

development at the Geneva Session of the Preparatory Committee, some consideration had been given to the treatment of foreign investments by capital-importing members. Insofar as the opposing ideas of the main creditor and debtor countries could be reconciled at that time, Article 12 represented this compromise. The Geneva Draft, however, subsequently came in for extended criticism from the International Chamber of Commerce-- particularly paragraph 2-- and from those countries principally concerned with creditor aspects; these criticisms took the form of concrete amendments to the Article at the Havana Conference. Some two dozen amendments to the Article were referred to the sub-committee⁽¹⁾ for attention. The majority of these amendments were in effect submerged in the discussions which ensued over the amendments proposed by the United States.

Evidently stimulated by the views expressed by the International Chamber of Commerce, the United States Delegation criticized paragraph 2 of the Geneva Draft for its vagueness and ambiguities. The I.C.C. had previously contended that the provisions of this paragraph would create among potential investors a sense of even greater insecurity than at present.⁽²⁾ In an effort to tighten the conditions imposed upon the debtor countries, the United States first proposed that paragraph 2 of the Geneva Draft should be replaced by the following words:

"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".

Defending the exemptions set forth in paragraph 2 of the Geneva Draft, the delegations of Australia, British India and New Zealand, among others, took issue with the new United States suggestion. The proposed obligation to negotiate and to consummate a bilateral agreement upon the request of another member drew strong criticism. In contradiction, these countries contended that every member had the right: (1) to decide what foreign investments it would permit; (2) to decide when and where it would tolerate foreign investments; (3) to discriminate in favour of new or existing domestic or certain foreign investments - if necessary.

In an effort to placate this opposition, the United States Delegation submitted a further redraft of the Article, which involved reconstructing paragraph 1 of the Geneva Draft, dropping the second paragraph - over which the main controversy had arisen, moving the original paragraph 3 into second position, and adding a wholly new third paragraph.⁽³⁾

- (1) The following delegations were appointed members: Australia, Brazil (J.G.Torres, Chairman), Canada, Ceylon, Czechoslovakia, Egypt, India, Mexico, Netherlands, New Zealand, Sweden, United Kingdom, United States, Venezuela.
- (2) International Chamber of Commerce: "A Charter for World Trade", Brochure No. 124, pages 12-13.
- (3) The reconstructed first paragraph and the new third paragraph submitted by the United States were as follows:-
 1. "The Members recognize that international investments, both public and private, can be of great value in promoting economic development and consequent social progress. They recognize that such development would will be facilitated if Members were to afford reasonable opportunities for investment upon equitable terms to the nationals of other Members and security for existing and future investments. They recognize also that Members have the right to prevent or limit the making of investments within their territories, or to establish appropriate safeguards with respect to such