

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

Draft Charter

The Delegation of the United States of America submit the following revisions of their proposals for amendments of paragraph 2 of Article 12 of Chapter IV of the Draft Charter (E/PC/T/W/123)\*.

CHAPTER IV

Article 12: Means of promoting economic development.

2. (a) In order to stimulate and assure the provision and exchange of facilities for industrial and general economic development, each Member shall take no <sup>1/</sup>unreasonable/ unfair or inequitable action within its jurisdiction injurious to the rights <sup>2/</sup>and/or interests of <sup>3/</sup>citizens or legal entities/ nationals of <sup>3/</sup>any/ other Members <sup>3/</sup>country, in the enterprise, skills, capital, arts and/or technology which they have supplied.

4/(b) (REDRAFT) With respect to the opportunity to make investments, the Members recognise that, except as otherwise deemed necessary in the national interest, the nationals of any other Member should be accorded national and most favored nation treatment within the territory of each Member. The Members undertake to cooperate with each

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\*In accordance with the procedure prescribed in E/PC/T/72 and E/PC/T/81 Rev. 1, these revised proposals have been referred directly to the Sub-Committee on Chapter IV.

other and with the Organization toward the achievement of this objective.<sup>5/</sup>

(c) (REDRAFT) Apart from the conditions or limitations which existed at the time that an investment was made, or at the time that the Charter shall have come into force with respect to such Member,<sup>6/</sup> no Member shall impose any requirements on the rights and interests of, or on the conduct of business by, nationals of other Members which are onerous than those such Member imposes upon its own nationals or upon nationals of third countries.<sup>7/</sup> Members undertake to consult with each other and with the Organization, with respect to carrying out the obligations of this paragraph. The provisions of this paragraph shall in no way affect the rights or obligations of Members under the Articles of Agreement of the International Monetary Fund.<sup>8/</sup>

(d) (REDRAFT) Any Member which may take an interest of a national of any other Member into public ownership or place such interest under public management or occupation shall make adequate, effective and prompt compensation to such national. The provisions of this paragraph shall in no way affect existing international obligations of Members.

COMMENTS:

1/ The words "unfair or inequitable" have been substituted for the word "unreasonable" as a drafting change and on the ground that they are somewhat more explicit than the word "unreasonable."

2/ The word "nationals" is used rather than "citizens or legal entities" since it is a more commonly used expression in international law and in treaties with respect to treatment of persons within the jurisdiction of other states. It is not believed that it is necessary to elaborate the word by providing

that both individual and legal nationals -- that is, corporations, associations, partnerships, etc. are included.

- 3/ Other changes are merely drafting changes.
- 4/ Paragraphs 2(b) (c) (d) and (e) have been redrafted from the proposals made by the Delegation of the United States of America in Document E/PC/T/W/123.
- 5/ Paragraphs 2(b) and 2(c) have been redrafted in order to separate the differing problems of the opportunity to invest (handled in paragraph (b) and the treatment of an investment once permitted (handled in paragraph (c)). As to (b), it is felt not to be desirable to impose a rigid present limitation on a country's freedom of action. However, it is desirable to state that Members recognise that national and most-favored-nation treatment should be accorded with respect to the opportunity to make investments. The necessary deviations from this principle are recognised in the phrase "except as otherwise deemed necessary in the national interest."
- 6/ This clause is introduced to cover the problem of the treatment of foreign investments (a) existing at the time the Charter comes into effect for any Member or (b) which may subsequently be made. As to existing investments it is provided that no Member shall be required to change its present laws even though, in the past, these may have imposed upon foreign investors burdens more onerous than imposed on national investors. However, existing investments, after coming into force of the Charter with respect to any Member, shall not be subjected to new and additional burdens of a discriminatory character. With respect to future investments, i.e., those made after the Charter comes into effect, each Member is obligated not to impose discriminatory burdens apart from the conditions imposed by the Member, in accordance with paragraph (b), at the time such investment is made.
- 7/ This phraseology has been altered to make explicit that Members are merely obligated not to impose positive burdens, beyond those permissible under the M-F-N and national treatment formula, on the investments of nationals of other Members. However, the phraseology does not necessarily require the conferring of special benefits on the investments of foreign nationals when such benefits are conferred upon local nationals.
- 8/ This proviso ensures that no Members will be required by this paragraph to take any steps inconsistent with the Members' privileges or obligations under the Articles of Agreement of the Monetary Fund.