Exchange as well as exchanges in Amsterdam, Antwerp, Brussels, Istanbul, Mexico City and Paris.

In addition to mobilizing private capital by the sale of its own bonds, the Bank has sold obligations of its borrowers to private investors to the extent of \$85 million, over \$30 million of which was without the Bank's guarantee. Private credits supplemental to the Bank's loans to the Union of South Africa in January 1951, totalling \$50 million, were made in conjunction with the placement with eight large commercial banks in the United States of \$10 million of the promissory notes of the Union of South Africa, and with the extension of a \$20 million revolving credit with these banks.

The Effects of the Bank's Loans on Investment Opportunities

The bulk of the Bank's loans have gone into the provision of basic services, such as power, railways, highways and communications. For several reasons, investment in these basic utilities has often lagged, with consequent adverse effects upon the productive sectors of the economy. In most countries utilities require heavy capital expenditure, and often yield a return only after a long period. The Bank points out that in many countries these services are quasi-monopolies subject to public regulation and susceptible to popular pressure, and are often not in a position to earn an adequate return on invested capital. They therefore frequently fail to attract private investment on the scale required. In other countries where these basic services have been State-owned, governments have been unable to undertake the heavy public expenditures required with the resources at their command. For these reasons the Bank has found that it could often make the greatest contribution by supporting the financing of such basic services.

The Bank has not yet found it possible to undertake a broad survey of the private investments, foreign or domestic, which Bank-financed projects have actually stimulated. Most of these projects in under-developed countries are still under construction or have only recently been completed. The Bank believes, however, that Bank-supported projects in many countries stimulate private foreign investment both directly and indirectly.^{2/}

^{2/} In this connexion, the Bank's review refers to a number of projects, chiefly for hydroelectric power and transportation, that have been financed wholly or partly by the Bank and are expected to stimulate private investment (in Brazil, Colombia, Belgian Congo, El Salvador, India, Mexico, Nicaragua, Northern Rhodesia and Southern Rhodesia).

Other Activities

The Bank has supplied the following information concerning its policies in matters related to private foreign investment:

(1) The Bank adheres rigidly to the principle that it will not make loans for a given project unless private capital is unavailable on reasonable terms, thus assuring that its loans are a supplement to private capital, foreign or domestic, and not a substitute. In accordance with this principle the Bank has refused to finance several projects which were subsequently financed by foreign private capital.

(2) The Bank urges prospective borrowers with defaulted foreign debt to improve their credit standing by resumption of debt service. In appropriate cases the Bank has also used its good offices in facilitating the negotiation of adjustments on defaulted debts. It is significant that of the publicly held external debt of the Bank's member countries, nearly two-thirds of the amount which was in default at the end of 1946 has now been settled or is in negotiation.^{3/} With respect to publicly held foreign bonds of the Bank's member countries and their political subdivisions, issued in the United States, almost one-third was in default at the end of 1945, whereas by the end of 1952 less than 6 per cent was in default.

(3) The Bank urges its prospective borrowers wherever necessary to take effective measures to promote economic and financial stability within a sound development programme. In several instances it has advised that further Bank lending was dependent upon the adoption of such measures.

(4) The Bank has consistently stressed that from the standpoint of rapid economic development of its members, appropriate measures to establish a favourable climate for foreign investment be taken and discriminatory restrictions which impede the flow of private capital be eliminated. In this connexion the Bank considers that in a number of countries its recommendations or representations have contributed towards removing obstacles to mineral exploration and production, towards obtaining fair treatment for the remittance of capital and profits and towards securing

^{3/} Most settlements have been made after negotiations between unofficial councils of bondholders in the United States or the United Kingdom, and the governments concerned.

electric rate adjustments that have facilitated private foreign participation in expansion.

(5) The Bank has on occasion called the attention of potential investors in the United States and Europe to specific investment opportunities in under-developed countries.

3. INTERNATIONAL MONETARY FUND

The international flow of private capital concerns the International Monetary Fund, both because of the Fund's fundamental objectives and because certain aspects fall under its direct responsibility. For example, many payments, such as transfers of interest, dividends and profits, are current transactions and accordingly are explored in the consultations under article XIV of the Fund agreement. The articles of agreement of the Fund (article XIV, section 4) stipulate that "Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with article VIII, sections 2, 3 or 4,^{1/} shall consult the Fund as to their further retention". Consultations of this kind began in March 1952 and have continued subsequently.^{2/} Although these consultations have specific reference to "restrictions on the making of payments and transfers for current transactions", and capital transactions are excluded, some payments affecting capital transfers are included.

The Fund frequently also consults with its members concerning multiple currency practices which involve transfer of private capital or of profits and interest on private capital and, in some instances, application of special exchange rates to the transactions of foreign companies. In general, in reviewing these practices the Fund pays particular attention to the balance of payments and the foreign exchange reserve situation of the country concerned, to the structure, stability and possible proliferation of exchange rates, and to the feasibility of more fundamental measures which would contribute towards overcoming underlying exchange difficulties. In cases where multiple currency practices perform functions not related to the balance of payments, the Fund has emphasized the need to find practical substitutes for these practices. In several cases,

^{1/} Article VIII, section 2, relates to "Avoidance of restrictions on current payments", section 3 to "Avoidance of discriminatory currency practices" and section 4 to "Convertibility of foreign-held balances".

^{2/} See International Monetary Fund, Fourth Annual Report on Exchange Restrictions (Washington, D.C., 1953).

the Fund has advised members to devote greater attention to the implications of their multiple currency policies on the inflow of foreign capital and has offered to co-operate with its members in adapting their practices so as to facilitate the inflow of capital.

The Fund's concern with many of the exchange restrictions that closely affect capital movements, together with its general interest in the contribution which international capital flows might make toward international payments equilibrium has occasioned it to devote considerable attention to these matters. In an increasing number of instances, the Fund has been requested by its members to provide technical advice concerning changes in the operation and administration of their exchange controls that would help to attract foreign capital. The Fund provides such advice and, under appropriate circumstances and conditions, makes its resources available.^{3/}

Studies have been made by the Fund on various aspects of the international flow of private capital. Thus, the Fund has recently surveyed foreign exchange regulations governing the servicing of foreign capital in member countries. Apart from studies on various aspects of international private capital movements conducted as part of its normal research activities, the Fund prepared a report at the request of the Economic and Social Council on "Investment Service of Under-developed Countries",^{4/} and a report at the request of the Economic Commission for Asia and the Far East on "The Impact of Different Types of Foreign Investment on the Balance of Payments Position of Far East Countries".^{5/}

^{3/} It will be observed that, according to article VI, section 1 of its articles of agreement, the Fund's resources are not available for financing large and sustained capital movements. However, this does not prevent the use of Fund resources for reasonably sized capital movements required for the conduct of trade or banking. Moreover, in order to permit members to protect themselves against capital flight and short-term "hot money" movements, article VI, section 5, provides that member countries are permitted to exercise such exchange controls as are necessary to regulate international capital movements, provided such controls do not restrict current transactions.

^{4/} See section on "General Recommendations" in chapter 1.

^{5/} See Economic Commission for Asia and the Far East, Mobilization of Domestic Capital: Report of the First Working Party of Experts (United Nations publication 1953.II.F.2).

4. OTHER INTER-GOVERNMENTAL AGENCIES

Specialized Agencies of the United Nations

Other specialized agencies are less concerned than the International Bank for Reconstruction and Development and the International Monetary Fund with the question of private foreign investment. Indirectly, however, the technical assistance rendered by these agencies may contribute in various ways to the creation of conditions within under-developed countries that are conducive to private investment, both domestic and foreign. The Food and Agriculture Organization of the United Nations and the International Labour Organisation have also given attention to certain specific questions bearing on the movement of private capital.

Food and Agricultural Organization of the United Nations

The flow of private capital to under-developed countries has been considered by the Food and Agriculture Organization (FAO) a part of the general question of financing investment in agriculture. The FAO Council stated in 1953 that the need to provide capital for agriculture has received continuing attention by the FAO Conference, the organization's governing body, and that "there is considerable evidence to show that the recommendations of the Conference on this matter have influenced the policies of member governments".^{1/} In 1950 the FAO Conference expressed the view that domestic savings in under-developed countries must be supplemented with capital from abroad to permit the objectives of the organization to be achieved.^{2/} The Conference also drew the attention of governments to the desirability, when formulating over-all programmes for agricultural development, of including projects through which debtor countries may increase exports with a view to facilitating the servicing of foreign investment.^{3/}

^{1/} Report of the Council of FAO, Seventeenth session (15 to 24 June 1953), page 28.

^{2/} Food and Agriculture Organization of the United Nations, Report of the Fifth Session of the Conference, March 1950, page 14.

^{3/} Food and Agriculture Organization of the United Nations, op.cit.

The Conference has also drawn the attention of member governments interested in attracting foreign private investment in agriculture to the recommendations contained in paragraph 6 of resolution 368 (XIII) of the Economic and Social Council.^{4/}

In response to requests by the FAO Conference, the Director General of the organization has prepared reports on financing investment in agriculture, with particular reference to foreign financing, both public and private.^{5/}

International Labour Organisation

As part of its normal work the International Labour Office of the International Labour Organisation collects information on laws and regulations affecting the employment of aliens, a subject which is of interest to foreign enterprises operating in under-developed countries. A series of monographs on such laws and regulations in some thirty-five countries of immigration is scheduled for publication in the near future.

The International Labour Office also publishes a "Legislative Series" containing translations and reprints of the more important laws and regulations affecting labour in different countries.^{6/}

At the third Asian regional conference of the International Labour Organisation in September 1953, a resolution was adopted concerning the international flow of capital for economic development.^{7/} The resolution, which

^{4/} Food and Agriculture Organization of the United Nations, Report of the Sixth Session of the Conference, March 1952, page 32.

^{5/} See "Report on International Investment and Financing Facilities, 1949" (C/49/16); and "International Investment and Agricultural Credit", 15 September 1953 (C/53/16). The latter document (pages 29 to 32) contains a summary of FAO action relating to the financing of agricultural development projects. It also contains (pages 3 to 25) a statistical analysis of the international flow of capital, public and private, to under-developed countries, with particular reference to the amounts invested in agriculture or in activities aiding agriculture.

^{6/} The "Legislative Series" has been issued since 1920 and is now published every two months in loose-leaf form. It includes a list of laws and regulations passed, in addition to those which are reproduced in full.

^{7/} The full text of the resolution is contained in Economic Commission for Asia and the Far East, "Activities of the International Labour Organisation of Special Interest to Asia and the Far East" (E/CN.11/381, 16 December 1953).

is being transmitted to the Economic and Social Council and the General Assembly at the request of the International Labour Organisation, expresses the hope that "effective arrangements can be devised to increase the flow of capital to the under-developed countries, and in particular that in the near future inter-governmental lending and grants may be progressively supplemented by substantial movements of private capital, for industrial development in Asian countries..." It adds that

"the Conference agrees that it would be in the interest of both the industrialized and the under-developed countries of the world if private capital were allowed and encouraged to participate in the development of less advanced areas through the easing, to the greatest extent practicable, of restrictions on the export of private capital to less advanced areas and through the creation of conditions in these countries which, whilst conforming to national legislation in the social and fiscal fields, would make investment attractive to the private investors..."

Other International Organizations

In addition to the United Nations and its specialized agencies, several other inter-governmental organizations have given consideration since the end of the war to measures for the stimulation of private international investment in under-developed countries.

Organization for European Economic Co-operation^{8/}

The Organization for European Economic Co-operation (OEEC) has been concerned with attracting foreign capital to member countries and their dependent territories and with exporting capital by member countries.

In 1950 the organization published a study entitled Report on International Investment containing a review of the general question of international investment, both public and private. A second study, Intra-European Investments,

8/ The following countries are members of the Organization for European Economic Co-operation: Austria, Belgium, Denmark, France, Germany (Federal Republic), Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland, Trieste, Turkey and United Kingdom. Canada and the United States, though not members of the organization, participate in its work.

was issued in 1951; this dealt chiefly with the investments of OEEC countries in other member countries and the dependent territories of members. In the same year the organization also published a report on Investments in Overseas Territories in Africa, South of the Sahara.

The Report on International Investment, which was approved by the Council of the organization in September 1950, contains a series of recommendations relating to the stimulation of private and public foreign investment.^{9/} It recommends that member countries (a) simplify the procedure for establishing a foreign-controlled enterprise in their territories, (b) publish authoritative statements on governmental policies affecting private foreign capital, (c) pay continuing attention to the possibility of progressively relaxing exchange controls affecting private investments. Recommendations addressed to non-member lending countries, in particular the United States, relate to such matters as the taxation of foreign private investments and the governmental regulation of private capital exports. Other recommendations deal with the question of international double taxation and the extension of governmental guarantees by capital exporting countries against certain non-commercial risks of private foreign investment. The organization's report Intra-European Investments contains recommendations similar to those just mentioned and more detailed suggestions and recommendations relating to foreign exchange control, protection of "industrial property" (patents, trademarks, etc.), fiscal measures, dissemination of information, internal financial stability and other domestic policies and regulations affecting the climate of foreign investment as well as assurances to foreign investors in the event of nationalization.^{10/} The measures considered relate to intra-European investment and to investments by non-member countries outside Europe in member countries and their dependent territories.

A working party established in 1952 has studied a number of proposals regarding specific mechanisms designed to facilitate the expansion of intra-European investment, including investment in the overseas territories of members.^{11/}

^{9/} Organization for European Economic Co-operation, Report on International Investment (Paris), pages 99 to 105.

^{10/} Organization for European Economic Co-operation, Intra-European Investments (Paris, 1951), pages 61 to 69.

^{11/} Organization for European Economic Co-operation, European Economic Co-operation (Paris, 1953), page xxiii.

Consideration has been given to the establishment within the organization of an Advisory Investment Board, in which the International Bank for Reconstruction and Development would be invited to participate. The terms of reference of the proposed board would include matters relating to both private and public international investment. In July 1953, the OEEC Council, without expressing opinion on the substance of the proposal, referred the matter for further consideration, with respect particularly to the terms of reference and membership of the proposed advisory board.^{12/}

In February 1953 the organization decided to make a further study of the problem of United States investments abroad. The purpose of this study is to consider what recommendations might be made to member countries in order to facilitate the development of private dollar investment in these countries and their dependent territories.^{13/} A questionnaire has been transmitted to member governments requesting information concerning the measures taken since publication of the Report on International Investments in 1950, with a view to encouraging the inflow of private dollar investments.

The organization's Code of Liberalization, adopted in 1951,^{14/} in addition to provisions concerning trade, contains undertakings relating to the liberalization of restrictions on invisible items in transactions within the area, including remittances of income on foreign capital and royalties. It does not, however, deal with capital movements other than the contractual amortization of loans.^{15/} With respect to capital movements, the Organization for European Economic Co-operation has recommended that countries having a surplus in their balance of

^{12/} Ibid., page xxiv.

^{13/} Ibid.

^{14/} Organization for European Economic Co-operation, Code of Liberalization (Paris, July 1951), adopted by the OEEC Council, 20 July 1951 (C(51)261).

^{15/} A list of reservations by several governments to certain of the provisions relating to invisible items is contained in the Code of Liberalization, annex C. Since 1951 many of the reservations have been withdrawn.

current payments "should be generous in granting authorization for investment of capital in foreign countries".^{16/} The organization has also expressed the view that a careful survey of the possibility of relaxing regulations governing movements of capital is required.^{17/}

The establishment of the European Payments Union by the Organization for European Economic Co-operation has played a part in facilitating international investments through its effect on the transferability of the currencies of member countries.^{18/}

Council of Europe.^{19/}

In connexion with promoting the economic development of the under-developed areas of member states, particularly their oversea territories, the Council of Europe has paid attention to stimulating the international flow of capital, both public and private. Several recommendations bearing on the subject were adopted by the Council of Europe following consideration of a report, The Strasbourg Plan, prepared by the Secretariat-General of the Council of Europe at the request of the Assembly of the Council.^{20/} These recommendations were intended to encourage the inflow of private foreign capital for the economic development of the oversea territories of member states.

The subject of foreign lending was also dealt with in a report by the Council of Europe entitled Full Employment Objectives in Relation to the Problem of European Co-operation. The chief concern of this report, however, was with co-operative action for the export of public capital to the oversea territories of member states. For this purpose a European Investment Bank was proposed.^{21/}

^{16/} Intra-European Investments, pages 61-62.

^{17/} European Economic Co-operation, page xvi.

^{18/} See Organization for European Economic Co-operation, Third Annual Report of the Managing Board of the European Payments Union (Paris, 30 June 1953), and earlier annual reports.

^{19/} The Council of Europe, established in May 1949, comprises the following members: Belgium, Denmark, France, Germany (Federal Republic), Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Saar, Sweden, Turkey and United Kingdom.

^{20/} See Council of Europe, Fourth Ordinary Session, Recommendation 26, 25 September 1952. See also The Strasbourg Plan (Strasbourg, 1952).

^{21/} Full Employment Objectives in Relation to the Problem of European Co-operation (Strasbourg, 1951) pages 63 to 68.

Organization of American States^{22/}

Chapter IV of the Economic Agreement of Bogota, signed at the ninth International Conference of American States at Bogota, Colombia, on 2 May 1948, relates to private foreign investment. The provisions include undertakings regarding the equitable non-discriminatory treatment of private foreign capital by the signatories. Among the subjects dealt with are the employment of technical personnel by foreign-owned enterprises and the payment of compensation for expropriated property. The agreement provides that "any expropriation shall be accompanied by payment of a fair price in a prompt, adequate and effective manner". With reference to the latter provision, reservations were entered by a number of the signatory States. The reservations assert the primacy of the constitutional provisions of the country in respect of the treatment of aliens and their property generally, and particularly in respect of the determination of compensation for expropriated property. The agreement, which requires ratification by two-thirds of the members of the Organization of American States (OAS), has not yet entered into force.

In 1953 the third Extraordinary Meeting of the Inter-American Economic and Social Council, an organ of the Organization of American States, adopted a resolution relating to private foreign investment.^{23/} The resolution states inter alia that "the investment of private foreign capital is an essential factor in the financing of the economic development of the Latin American countries" and that "the maintenance, in the American countries, of a favourable climate such as will encourage and inspire confidence on the part of the investor is ... necessary to encourage the flow of private capital toward countries in the course of development". Reference is also made to the advisability of continuing studies "leading to desirable and feasible changes in the taxation systems of capital exporting countries, so as to encourage the flow of private capital from such countries" to under-developed countries.

^{22/} The first International Conference of American States was held in 1890. The present charter of the Organization of American States, which was signed at the ninth conference in 1948, provides that the organization is a "regional agency within the United Nations". The present membership of the organization consists of the twenty countries of Latin America and the United States. The Pan-American Union is the central, permanent organ and the general secretariat of the organization.

^{23/} Resolution 31/53, of 21 February 1953.

The OAS Pan-American Union is continuing to issue a series of studies on the laws affecting business in each of the Latin American countries. These studies, which were begun in 1946 by the Inter-American Development Commission, a subsidiary body, contain an authoritative digest of information of interest to existing and potential private foreign investors.^{24/}

^{24/} The studies are published under the title, A Statement of the Laws of... in Matters Affecting Business. Reports have been published in nineteen countries of Latin America.

5. NON-GOVERNMENTAL ORGANIZATIONS ^{1/}

International Chamber of Commerce

Since 1947 the International Chamber of Commerce (ICC) has issued a number of reports and has approved several resolutions relating to the international flow of private capital.^{2/} The reports and recommendations deal generally with the role of private foreign capital in financing economic development and also with particular questions relating to the treatment of foreign capital and foreign enterprises.

A draft international agreement, entitled "An International Code of Fair Treatment for Foreign Investments" has been prepared by the organization. The agreement contains a series of provisions for the purpose of establishing "conditions of fair and non-discriminatory treatment" for investments in the territories of the contracting parties.

The investment code, it was suggested, might be put into force either unilaterally by capital importing countries, by bilateral agreement or by multilateral agreement "concluded by groups of countries able and willing to

^{1/} This section relates to certain non-governmental organizations having consultative status with the Economic and Social Council.

^{2/} The reports in question include the following: Foreign Investments and Economic Expansion, Brochure 107, March 1947, extract in document E/C.2/36 of the Economic and Social Council; International Double Taxation, Brochure 116, February 1947 (E/C.2/40); The Status of Foreign Establishments, Brochure 120, June 1947; Fair Treatment for Foreign Investments, International Code, Brochure 129, August 1949 (E/C.2/229); Financing Economic Development, Brochure 142, July 1950 (E/C.2/256.Add.1); Governmental Guaranties to Investors, Brochure 145, March 1951, extract in E/C.2/287; Unilateral Relief from Double Taxation, Brochure 146, March 1951, extract in E/CN.8/NGO/2; Economic Development and Private Investments, Brochure 165, March 1953 (E/C.2/353).

Resolutions based on the above reports are contained in the following: Resolutions of the XIth Congress, Brochure 117, June 1947; Resolutions of the XIIth Congress, Brochure 141, August 1949 (E/C.2/229); Resolutions of the XIIIth Congress, Brochure 161, August 1951 (E/C.2/321); and Resolutions of the XIVth Congress, Brochure 175, July 1953 (E/C.2/366).

See also a statement by the International Chamber of Commerce in Methods of Financing Economic Development. United Nations publication 1949.II.B.2, pages 148 to 163.

adopt the code's main provisions". The International Chamber of Commerce recommended that work should be started under the auspices of the Economic and Social Council or of one of the specialized agencies "on the gradual elaboration of a universal convention for adoption and signature at some more auspicious time".

The organization has made recommendations with respect to international double taxation and discrimination in the taxation of foreign investments. Recommendations relating to these questions are included in the proposed international investment code, and separate recommendations are contained in a report, Unilateral Relief from Double Taxation, which was submitted to the Fiscal Commission of the United Nations.

In May 1953 the International Chamber of Commerce adopted a resolution drawing the attention of the Economic and Social Council "to the grave anxiety aroused in the business world by the resolution [620 (VII)] adopted by the General Assembly of the United Nations in December 1952 entitled "Right to exploit freely natural wealth and resources".^{3/} The resolution expressed the view that if the subject "is to be adequately treated in a brief resolution such as that of the United Nations General Assembly the proper emphasis should also be given to the respect for contractual obligations, the duty of compensation in case of nationalization and, in general, to the fair treatment of foreign capital and enterprise".

Other Non-Governmental Agencies

Several other non-governmental organizations have made recommendations and prepared reports dealing with the subject of the international flow of private capital.

National Association of Manufacturers (United States)

The National Association of Manufacturers (NAM) of the United States has transmitted to the United Nations the following reports which contain recommendations relating to governmental policies affecting private foreign investment: Capital Export Potentialities after 1952 (circulated as E/C.2/184, 29 March 1949); The Bold New Plan, A Program for Under-developed Areas (circulated as E/C.2/204, 6 July 1949; and a Statement on Nationalization, 17 April 1953 (transmitted to the Secretary-General of the United Nations, 20 April 1953). Recommendations in the above documents relate to the legal status of foreign

^{3/} Brochure 175, July 1953.

capital, compensation in the event of nationalization or expropriation, exchange control, taxation and other matters. In particular, the organization has stressed that "States should assure the security of all foreign investments within their territories. In the event of any expropriation or nationalization in any manner, prompt (or prior, where a nation's constitution so provides), adequate and effective compensation should be agreed upon with the owners of said investments in a form acceptable to them".

International Federation of Agricultural Producers

The International Federation of Agricultural Producers (IFAP) has made several recommendations relating to the financing of economic development. At its sixth Ordinary General Meeting in Rome in 1953, a report was approved containing the following statement: "A vast expansion of capital movement can be encouraged to the mutual advantage of all parties. IFAP members from all countries may well work with their respective governments to create conditions favorable to capital movement".

World Federation of United Nations Associations

The World Federation of United Nations Associations (WFUNA) considered the financing of economic development of under-developed countries at its eighth Plenary Assembly in September 1953. Reports were presented by the Belgian and Italian Associations for the United Nations dealing with both public and private foreign capital in relation to economic development, but no specific recommendations were made concerning private foreign capital.

International Fiscal Association

The International Fiscal Association (IFA) has given extensive study to the question of the taxation of foreign investment. The organization adopted a resolution on the taxation of enterprises engaged in sea and air transport and is continuing to study the question of fiscal measures capable of facilitating international capital transfers. The matter will be placed on the agenda of the eighth Congress of the organization, to be held in 1954.^{4/}

^{4/} See International Fiscal Association, Studies on International Fiscal Law, vols. XXII, XXIII and XXIV.

Inter-American Council of Commerce and Production

The Inter-American Council of Commerce and Production (IACCP) has discussed the question of stimulating the international flow of private capital to under-developed countries on several occasions. At its plenary meeting in Lima, Peru, in November 1952, the organization adopted a resolution dealing with the promotion of private foreign investment in the Western Hemisphere. The resolution recommended that the less developed countries "promote a climate favourable to the investment of private capital". It also recommended that governments of American nations negotiate treaties for the elimination of double, extra-territorial and discriminatory taxation, and accept the principle that company profits should be subject to taxation only in the countries where earned. The organization recommended that equal treatment be accorded to both new and existing investments and that no unilateral modifications be made in concessions already granted. Other recommendations were related to tax incentives by capital exporting countries, compensation in the event of nationalization or expropriation and foreign exchange restrictions.

II. NATIONAL ACTION

In view of the many factors affecting the international flow of private capital, it is evident that governmental action designed to stimulate such flow may take a variety of forms. A number of the governmental measures discussed below are designed to reduce various types of non-business risks anticipated by investors or to increase the anticipated yield of investments through tax concessions or similar action. It should be borne in mind, however, that measures of this type may carry less weight in attracting investment than the avoidance of deterrent action in capital importing countries in such matters as expropriation, exchange control and similar restrictions and the establishment of a generally favourable framework of political, social and economic institutions. But even the removal of specific deterrents by capital importing countries or action by capital exporting countries to mitigate the effect of such deterrents or other risks, although necessary, may not be sufficient for stimulating the international flow of private capital. Over the long run, measures to promote economic development and thus increase the scope and potential yield of investments through raising the general level of activity in under-developed countries may have an important influence on the volume of funds that private investors are willing to place abroad. Mention may be made also of governmental measures to reduce the prevailing international economic disequilibrium and to maintain national and international economic stability.^{1/}

The climate of foreign investment, in a narrower sense, is affected by government policies having a more direct incidence on private foreign investment. Such policies are expressed in constitutional provisions, laws, regulations and a wide variety of administrative action. Much national action taken to stimulate the flow of private capital to under-developed countries is concerned

^{1/} Discussion of this type of action may be found in the following United Nations reports: Measures for the Economic Development of Under-Developed Countries (1951.II.P.2), Measures for International Economic Stability (1951.II.A.2) and Commodity Trade and Economic Development (1954.II.B.1).

with the removal or reduction of specific obstacles resulting from previous government action. Another type of governmental action aims at increasing the yield of such investments, primarily through tax concessions, or at reducing the risk incurred by the private investor through guarantees extended by the government of the capital exporting country. Undertakings by capital importing countries, unilaterally or through agreement with capital exporting countries, have also been designed to reduce non-business risks on the part of private foreign investors.

The action taken thus far by governments to stimulate the international flow of private capital relates mainly to so-called direct business investments, usually in branches or subsidiaries controlled by parent concerns in the capital exporting country. International portfolio investment, particularly in the form of loans to governments of under-developed countries, appears to be hampered by difficulties too fundamental to be removed through action of the type under consideration.^{2/}

^{2/} See The International Flow of Private Capital, 1946-1952 (United Nations publication 1954.II.D.1), pages 40 to 42.

6. CAPITAL IMPORTING COUNTRIES

Obstacles to Inflow of Private Capital

Governmental measures in capital importing countries that tend to limit the opportunities for private foreign investment or to create special risks or obstacles that inhibit the flow of such capital have been described at length in official reports.^{3/} The obstacles in question fall into the following main groups:

3/ United Nations: "Survey of Policies Affecting Private Foreign Investment" (E/1614/Rev.1, 8 March 1950); Foreign Investment Laws and Regulations of the Countries of Asia and the Far East (1951. II.F.1); Foreign Capital in Latin America, study in preparation, consolidating and revising the series "Economic and Legal Status of Foreign Investments in Selected Countries of Latin America" (E/CN.12/166 and Addenda 1-15, 12 April 1950 to 11 May 1951); The Effects of Taxation on Foreign Trade and Investment (1950.XVI.1); United States Income Taxation of Private United States Investment in Latin America (1953.XVI.1).

Organization for European Economic Co-operation: Report on International Investment (Paris, 1950); Intra-European Investments (Paris, 1951).

Pan American Union: Series under the title Statement of Laws of ... in Matters Affecting Business, initiated by the Inter-American Development Commission and continued by the Pan American Union of the Organization of American States, Washington, D.C. Studies relating to eighteen countries of Latin America were published during the period 1946 to 1951.

United States Department of Commerce: Factors Limiting United States Investment Abroad, part I (1953); Investment in Venezuela (1953); Investment in Colombia (1953); Investment in India (1953); International Reference Service, Series entitled Establishing a Business in ...

Mention may also be made of two reports prepared at the request of official agencies:

National Industrial Conference Board, Inc.: Obstacles to Direct Foreign Investment, Report prepared for the President's Committee for Financing Foreign Trade (New York, 1951).

Government of Canada: Report of Advisory Committee on Overseas Investment (Ottawa, 1951).

(1) Legal restrictions on the entry of foreign capital and the control and operation of foreign-owned enterprises.

Among the principal types of restrictions are the following: mandatory or discretionary exclusion of foreign capital from particular industries or types of economic activity; restriction of entry of foreign capital case by case according to various criteria; mandatory or discretionary requirements for minimum financial or other participation by nationals of the capital importing country in all business enterprises or in selected types of economic activity; stipulations regarding participation by nationals in the labour force of enterprises established within the country. Other regulatory measures which may or may not discriminate against foreign investment as such but which often have a special incidence on foreign-owned enterprises include: regulations governing the exploitation of minerals and natural resources generally; official fixing of prices and rates, particularly in the public utility industry, and official regulation of labour relations.

(2) Exchange restrictions, quantitative restrictions on imports and exports and other types of control over international transactions.

(3) Fiscal measures.

(4) Policies concerning nationalization, expropriation, and the extent of public ownership, of industry.

Before considering examples of action taken by capital importing countries to reduce or mitigate the effect of impediments of the types just listed, a few general observations may be useful. A number of the impediments directly affecting foreign investments are symptoms of underlying economic conditions rather than the expression of policy towards foreign capital as such. This is particularly true of certain fiscal measures and of measures affecting international transactions, particularly exchange restriction. Accordingly, although removal of obstacles of this type may stimulate the inflow of capital, this may be the by-product of action taken for other reasons and in some cases due to developments outside the country's control.

Many of the impediments result from administrative action within a general framework of control of economic activity. The deterrent effect on private investment of such control depends on the investor's anticipations with respect to the yield of the investment and the future policy of the capital importing country. Uncertainty rather than the specific restriction may be the serious impediment. Certain types of government action referred to below are designed to stimulate the inflow of capital by providing assurance of stability with respect to investment policies over a specified or indefinite period.

The following paragraphs do not relate to countries in which, owing to absence of specific governmental restraints private foreign capital, the investment climate, in the narrow sense, is relatively favourable. They are concerned largely with policies of under-developed countries, but it may be noted that both as regards the obstacles and the action taken to reduce them, the policies of under-developed countries in certain respects differ little from those of several more developed countries that import capital.

Policies and Measures affecting Entry and Operation

Since the end of the war a number of under-developed countries have taken action designed to stimulate the inflow of private foreign capital by defining the conditions under which such capital may enter the country and carry on its operations and, in general, by clarifying the status of foreign-owned enterprises within the country. Such action has sometimes been coupled with extension of fiscal concessions, assurances concerning the remittance of income and capital and, in some instances, with undertakings regarding future policy in respect of nationalization, expropriation and similar matters.

Action of this type has taken a variety of forms, reflecting to some extent the prevailing system of regulation. Certain countries have adopted special legislation clarifying the status of foreign capital as such. Others have taken administrative action in connexion with such matters as taxation and exchange control. In some cases bilateral treaties have been signed with a capital exporting country, particularly the United States,

either independently of, or in conjunction with, national legislation relating to foreign capital. In other cases the policy to be adopted with respect to foreign capital has been the subject of official declarations of policy by government authorities. A few illustrations of action in these fields may be given.

Investment laws and related policies

The attempt to clarify the status of private foreign investments in a single comprehensive statute may be illustrated by a recent legislative decree of the Government of Greece.^{4/} The decree establishes a special interministerial agency to review applications for the investment of foreign capital in Greece and to determine the status of such investments pursuant to general policies embodied in the decree itself. For each investment a formal decree, analogous to a concession contract, is to be issued setting forth the understanding reached between the investor and the Government. A minimum condition for approval of such investments is that they be "productive" in the sense that they serve "the promotion of national production or . . . otherwise contribute to the economic development of the country". The general conditions applicable to approved investments, as specified by the decree, include the following:

Exchange control. The agreement is to stipulate the terms of repayment and service of capital, including the kind of foreign exchange and/or Greek export products which may be used for this purpose. The Bank of Greece will allocate the foreign exchange required to meet the commitments created by the decree. Capital repatriation is limited to 10 per cent per annum of the amount of capital imported. The decree may provide that the total amount or a portion of profits realized from foreign capital be deemed foreign capital, provided it is reinvested in an approved manner. Remittance on account of income from investments shall not exceed 12 per cent per annum for income on equity capital and 10 per cent per annum for interest on loan capital. If amounts remitted in any year are less than the limit, however, the balance may be remitted in subsequent years. These limits on remittances may be exceeded in the case of

^{4/} Decree of 22 October 1953, concerning "Investment and Protection of Foreign Capital".

certain enterprises producing for export or deemed to be of special importance. If existing foreign exchange restrictions are removed, the limits on remittances shall cease to apply.

Tax concessions. Certain tax concessions may be granted to foreign enterprises engaged in manufacturing for export or in mining, whose operations save "substantial" amounts of foreign exchange. The concessions include: (a) freezing of income tax rates for a period not exceeding ten years, with provision for downward readjustment if the rates are lowered; (b) lowering of, or exemption from, customs duties, and similar charges on imports of equipment; (c) lowering of, or exemption from, certain other taxes, charges or levies to be specified in the decree. Tax concessions made will be extended to all "similar" enterprises in existence or to be established. Enterprises qualifying for tax concessions will be free of export restrictions on their products and of export taxes, provided the country's requirements are met by domestic production.

Personnel. Approved foreign enterprises will be permitted to employ foreign technical and administrative staff in "higher positions".

Expropriation. Approved foreign enterprises will be exempt from compulsory expropriation, and also from requisition except in case of war.

Other provisions. Disputes arising within the purview of the decree shall be settled by arbitration. All approved investments are assured treatment as favourable as that extended to other similar enterprises in the country.

The status of private United States investments in Greece is also the subject of a bilateral treaty that has been signed by the two countries but has not yet been ratified. Treaties of this type are discussed below.

So-called "investment" laws of similar but varying scope and content have been adopted recently in several under-developed countries, including

Argentina,^{5/} Chile,^{6/} Colombia,^{7/} Egypt,^{8/} Iran,^{9/} Israel,^{10/} Japan^{11/} and Turkey.^{12/}

- ^{5/} Law No. 14222 of 26 August 1953, governing foreign capital investment, and Decree No. 19111 of 16 October 1953, regulating the application of Law No. 14222. The Law of 26 August 1953 also empowers the authorities to declare an investment to be of "national importance" and thus to qualify under Law No. 13892 and Decree No. 14630 of 4 June 1944, which provides tariff protection or subsidization for approved enterprises.
- ^{6/} Decree Law No. 427 of November 1953. The decree establishes a ceiling on annual remittances of capital but imposes no limits on the transfer of income from approved investments. Enterprises in which approved investments are permitted are free from any system of fixing, regulating, control or freezing of prices, provided that domestic enterprises producing similar articles were not subject to such control at the time of approval (Article 5(d)). The income from such enterprises is to be exempt for a period of ten years from "all new taxes or levies" that may be established.
- ^{7/} Law 8 of 18 July 1952. This law is concerned largely with the administration of exchange control. No criteria are specified to qualify for privileges to transfer capital and earnings, but a procedure of registration is established. No limits are placed on outward transfer of capital and income; registered investments are accorded the right to re-export capital at any time, to remit earnings and to register undistributed profits as imported capital.
- ^{8/} Law No. 156 of 1 April 1953. Important revisions were also made concurrently in the Company Law and the Mining Law (Law No. 66 of 19 February 1953).
- ^{9/} Decree of 16 December 1953.
- ^{10/} Law for the Encouragement of Capital Investment, 29 March 1950.
- ^{11/} Law concerning Foreign Investment, No. 163, 1950, as amended.
- ^{12/} Law No. 6224, 18 January 1954. This law removes a limit on the transfer of income and capital of approved foreign investments contained in Law No. 5821 of 1 August 1951.

Certain features common to legislation of this type may be observed. The provisions extended are available only to "approved" investments. While the criteria for approval are similar, they vary in detail and give substantial latitude for administrative discretion. The criteria most commonly specified are (a) the impact on the balance of payments; and (b) the contribution of the enterprise to the country's economic development through provision of desired technology, diversification of industry, development of domestic raw materials and training of workers. Common to all the laws are certain undertakings regarding the remittance of earnings and repatriation of capital. The commitment to effect transfers varies in firmness, however, and is usually coupled with the establishment of a maximum amount that may be transferred, usually expressed as a percentage of "registered" capital. Several of the laws authorize the extension of fiscal and other concessions, subject to wide administrative discretion.

More or less comprehensive investment laws of the type referred to have thus far been adopted by relatively few countries. In other countries, laws and administrative action relating to the establishment of new enterprises, exchange control, taxation, labour relations and other matters affecting the operation of foreign-owned enterprises have served to define the framework within which private foreign capital may be employed in the country.

Thus, in India the status of private foreign capital has been clarified by a series of policy declarations, laws and administrative actions during the past several years.^{13/} There have been several general statements of policy towards private foreign investments,^{14/} administrative action providing assurances in respect of exchange restrictions^{15/} and administrative action admitting new investments, particularly in connexion with comprehensive

^{13/} United States Department of Commerce, Investment in India (Washington, D.C., 1953). See also Government of India, Governmental Measures affecting Investment in India (New Delhi, July 1950).

^{14/} See appendix.

^{15/} See discussion of exchange control below.

laws regulating industry and mineral development.^{16/} All new foreign investments are subject to approval in each instance. The licensing of new private investment, both domestic and foreign, in most branches of industry is subject to the Industries (Development and Regulation) Act of 1951. The authorities responsible for reviewing applications for new foreign investment may grant a measure of tax exemption, determine the extent of financial participation by Indian nationals in the enterprise, extend a guarantee against nationalization for a specified period and a general guarantee of compensation in the event of expropriation.^{17/}

In some countries statutory restrictions on the investment of foreign capital are comprehensive but, through administrative discretion, wide scope exists for private foreign investment in particular fields, notably manufacturing. Thus in Mexico a law of July 1944 provides that permission to invest in a wide range of economic activities may be subject to the requirement that foreign participation not exceed 49 per cent of the total share capital. This requirement is mandatory, however, only in a few branches of business (such as broadcasting, transportation and publishing) and has not been applied to foreign investment in manufacturing and commerce. The position of foreign investors is strengthened by the absence of exchange restrictions. The Mexican Government has repeatedly stated that foreign investors will be treated on a basis of equality with domestic enterprises.^{18/}

^{16/} For example, several large petroleum refineries have been established by special agreements which involve the granting of an exemption under the Industries (Development and Regulation) Act. These agreements contain assurances regarding remittance of income, repatriation of capital and exemption from certain import duties, and stipulate that the controlling interest in the share capital of the enterprises may remain in foreign hands.

^{17/} The Constitution of India, article 31, guarantees compensation in the event of acquisition of private property for public purposes. Similar provisions appear in the constitutions of most countries.

^{18/} See, for example, the statement by the Mexican delegation at the third extraordinary session of the Inter-American Economic and Social Council, February 1953.

An important area of policy affecting the inflow of foreign capital is that concerned with the granting of concessions under general laws relating to minerals and other natural resources or through administrative action of other types. While some countries have tightened their concession policies in recent years, others have taken action to facilitate the granting of concessions. Reference may be made to new mineral laws in Colombia, Peru and Israel and the concession policies of countries in the Arabian peninsula. Such action has often been coupled with the adoption of a formula similar to that in the Venezuelan income tax law of 1948 providing for a sharing of the profits of enterprises engaged in mining or petroleum extraction.

Bilateral treaties

Reference was made above to the negotiation of multilateral agreements concerning private foreign investment. While no such agreements have thus far entered into force, bilateral treaties, including clauses relating to private foreign investment, have been concluded recently between the United States and a number of under-developed countries, as well as more advanced ones. These treaties, based on the principle of mutuality, define the status of the foreign investments and business enterprises owned by nationals of each contracting party in the territory of the other. They also include provisions relating to the civil rights of nationals and corporations and to various aspects of commercial policy that affect the operation of foreign-owned enterprises.

Such treaties represent a new departure in commercial agreements concluded by the United States.^{19/} Since 1946, at the initiative of the United States,

^{19/} Commercial treaties concluded between many other countries do not appear to contain comparable provisions relating to private foreign investment. The application of the most-favoured-nation clause in commercial treaties concluded by other capital exporting countries than the United States may, however, generalize to some extent the rights and provisions accorded to United States private investors in the treaties recently concluded.

treaties have been signed with the Governments of the following countries:^{20/}
China: Taiwan, Colombia, Denmark, Ethiopia, Finland, Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan and Uruguay. With respect to the status of private foreign investment, the most important provisions of the treaties relate to (a) general principles governing the status of foreign capital and foreign-owned enterprises, (b) establishment, control and operation of such enterprises, (c) exchange restrictions and (d) nationalization and expropriation. Some variation exists among the treaties, but except for that with Ethiopia mentioned below, their content is similar and may be illustrated by reference to the following provisions contained in the treaty with Uruguay.

General principles. The capital importing country undertakes to "take no unreasonable or discriminatory measures that would impair the legally acquired rights or interest" of the nationals of the capital exporting country and not to deny opportunities and facilities for investment "without appropriate reason".

Entry and operation of foreign enterprises. The capital exporting country is accorded "national treatment" in respect of entry into commerce, manufacturing, processing, finance (other than deposit banking, construction and publishing).^{21/} In the exploitation of mineral deposits and other activities not included in the above list, most-favoured-nation treatment is accorded if national treatment is not granted. Foreign enterprises are accorded the right to employ technical experts, executive personnel and other specialized employees regardless of nationality.

^{20/} At the end of 1953 treaties between the United States and the following countries had been ratified by both parties: China: Taiwan, Ethiopia, Finland, Ireland, Israel, Italy and Japan. The United States Senate had ratified treaties with all the countries listed in the text except the treaty with Colombia which was withdrawn at the request of the President for further negotiation.

^{21/} The treaty contains the following definition of national treatment: "The term 'national treatment' means treatment accorded within the territories of a High Contracting Party upon terms no less favourable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party."

Exchange control. Remittances arising from foreign investments (including compensation in the event of expropriation) are, in principle, to be free from restriction except in periods of "exchange stringency", during which the capital importing country may apply restrictions to assure the availability of foreign exchange for essential imports or, in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund. In the event of exchange stringency the treaties provide that the capital importing country shall "make reasonable" provision for transfers arising from foreign investment and shall apply certain principles of non-discrimination in the administration of exchange restrictions.

Nationalization and expropriation. In the event of nationalization or other forms of expropriation, foreign investors are to be accorded no less than national treatment and "any expropriation shall be made in accordance with the applicable laws, which shall at least assure the payment of just compensation in a prompt, adequate and effective manner". These principles apply not only to enterprises in which there is a majority foreign interest but to all property of nationals and companies of the foreign country affected.

In respect of the entry of foreign capital, the treaty between the United States and Ethiopia^{22/} differs from other treaties recently negotiated. A commitment regarding the initiation of enterprises is limited to a provision that "reasonable opportunities" will be afforded. Thus, the government concerned retains the right to limit the entry of foreign capital or investment according to specific criteria in each case, so long as it is in accord with the provision referred to. For investments admitted, however, the treaty applies provisions similar to those described above.

The (United States) Mutual Security Act of 1951, as amended in 1952, provides that the United States Department of State "shall accelerate a programme of negotiating treaties of commerce, trade, or other temporary

^{22/} United States 82nd Congress, Second Session, Senate, Executive F, Treaty of Amity and Economic Relations with Ethiopia, 14 January 1952.

arrangements where more suitable or expeditious, which shall include provisions to encourage and facilitate the flow of private investment to countries participating in programmes under ... [the Mutual Security Act]." In addition to the action mentioned above, treaty negotiations have been carried on with Australia, Egypt, India and Paraguay. Preliminary discussions have taken place with several other countries, including Afghanistan, Ecuador, Haiti, Pakistan, Peru and Turkey.^{23/}

Foreign Exchange Regulation.

The effect of exchange control on international investment is discussed in The International Flow of Private Capital, 1946-1952, pages 53 to 55. As pointed out in that study, "the stringency of exchange control and its inhibiting effect on foreign investment vary considerably among countries and, in some cases, within a given country, among particular fields of investment, among individual foreign enterprises, between old and new and between officially approved 'essential' and other investments". It has been indicated above that steps have been taken by a number of countries to facilitate foreign investment by according specified rights to foreign investors within a system of exchange control. Since the application of exchange restrictions in many instances depends on administrative decisions, it is difficult to summarize the prevailing situation in many countries. A few general observations may be made, however, with reference to measures liberalizing the application of exchange restrictions to transactions affecting foreign investments.^{24/}

Among under-developed countries not maintaining exchange control are the following: El Salvador, Guatemala, Haiti, Honduras, Lebanon, Mexico and Panama. In several other under-developed countries including Cuba, the Dominican Republic and Venezuela, the control is essentially nominal.

^{23/} United States 83rd Congress, First Session, Committee on Foreign Affairs, The Mutual Security Act and Overseas Private Investment, Preliminary Report of the Sub-Committee on Foreign Economic Policy, 3 June 1953.

^{24/} A summary of the formal exchange control regulations in effect is contained in the International Monetary Fund's Fourth Annual Report on Exchange Restrictions (Washington, D.C., 1953).

The position of foreign investors is also made easier in some countries by the establishment of a free exchange market for non-trade transactions, as is the case in Colombia, Peru and Uruguay. Capital may thus enter and remittances be made at the free rate without limit.

Many other countries, while maintaining control over remittances related to foreign capital and the income thereon, have taken administrative action or adopted laws to facilitate such remittances or render them more certain. In a number of cases - including countries and territories in the sterling area and the other dependent territories of European countries - the policy is to allow the transfer of income on foreign capital through administrative decision without any formal limit as to the amount. In effect, the investor relies on the record of performance by the exchange control authorities, which in most cases have authorized bona fide requests for remittance of income. In respect of transfers of income on investments, usually no discrimination is made between old and new investments, although the entry of capital for new investments is subject to permission by the exchange control authorities. In respect of repatriation of capital, the controls are stricter, except in the case of approved new investments. Repatriation privileges are extended, for example, to approved investments made in dollars or other "hard" currencies in the British, French and Belgian dependent territories.

The exchange control regulations of a number of under-developed countries now provide a certain measure of assurance to foreign investors concerning their rights to transfer income or capital within a system of exchange control. This is done through special laws, some of which have been referred to above, or by official statements of the exchange control authorities concerning the allocation of foreign exchange for remittance of such income or capital. Commitments of this kind are frequently accompanied by the establishment of a ceiling on the transfers which may be effected at the official rate of exchange. Among the countries which maintain or have in the recent past

made such arrangements are: Argentina, Bolivia, Brazil,^{25/} Chile,^{26/} Colombia,^{27/} Costa Rica, Ecuador, Egypt, Greece, Indonesia, Israel, Nicaragua, Paraguay, the Philippines and Turkey.^{28/} The commitments are limited to approved investments, and in some cases discriminate between old and new investments; further, in practice they are conditional on the availability of sufficient foreign exchange, and in several of the countries mentioned the formal regulations have been of little practical significance during various periods owing to the prevalence of exchange stringencies. In the case of several countries - for example, Chile and Greece - recent legislation stipulates that the amounts required shall be set aside in the annual foreign exchange budget.

If transfers can be effected only at the official exchange rate, undertakings of the above type may be of particular importance to the investor. If, as is sometimes the case, remittances can be made through the free market at a rate less favourable to the investor, the value of such assurances depends on the spread between the rates involved. Since the maximum amount of investment income that may be transferred at the official rate is usually

^{25/} The Brazilian exchange system has undergone several modifications in recent years. Under the present system, remittances may be made on approved investments at the official rate up to 10 per cent of registered capital per annum. Most foreign exchange transactions, however, are effected through a rate established by a system of auction. A decree of 3 January 1952 limiting the basis for remittances to the amounts originally brought into the country in foreign currency was modified by a law of 7 January 1953, establishing a free market for various transactions, including those relating to the inflow of foreign capital and remittances related thereto.

^{26/} Under the law of 10 November 1953, enterprises with approved foreign investments in Chile may effect remittances of income without limit at the official rate; after five years, the capital of approved investments may be repatriated in annual instalments of 20 per cent of the annual original value of capital invested.

^{27/} No limit is imposed by Colombia on the remittance of income or transfer of capital.

^{28/} As stated in footnote 12, the Turkish law of 18 January 1954 authorizes remittance without limit of income and capital of approved investments.

expressed as a percentage of invested capital, an important question arises whether the capital is defined to include reinvested earnings. The same consideration applies to the repatriation of capital, since the annual repatriation is usually limited to a fixed percentage of the agreed value of the investment.

A number of countries maintaining exchange control have accorded special privileges to certain foreign investments in the export sector of the economy. The enterprises concerned are sometimes not required to surrender their export proceeds and are to that extent exempted from exchange control restrictions. However, in several cases, notably Chile and Venezuela, the arrangement is coupled with the requirement that local currency be acquired by the enterprises concerned at a rate which is relatively unfavourable to them.^{29/}

Fiscal Incentives

A number of under-developed countries have extended tax concessions with a view to attracting foreign investment.^{30/} This has been done pursuant

^{29/} It is reported that negotiation to modify the application of such a "penalty" rate to foreign enterprises in the Chilean copper industry is currently in progress, and that an increase in the income tax rates on such enterprises is contemplated in consideration of a reduction of the penalty rate. Such a change may be advantageous to a foreign enterprise if it can credit its increased tax liability against its tax liability in the capital exporting country.

^{30/} The subject of tax incentives to foreign investment is discussed in general terms, with illustrative material, in the following United Nations reports: The Effects of Taxation on Foreign Trade and Investment (1950.XVI.1), pages 19 to 34; Report of the Technical Assistance Conference on Comparative Fiscal Administration (E/CN.8/67). Summaries of tax incentives in particular under-developed countries appear also in Foreign Investment Laws and Regulations of Countries of Asia and the Far East (1951.II.F.1); Economic and Legal Status of Foreign Investments in Selected Countries of Latin America (E/CN.12/166 and addenda); The Use of Taxation Techniques as Incentives to Private Investment in Far Eastern Countries (ECAFE/I and T/Fed.19, 8 September 1953).

See also Report of the United Nations Mission of Technical Assistance to Bolivia (1951.II.B.5), page 35 and following.

to legislation on foreign investment as such or, more frequently, through administrative action under legislation authorizing tax concessions to private enterprises generally. As in the case of exchange control, tax concessions are often extended to particular enterprises; further, certain types of concession have been made available to particular classes of private investors generally. In some instances, as in the recent decree of Greece referred to above, a tax concession granted to a particular firm is extended to all similar enterprises. As was pointed out above, under several recent "investment laws" a foreign enterprise may receive assurance that it will not be subject to new forms of taxation or, in some cases, to an increase in the amount of taxes during a specified period. In general, most forms of tax concessions to attract investment are extended for a limited period of time.

Under-developed countries still rely to a great extent on import duties and other forms of indirect taxation. The granting of freedom from import duty on equipment has served as an instrument for stimulating enterprise. Reference may be made also to the extension of tariff protection to selected industries in which foreign capital has been invested. In recent years such protection has been reinforced or replaced by quantitative restrictions on imports or exchange restrictions employed primarily for balance of payments reasons but having an incidental protective effect.

Reduction of export taxes is less frequently offered as an incentive to investment. A number of older concession contracts with private foreign investors, however, stipulate that export taxes shall not be increased or that they shall be based on an agreed formula for the duration of the concession. Such concession contracts have typically contained also an understanding regarding other types of taxation to which the enterprise shall be subject.

A few countries which maintain taxes on foreign exchange transfers - for example, Cuba and the Philippines - may authorize the granting of exemption from such taxes to approved foreign enterprises.

With the increase of direct taxation in under-developed countries, exemption from or reduction of taxes on the income of business enterprises has been introduced by some countries with a view to stimulating private investment. Tax concessions of this kind have usually been subject to a time limit and have been extended only to enterprises meeting rather specific criteria related, for instance, to the country's programme of economic development.

In a number of under-developed countries, incentives are offered through the allowance of accelerated depreciation and depletion during the early years of the investment. The reinvestment of earnings of existing enterprises has also been encouraged in certain cases by application of a reduced rate of tax on earnings that are reinvested.

The significance to a foreign investor of measures of the sort described depends partly on the tax liability of the parent enterprise (or other taxpayer) on account of profits earned by branches or dividends remitted. This liability, in turn, depends not only on the extent to which international double taxation is eliminated but also on the method by which such elimination is effected. The chief issue that arises is whether the taxpayer's liability shall be determined by the tax system in effect in the country where the income is earned or where the income is received. Since the level of taxation may vary considerably between capital exporting and capital importing countries, the way in which this issue is resolved may be of importance in affecting the flow of capital. Most independent under-developed countries remain outside the network of bilateral treaties that have been concluded to eliminate double taxation of income from foreign investment.^{31/} This appears due mainly to the fact that the treaties concluded or proposed by capital exporting countries maintain the obligation of the parent enterprise under the tax laws of these countries, an obligation coupled with the practice of certain capital exporting countries, particularly

^{31/} See United Nations, International Tax Agreements, vol. II (1951.XVI.1), page XI.

the United States and the United Kingdom, of granting credit for taxes on business income paid abroad, even in the absence of treaties. If tax rates are lower in the country of operation than in the capital exporting country, a tax concession by the former on business income taxes may not reduce the total liability of the parent enterprise.

For the reasons indicated, attention has been turned increasingly to action by capital exporting countries to modify the taxation of incomes earned by foreign investments so as to permit the parent enterprise to take advantage of the fact that in many cases its foreign tax liabilities are lower than the domestic, or to permit capital importing countries to grant tax concessions that would effectively reduce the total amount of tax due from foreign investors. Reference was made above to proposals by the Economic and Social Council. Action in this connexion taken or proposed in the United States and the United Kingdom is considered in the section on capital exporting countries.

Other Measures to Encourage Capital Inflow

Several under-developed countries have established official financial institutions to grant credits to new private enterprises. While such institutions are concerned primarily with the promotion of locally owned enterprises, they may also serve as a focal point for the attraction of private foreign capital. They have been active, for example, in the financing of manufacturing enterprises, sometimes through joint participation of local and imported capital, or in arranging for use of patents and local and imported capital, or in arranging for use of patents and technological assistance from abroad on a royalty basis. Such institutions may also serve as a medium for channeling capital from foreign private portfolio investors.^{32/}

^{32/} In a survey of British Guiana by a mission of the International Bank for Reconstruction and Development, for example, it was suggested that an agency of this type might attract the participation of such private investment agencies as the recently established (British) Commonwealth Development Finance Company, Limited, and Barclays Overseas Development Corporation (International Bank for Reconstruction and Development, The Economic Development of British Guiana, (Washington, D.C., 1953), pages 37 and 38.)

Certain countries solicit private foreign capital for particular projects or disseminate information concerning the status of foreign capital within their borders.^{33/} Functions of this sort may be performed by a national development authority (for example, "fomento" corporations in several Latin American countries), by special agencies established under investment laws (for example, an "investment centre" established by the Government of Israel pursuant to the investment law of 1950), or through diplomatic channels. Informational activities may also be carried out by commercial banks and similar agencies. An industrially developed country, the Netherlands, affords an example of action of this latter type. After the Second World War the Netherlands Ministry of Economic Affairs sponsored the Netherlands Industrial Institute, a private organization. This Institute was founded by a group of Netherlands bankers and businessmen to collaborate with the Government in attracting foreign enterprises to the Netherlands, either to establish branches or subsidiary companies there or to participate in existing Netherlands enterprises. The Institute solicits foreign capital and technology through a variety of activities, including the preparation of detailed surveys of legal and other factors relevant to the establishment of enterprises in the Netherlands. A branch of the Institute in the United States serves as a point of contact with potential investors.

In capital exporting countries, functions parallel to those just mentioned are performed by private or governmental institutions. Thus, the United States Government publishes a series of reports concerning governmental measures and economic conditions affecting private foreign investment in various under-developed countries,^{34/} disseminates information concerning investment opportunities of interest to potential investors in the United States

^{33/} Some governments have published summaries of laws and regulations governing private investment and related information concerning investment opportunities. Examples are Governmental Measures Affecting Investment in India (issued by the Economic Adviser to the Government of India, July 1950), Venezuelan Legislation on Business Labor and Taxation (Embassy of Venezuela, Information Service, Washington, D.C., 1952), and Brazilian Bulletin (Brazilian Government Trade Bureau, New York).

^{34/} United States Department of Commerce, Investment in India (1953), Investment in Venezuela (1953), Investment in Colombia (1953).

and takes other action to facilitate negotiations with business enterprises in capital importing countries as well as governments.^{35/} In some instances, it is reported, action of this type has led to the modification of restrictions on the flow of private foreign capital.^{36/}

^{35/} Information on specific investment opportunities is reported by United States governmental missions abroad and is disseminated in various ways by the Department of Commerce and other agencies. In connexion with the Mutual Security Act, a "Contact Clearing House" has been established with a view to stimulating greater participation by small and medium-sized enterprises in the effort to increase United States private investment abroad (Report to Congress on the Mutual Security Program for the Six Months ended June 30, 1953 (Washington, D.C., 1953), page 60).

^{36/} Mutual Security Act and Overseas Private Investment, report of the Sub-Committee on Foreign Economic Policy of the Committee on Foreign Affairs, 83rd Congress, First Session (Washington, D.C., 1953), page 56.

7. CAPITAL EXPORTING COUNTRIES

The obstacles to the international flow of private capital and possible measures to reduce or mitigate the effect of such obstacles have been the subject of intensive study by governmental bodies in several of the major capital exporting countries during recent years.^{1/} A number of measures have been recommended and several adopted with the object of promoting the export of long-term capital, particularly to under-developed countries.

Regulation of Capital Export

Exchange control

The outflow of private capital for investment abroad since the outbreak of the Second World War has generally remained subject to control in traditionally capital exporting countries other than the United States and Switzerland. Capital movements between European countries and their associated monetary areas overseas, however, have with few exceptions remained free from exchange control.

With the post-war economic recovery of western Europe, exchange restrictions on capital movements within the region have been somewhat relaxed, and the authorities have shown an increasing tendency to authorize specific investments in the dollar area that promise to yield dollar earnings. There has also been some

^{1/} In the United States, the major source of private funds for investment overseas, the question has been examined by several official groups and executive agencies charged with making recommendations on various aspects of the country's international economic policies. Among the reports dealing with aspects of the question are the following: Point Four, United States Department of State Publication 3719 (Washington, D.C., January 1950); Gordon Gray, Report to the President on Foreign Economic Policies (Washington, D.C., November 1950); International Development Advisory Board, Partners in Progress (Washington, D.C., March 1951); Resources for Freedom, Report of the President's Materials Policy Commission (Washington, D.C., June 1952); Public Advisory Board for Mutual Security, A Trade and Tariff Policy in the National Interest (Washington, D.C., February 1953); The Mutual Security Act and Overseas Private Investment, Report of a Subcommittee of the Committee on Foreign Affairs, 83rd Congress, First Session (Washington, D.C., 1953); United States Department of Commerce, Study of Factors Limiting American Private Foreign Investment (July 1953); Commission on Foreign Economic Policy, Report to the President and the Congress (Washington, D.C., January 1954).

growth of medium-term export credits in connexion with the drive for recovery of former export markets. These developments have been accomplished by administrative action rather than formal liberalization. ^{2/}

A first step towards relaxation of restriction on private foreign investment was the abolition by some European countries, including France and the Netherlands, of the liability to compulsory sale and repatriation of assets held abroad by residents. In several countries restrictions on reinvestment of earnings on investments abroad were liberalized, and increased scope was permitted for switching from one investment to another both within a country overseas and between certain countries.

Policies governing the outflow from European countries of new funds for long-term investment abroad may be illustrated by a few examples. Capital transfers to non-European countries from Belgium require specific authorization but "such authorization is usually granted when an economic interest is the basis for the transfer, or if the transfer is aimed at maintaining the percentage of the investment in companies abroad when these companies increase their capital". ^{3/} In Denmark, applications for investment abroad by residents are approved when these investments may, with reasonable certainty, lead to an increase in net foreign exchange earnings. ^{4/} In western Germany, new foreign investments by residents require a licence under regulations which stipulate that "new foreign investments should be carried out in the most favourable way from the point of view of foreign exchange. Capital paid in property or in services is preferred, and only in exceptional cases can the transfer of foreign currency for investment purposes be considered." ^{5/} The United Kingdom has allowed some investment by British enterprises in the United States and an increasing amount in Canada during the past several years.

The exchange control authorities of western European countries have also permitted the extension of export credits in increasing amounts and with

^{2/} The Code of Liberalization, adopted in 1951 by members of the Organization for European Economic Co-operation, was largely limited to undertakings regarding relaxation of restrictions on current transactions between the members, including yield on investments, royalty transfers, and, under certain conditions, contractual amortization of loans.

^{3/} International Monetary Fund, Fourth Annual Report on Exchange Restrictions (Washington, D.C., 1953), page 69.

^{4/} Ibid., page 127.

^{5/} Ibid., page 170.

lengthening maturity. The governments of these countries have supported this development by extending guarantees or arranging for official or semi-official systems of insurance against commercial and other risks attached to such credits extended by exporters or commercial banks.

Other regulation of capital export

While reliance has been placed primarily on exchange control to restrict capital exports, other forms of governmental control have been exercised in some countries not maintaining exchange control or have been enforced with respect to capital movements within particular monetary areas, such as the sterling area.

Thus, the United Kingdom maintains strict control over the floatation of foreign and domestic securities. With respect to issues floated on account of countries within the sterling area, the policies applied by a capital issues committee under the Borrowing (Controls and Guarantees) Act of 1946 have taken account of understandings reached at conferences of Commonwealth ministers. A communique issued after a conference of Commonwealth finance ministers in January 1954 pointed out that Commonwealth governments may now approach the London market, after consultation with the United Kingdom Government, to obtain financing for general programmes of economic development as well as for specific projects. Such consultation, it was stated, was necessary to ensure conformity with the general policy of concentrating on measures leading to improvement in the sterling area's balance of payments and of ensuring the provision of an adequate contribution to investment from local resources of the borrowing countries. Consultation is also regarded as desirable in order to regulate the timing of such borrowing.

In countries that do not restrict capital exports for balance of payments reasons, control over the floatation of new securities for investment overseas is largely confined at present to regulations concerning disclosure of information for the protection of investors. Thus, in the United States the Securities Act of 1933, as amended, requires registration with the Securities and Exchange Commission of publicly issued securities of foreign and domestic origin. A recent official United States report on the stimulation of private investment abroad recommended that "every effort should be made ... to assist foreign business firms

and governments to sell their securities in the United States by simplifying Securities and Exchange Commission regulations and procedures, and helping foreign firms and governments to improve their methods of financial administration so as to conform to its requirements". ^{6/}

Mention may be made also of regulation in capital exporting countries of "institutional" investment by agencies such as life insurance companies, savings banks, trust funds and pension funds. Besides having a tendency to place their funds in relatively secure investments, such agencies are subject to legal controls in most countries, limiting the character of their assets. In the United States, legislative or administrative action in certain States was required to render the bonds of the International Bank for Reconstruction and Development eligible for purchase by savings institutions. In the report referred to in the preceding paragraph, it was suggested that "it would be desirable to relax similarly provisions of state laws with regard to direct sales of foreign stocks and bonds to such institutions and to individual fiduciaries". ^{7/}

Tax Policies

The major capital exporting countries have taken action through legislation to reduce or eliminate the international double taxation of income accruing to their residents (or nationals), both individuals and corporations, from investments abroad or from other foreign economic activities. ^{8/} A few countries in Europe that in the past have been important sources of capital for investment abroad give exemption from, or reduce, the tax due on the income from such investments.

^{6/} United States Department of Commerce, Study of Factors Limiting American Private Foreign Investment, page 30.

^{7/} Ibid., page 39.

^{8/} As was pointed out above, treaties providing for the avoidance of international double taxation have been concluded largely between countries in an advanced stage of economic development, except for treaties between the United Kingdom and its dependencies.

The United States and the United Kingdom allow a credit for income taxes paid abroad. ^{9/} In general in these two countries domestic corporations, residents - and, in the case of the United States, non-resident citizens - are subject to tax on their entire income, whether from foreign or domestic sources. The taxpayer is permitted, however, to credit against his tax on foreign income corresponding taxes paid on such income abroad by deducting the foreign tax from the domestic tax due. There are limitations both on the kind of foreign taxes which may be credited (chiefly income taxes or taxes imposed in lieu thereof) and on the amount of the foreign tax which can be credited (usually up to the amount of the corresponding United Kingdom or United States tax on the foreign income). ^{10/}

In recent years increasing interest in capital exporting countries has been directed towards the potentialities of tax incentives, going beyond the mere avoidance of international double taxation, for increasing the flow of private investment capital to under-developed countries.

In the United Kingdom and the United States recommendations have been put forward to enable investors to retain the full benefit from tax concessions extended to them by capital importing countries. At present such concessions, when applied to taxes for which credit is received in the capital exporting country, instead of reducing the investor's total tax liability serve merely to increase the

^{9/} A comprehensive analysis of the United States provisions is contained in the the United Nations report, United States Income Taxation of Private United States Investment in Latin America (1953.XVI.1).

^{10/} In the United Kingdom, credit up to the full amount of the applicable United Kingdom tax was not granted (except under bilateral tax agreements) until the Finance Act of 1953 which resulted from a recommendation of the Royal Commission on the Taxation of Profits and Income (First Report, Cmd 8761, London, February 1953).

portion of domestic tax remaining payable after credit has been taken for the reduced foreign tax. ^{11/} The proposals would be implemented either through domestic legislation, ^{12/} or through special bilateral agreements with the capital importing countries specifying the eligible tax concessions. ^{13/} As yet, however, these recommendations have not matured into legislative proposals in either of the two countries; nor have more far-reaching proposals, such as the granting of complete tax exemption to income from foreign investment. ^{14/}

Thus, the principle of taxing income only or primarily in the country in which the income is produced, referred to in resolution 486 B (XVI) of the Economic and Social Council, has not been adopted as the basis of tax policy by governments of the major capital exporting countries.

More limited proposals under active consideration in the United States are contained in the President's budget message to Congress of 21 January 1954. These proposals, which in most respects are similar to recommendations recently made by the Commission on Foreign Economic Policy, ^{15/} are along the following lines:

-
- ^{11/} Except in the case of retained profits of foreign subsidiaries which are subject to tax only in the country of operation.
- ^{12/} United States Department of Commerce, Study of Factors Limiting American Private Foreign Investment, page 27.
- ^{13/} Royal Commission on the Taxation of Profits and Income, First Report, page 18.
- ^{14/} A proposal of this nature was made by the United States International Development Advisory Board, in Partners in Progress, page 79. In this connexion mention may also be made of proposals to stimulate private portfolio investment through tax concessions, such as creating a class of tax-exempt foreign securities, reducing or eliminating the tax on capital gains as applied to foreign shares, and providing more definite allowance for offsetting capital losses against income than at present. See, for example, "Program for Increasing Private Investment in Foreign Countries", report prepared by August Maffry for the United States Department of State, Department of Commerce and Mutual Security Agency, Washington, 18 December 1952.
- ^{15/} Commission on Foreign Economic Policy, Report to the President and the Congress, page 23.

- (1) A reduction of fourteen percentage points in the tax rate applicable to income derived by United States corporations from foreign establishments;^{16/}
- (2) Treatment of foreign branches of United States enterprises as foreign subsidiaries, thus subjecting these enterprises to United States tax only on profits actually remitted to the United States, but not on profits retained or reinvested abroad;
- (3) An extension of the scope of the credit for foreign taxes by relaxing certain limitations both as to the amount and as to the kind of foreign taxes admitted to credit;
- (4) Extension of the benefit of the tax credit to individuals investing abroad through domestic investment trusts.

These proposals, if adopted would be in addition to certain concessions which have been accorded for some time in the United States to United States corporations deriving most of their income from operations in countries of the Western Hemisphere outside of the United States or in United States possessions. Complete exemption is granted in the latter case, while, in the former, corporations receive a reduction in their tax rate of fourteen percentage points, a concession now proposed to be extended to operations throughout the world.

Finally, it should be noted that the treatment in both the United Kingdom and the United States of separately incorporated subsidiaries as separate legal entities has the consequence that foreign subsidiaries are exempt from tax on income not remitted to their parent enterprises. Thus enterprises which carry out their foreign operations through subsidiaries abroad are liable to tax on their profits from these only to the extent to which they are repatriated in the form of dividends.

^{16/} At the end of 1953 the rate of tax on corporate incomes in the United States was 52 per cent. Under existing legislation this rate is due to fall to 47 per cent in 1954, but it has been recommended in the President's budget message that the reduction be deferred for one year. It may be observed that United States enterprises engaged in the extraction of minerals, whether operating at home or abroad, are allowed an annual deduction for depletion for income tax purposes based on their gross income and ranging from 27.5 per cent for petroleum production to 15 per cent for metals and 5 to 10 per cent for other minerals. Since capital importing countries often tax enterprises engaged in mineral extraction more heavily than others, the depletion allowance, combined with the system of credit for taxes paid abroad, usually reduces substantially the tax payments to the United States by such enterprises.

Investment Guarantees

A capital exporting country wishing to stimulate private investment abroad may guarantee investors against specific risks faced by them with respect to investments overseas. Among the major risks that may be covered by guarantee are inability to transfer earnings or repatriate capital as the result of exchange control restrictions and loss of capital from exportation without full compensation.

Guarantees against certain non-business risks of foreign investments were introduced by the United States Government in 1948 and extended in scope by subsequent legislation. Under the present system guarantees are available to private investors in the United States against two types of risk: (a) inability to convert foreign currencies into dollars, and (b) loss of capital through expropriation. The insurance is available only on new investments approved by the administering agency, including additions to existing investments. The investor must be a United States citizen or a corporation organized under United States law and predominantly owned by United States citizens.

The guarantees are available for investments of various types including equity capital, loans, and licensing arrangements providing for the use of patents, processes and techniques in exchange for royalty payments. Equity investments are eligible for guarantee if they are expected to have a minimum life of five years and loans if they have a maturity of at least three years. In principle, foreign government bonds or similar obligations placed with individual or institutional investors in the United States are eligible for guarantee although in practice guarantees have thus far been extended only to direct investments or in connexion with licensing arrangements.

Guarantees are available for a fee determined by the administering agency. The charge is one per cent per annum of the face amount for a guarantee against expropriation and a somewhat lower rate for a guarantee against inconvertibility.^{17/} The maximum convertibility guarantee in the case of an equity investment

^{17/} Mutual Security Agency, Investment Guaranty Manual (Washington, D.C. 1952).

(including capital and income thereon) is 175 per cent of the amount in dollars of the investment. A convertibility guarantee insures the investor that he will receive in dollars the equivalent of the amount that he would seek to transfer at approximately the rate at which exchange transactions are being generally effected at the time of the desired transfer; it does not insure against loss from depreciation of the exchange rate. The Mutual Security Act of 1953 authorizes the issue of new guarantees until 30 June 1957 and provides that such guarantees may be effective up to twenty years from the date of issuance.

To be eligible for a guarantee, an investment must meet several conditions. Geographically, the guarantee system may in principle be applied to investments in all countries participating in or eligible to participate in programmes under the Mutual Security Act, including technical assistance programmes. About sixty countries and their dependent territories would accordingly be eligible, including most of the under-developed countries. However, the guarantees are available only to countries that have entered into special agreement with the United States Government. The main purpose of such an agreement is to establish the treatment to be accorded foreign currency, property and claims acquired by the United States Government when guarantees are invoked. Thus far, agreements have been concluded with most countries in western Europe but with only a limited number of under-developed countries, including China: Taiwan, Haiti, Israel and the Philippines. In addition to approval by the United States administering agency, each investment for which a guarantee is sought must be approved by the government of the capital importing country.

The maximum liability of outstanding guarantees extended under the programme at the end of 1953 was \$41 million, most of which was in guarantees of convertibility with respect to investments in western Europe. In mid-1953 pending applications for guarantees totalled about \$61 million. ^{18/}

Opinion about the insurance system is reflected in a recent report by the United States Department of Commerce:

"There is no clear evidence ... that the present guaranty system ... has resulted in an increased volume of investment. Moreover, business

^{18/} 83rd Congress, First Session, Committee on Foreign Affairs, The Mutual Security Act and Overseas Private Investment, page 37.

opinion on the effectiveness of guaranties is far from unanimous. Some businessmen are definitely opposed to the guaranty principle on the grounds (1) that the foreign government, not the United States, should make the guaranties and pay any liabilities, (2) that guaranties tend to perpetuate the very risks they are designed to compensate and (3) that the existence of a government guaranty system leads to wider government interference in private business. Others object to the cost of the guaranties, the methods of negotiating the contracts, the necessity of disclosing business affairs to the Government, and the limitation of guaranties to new investments. Others believe, however, that the guaranty principle is sound as a means of giving confidence to business in the face of the extraordinary risks encountered under present world conditions." ^{19/}

Several recommendations have been made by United States Government agencies and other bodies with respect to modification of the guarantee programme. The Commission on Foreign Economic Policy recommended that the programme be given a further period of trial and that during this period guarantees authorized against the risks of "war, revolution and insurrection" in addition to risks previously covered. ^{20/}

Other Measures to Encourage Investment

Reference has been made to various types of activity in both capital importing and capital exporting countries regarding the dissemination of information on investment opportunities and investment conditions generally in under-developed countries. Related to this sphere of activity are various types of technical assistance in engineering, economic surveys and related fields provided through governmental - as well as private - channels in under-developed countries. Over an extended period this type of activity may have a significant effect on the scope for private investment, particularly with respect to small or medium-sized enterprises in the field of manufacturing. The same may be said of technical assistance provided by individual governments in certain other fields.

^{19/} United States Department of Commerce, Study of Factors Limiting American Private Foreign Investment, page 28.

^{20/} Commission on Foreign Economic Policy, Report to the President and the Congress, page 26.

Several official reports dealing with the stimulation of private foreign investment by United States enterprises have referred to the possible effects of the United States anti-trust laws. It is stated, for example, that "some business representatives maintain that the anti-trust laws constitute a deterrent to private foreign investment and that business should be free to adjust to monopolistic arrangements abroad developed by foreign firms in accord with foreign legislation... Complaints from business suggest that more certainty in this regard, even without change, might provide some stimulant to private foreign investment."^{21/} The view of the United States Commission on Foreign Economic Policy on this question was stated as follows:

"United States anti-trust policies should be restated in a manner which would clearly acknowledge the right of each country to regulate trade within its own borders. At the same time it should be made clear that foreign laws or established business practices which encourage restrictive price, production, or marketing arrangements will limit the willingness of United States businessmen to invest abroad and will reduce the benefits of investment from abroad to the economies of the host countries." ^{22/}

The operations of government lending agencies in capital exporting countries may also serve to facilitate private investment abroad in a manner similar to that of the proposed International Finance Corporation. Thus, the United States Export-Import Bank is empowered to lend to private borrowers, without government guarantee of the type required by the International Bank for Reconstruction and Development. Financing of this type has been extended to United States and foreign enterprises, particularly for the development of minerals in under-developed countries. The Export-Import Bank is not authorized, however, to provide funds in the form of equity capital. Similar operations are carried out by the United Kingdom Colonial Development Corporation and the French Caisse centrale de la France d'Outre-Mer in the oversea territories of the countries concerned. More generally, of course, government agencies supplying capital in the form of loans

^{21/} United States Department of Commerce, Study of Factors Limiting American Private Foreign Investment, page 29.

^{22/} Commission on Foreign Economic Policy, Report to the President and the Congress, page 21.

or grants have tended to increase the scope for private investment through provision of basic facilities and through general stimulation of economic activity in under-developed countries.

APPENDIX

OFFICIAL STATEMENTS CONCERNING PRIVATE FOREIGN CAPITAL IN INDIA

The development since 1948 of the policy of the Government of India towards foreign capital is indicated in the following statements.

Extract from a resolution of the Government of India on industrial policy,
6 April 1948

"The Government of India agree with the view of the Industries Conference that, while it should be recognized that participation of foreign capital and enterprise, particularly as regards industrial technique and knowledge, will be of value to the rapid industrialization of the country, it is necessary that the conditions under which they may participate in Indian industry should be carefully regulated in the national interest. Suitable legislation will be introduced for this purpose. Such legislation will provide for the scrutiny and approval by the Central Government of every individual case of participation of foreign capital and management in industry. It will provide that, as a rule, the major interest in ownership, and effective control, should always be in Indian hands; but power will be taken to deal with exceptional cases in a manner calculated to serve the national interest. In all cases, however, the training of suitable Indian personnel for the purpose of eventually replacing foreign experts will be insisted upon."

Excerpt from a statement in the Parliament by Prime Minister Nehru
on 6 April 1949

"...The policy as regards participation of foreign capital has already been announced in broad terms in Government's resolution of the 6th April, 1948. The stress on the need to regulate, in the national interest, the scope and manner of foreign capital arose from past association of foreign capital and control with foreign domination of the economy of the country. But circumstances today are quite different. The object of our regulation should therefore be the utilization of foreign capital in a manner most advantageous to the country. Indian capital needs to be supplemented by foreign capital not only because our national savings will not be enough for the rapid development of the country on the scale we wish, but also because in many cases scientific, technical and industrial knowledge and capital equipment can best be secured along with foreign capital."

Excerpt from the First Five-Year Plan

"In securing rapid industrial development under present conditions, foreign capital has an important part to play. A free flow of foreign

capital should be welcome because it will ensure the supply of capital goods and of technical know-how. The Government's policy in this regard gives the following assurances to foreign capital:

- "(a) there will be no discrimination between foreign and Indian undertakings in the application of general industrial policy;
- "(b) reasonable facilities will be given for the remittance of profits and repatriation of capital, consistently with the foreign exchange position of the country, and
- "(c) in the event of nationalization fair and equitable compensation would be paid.

"... In view of the fact that the best use of foreign capital is as a catalytic agent for drawing forth larger resources for domestic investment, it is desirable that such investment should be channelled into fields of high priority. The broad principle to be followed is that foreign investment should be permitted in spheres where new lines of production are to be developed or where special types of experience and technical skill are required or where the volume of domestic production is small in relation to demand and there is no reasonable expectation that the indigenous industry can expand at a sufficiently rapid pace. The system of joint enterprises under which a number of foreign concerns have established new industries in the country in collaboration with Indian industrialists appears to be suitable for securing the employment of equity capital. Agreements for such joint participation between foreign and Indian concerns should be subject to the approval of the Government. The share of national capital in joint enterprises, the facilities for the training of Indians, the disclosure of patented processes to Indian associates, etc., are matters which have to be decided with due regard to the facts of each particular case."

Extract from a speech by Mr. T.T. Krishnamachari, Minister for Commerce and Industry, in the Parliament, 4 April 1953

"...it seems to me clear that Indian capital will have to be supplemented by foreign capital, provided we want rapid progress...

"That does not mean that we want foreign capital at any price. We want it on terms which we consider reasonable. We are prepared to give to the foreign investor the assurance of fair and reasonable treatment. This includes not merely facilities for remitting dividends and even for the repatriation of capital, as already announced by the Government on more than one occasion, but also reasonable opportunities to develop and expand. Even here I have been insisting that in the expansion of any such concern owned by foreigners attempts should be made at every stage to associate Indian capital. We have a fairly close system of control over industry. We do propose to make that

control complete. Government have ample powers, and I hope will have more powers if necessary, to ensure that private industry does not act in any manner inimical to national interests and also plays a fair game towards the consumer. These powers apply to foreign-owned firms no less than to Indian-owned firms. Neither the one nor the other can be allowed to pursue anti-social policies or exploit the Indian consumer. Subject to these safeguards, which I repeat are non-discriminatory and to any specific conditions imposed at the time of entry, we give to foreign firms fair and equal treatment; and I am quite satisfied that it is in the interests of the country and the millions of people who inhabit it."
