

The revised United States draft failed to allay the strong opposition in the sub-committee, and it was almost immediately withdrawn by that Delegation. The Australian Delegation then submitted a draft which left paragraph 3 of the Geneva Draft intact but replaced the first and second paragraphs with new phraseology derived in small measure from the previously withdrawn United States draft. After modifications had been made in it, this Australian draft emerged as the finished product of the sub-committee.

Underlying Article 12 of the Havana Charter is the simple proposition - fostered principally by the United States Delegation - that if conditions are made favourable in the borrowing countries, lenders will again be prepared to furnish a significant volume of private (and public) capital for foreign investment. In order to provide the required conditions, expectant borrowing countries must offer certain assurances, first to attract private capital, and second to guarantee stable and equitable treatment to the foreign investors when their capital resources have been committed.

In line with this conception of the problem, Article 12 is designed to assist in creating an environment favourable to the international flow of capital - generally the emphasis was on private capital. The suitable environment is to be created by the negotiation of bilateral and multilateral agreements which will set forth the mutually acceptable conditions under which the capital importing members will receive and treat capital investments from the capital exporting countries.

The Members are required to commit themselves - subject to important reservations described subsequently - to the following undertakings:-

1. To provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments (Paragraph 2(a)(i)).
2. To give due regard to the desirability of avoiding discrimination as between foreign investments. (Paragraph 2(a)(ii)).
3. Upon the request of any Member, and without prejudice to existing international agreements to which Members are parties (e.g. the IMF Articles of Agreement), to enter into consultation or negotiations directed toward a mutually acceptable agreement. (Paragraph 2(b)).
4. Members shall promote co-operation, when appropriate, between national and foreign investors for the purpose of encouraging development or reconstruction. (Paragraph 3).

In making these undertakings, however, the Member does not impair its right:

1. to ensure that foreign investments are not used for interference in the Member's internal affairs;

(3) -- continued.

investment, including measures adequate to ensure that it is not used as a basis for interference in their internal affairs or national policies".

3. "Members undertake, for the purpose of carrying out the principles and subject to the limitations expressed in this Article:

- (a) to provide reasonable opportunities for private investment and adequate security for existing and future investments; and
- (b) upon the request of any Member to enter into consultations or to participate in negotiations directed toward agreements with respect to international private investments".