

DRAFT CHARTER

UNITED STATES: PROPOSED AMENDMENT

CHAPTER III - ECONOMIC DEVELOPMENT

Article 12

International Investment for Economic Development

1. The Members recognize that, with appropriate safeguards, including measures adequate to ensure that foreign investment is not used as a basis for interference in the internal affairs or national policies of Members, international investment, both public and private, can be of great value in promoting economic development and consequent social progress. They recognize that such development would be facilitated if Members were to afford, for international investments acceptable to them, reasonable opportunities upon equitable terms to the nationals of other Members and security for existing and future investments. Accordingly they agree to provide, consistent with the [limitations] safeguards* recognized as necessary in this Article, the widest opportunities for investment and the greatest security for existing and future investments.

[2.** Subject to restrictions imposed in accordance with the Articles of

* This amendment is a consequence of the proposed deletion of paragraph 2 of Article 12 of the Geneva Draft.

** The change indicated is suggested by the delegation of the United States largely because of difficulties of interpretation and of substance arising out of the draft prepared at Geneva. It will be recalled that this subject was discussed for the first time at Geneva. At Geneva, it was argued by certain delegations that the attempt to state definite rules for treatment of foreign investment in the Charter could only result in a cumbersome, unworkable and exception-ridden provision. It was agreed nevertheless that the attempt to draft acceptable provisions of a detailed nature should be made.

The delegation of the United States has now come to the conclusion, after close study of the resultant paragraph 2 of Article 12, that the attempt was not successful. The paragraph as contained in the Geneva Draft is cloudy and difficult. The exception contained in the paragraph are such as to obscure and overshadow the rule. Interpretative difficulties, many of which were pointed out at Geneva, are numerous, and are attested by the lengthy footnote to the paragraph, and the footnote itself gives rise to interpretative problems.

The delegation of the United States has therefore concluded that paragraph 2 of Article 12 of the Geneva Draft should be deleted, and a simpler paragraph should be substituted,

/Agreement of

Agreement of the International Monetary Fund or with a special exchange agreement entered into between the Member and the Organization under paragraph 6 of Article 24 of this Charter,

(a) with respect to existing investments or to future investments after they have been made, no Member shall impose, directly or indirectly, requirements on the investments of nationals of other Members which are appreciably more onerous than those which

(b) Members shall make just compensation if the property, in which a national of another Member has an interest, is taken into public ownership or placed under public management or occupation.⁷

3.* Each Member shall, upon the request of any other Member enter into and carry out with such other Member negotiations directed to giving effect to the provisions of paragraph 1 of this Article.

4.** Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development in cases where such co-operation appears to the Members concerned to be appropriate.

* The delegation of the United States suggests for this paragraph the simple statement that members shall, if requested, proceed with negotiations directed to giving effect to the provisions of paragraph 1 of Article 12. This statement is a desirable and unambiguous method of handling problems arising in connection with the provisions of Article 12 of the Geneva Draft. It is pointed out that there was substantial unanimity at Geneva on paragraph 1 as a statement of objectives. The paragraph now suggested as paragraph 2 provides for the carrying out in subsequent negotiations of the principles thus agreed under paragraph 1, and is not open to the objections and pitfalls which accompany an attempt to write detailed rules into the Charter.

** This paragraph has been retained in the form shown in the Geneva Draft.