

A group of thirteen developed states (including Canada) proposed the addition to Article 2 of a third paragraph in the following terms: "States taking measures in the exercise of the fore going rights shall fulfil in good faith their international obligations". The phrase "international obligations" was deliberately chosen to avoid pre-judging whether such obligations arise from treaties only or from customary international law as well. It thus permitted states which wished to do so to maintain that their only obligations to other states in respect of foreign investment were those they had expressly accepted by treaty. Despite this "flexibility", the paragraph was defeated by a vote of 71 opposed, 20 in favour, with 18 abstentions.

The implications of this vote for the evolution (one could hardly call it "progressive development") of international law are disturbing. In his statement in the General Assembly, the Canadian representative said:

"The third paragraph proposed for Article 2 ... prejudged neither the content of international law relating to foreign investment, nor the sources of such law. It merely sought to establish the principle that, in this very important area of international relations, the rule of law is to apply among states ...

... The reason my Delegation attaches such importance to this point ... is that if we are to achieve and maintain the equitable distribution of the world's wealth which this Charter is intended to promote, a significant flow of private capital from developed to developing countries in the form of investment will be required. This movement of capital will take place only in conditions which provide at least a certain degree of security, which cannot possibly exist if the rule of law is rejected."