Draft Charter

The Delegation of the United States of America submit the following proposals for amendment of Chapter IV of the Draft Charter:

CHAPTER IV

Economic Development and International Investment

Article 9: Importance of Economic Development and International Investment in Relation to the Purposes of this Charter.

The Members recognize that the industrial and general economic development of all countries, and particularly of those countries or dependent territories in which resources are as yet relatively undeveloped, will improve opportunities for employment, enhance the productivity of labor, increase the demands for goods and services, contribute ultimately to economic stability, expand international trade and raise levels of real income, standards of living, thus strengthening the ties of international understanding and accord. They also recognize the importance of private and public international capital movements, into productive investments in promoting and facilitating such development.

COMMENT:

(1) This addition has been made in order to recognize that certain Member countries have responsibilities in dependent areas which are particularly underdeveloped.

(2) This statement is deleted because it is contentious and of doubtful validity.
(3) The term "levels of real income" has given rise to difficulties of interpretation. The suggested substitute is more concrete and widely understood.

(4) This statement does not add significantly to the substance of the Chapter and its deletion is, therefore, suggested.

(5) This added sentence states in general terms the importance of the relation between international investment and economic development.

Article 11

Plans for Economic Development

1. Members shall cooperate with one another, and with the Economic and Social Council of the United Nations and with appropriate inter-governmental organization in promoting industrial and general economic development.

2. The Organization, upon the request of any Member, may advise such Member concerning its plans for economic development and within the powers and resources of the Organization and on terms to be agreed upon, provide such Member with technical assistance and advise the Member in completing and the carrying out of its programmes, or arrange for the provision of such assistance and assist in the procurement of appropriate engineering and other technical assistance. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries.
COMMENT:

(1) The word "shall" has been changed to "may" in recognition of the views expressed by the Economic and Social Council on March 28 (see E/EC/T/55) concerning the functions of ITO regarding economic development. While ECOSOC believed that the general proposal contained in this Article was appropriate, it called attention to "the responsibilities in this field of intergovernmental organizations which are now, or are qualified to be, specialized agencies under Article 57 of the United Nations Charter". In order to avoid conflict with such other specialized agencies, this function cannot be made mandatory upon ITO but must rather be permissible.

(2) This change is made in order to avoid ambiguity.

(3) The term "competence" is ambiguous. If it means ability, it is covered by the term "within its resources" and is, therefore, redundant. If, however, it means legal or constitutional right, it would be more appropriate to use the word "power".

(4) The term "provide technical assistance" has been widely misunderstood to mean that ITO proposes to establish industrial and scientific research laboratories, execute construction projects, and generally go into the business of providing industrial technology. The suggested change in wording makes it clear that the function of the Organization is advisory rather than entrepreneurial.

Article 12
Means of Economic Development and their Promotion

1. Progressive economic development is dependent, among other things, upon adequate supplies of capital funds, materials, equipment, advanced technology, trained personnel, and managerial skill. Accordingly, the Members shall impose no unreasonable impediments that would prevent other Members from obtaining any such facilities for their economic development on equitable terms, and shall cooperate in accordance with Article 11, within the limits of their power, in providing or arranging for the provision of such facilities.

COMMENT:

(1) This term has been added in order to indicate that the list of prerequisites is not intended to be exhaustive.

(2) This term has been introduced to make the obligation in question more concrete.
NOTE: Substitute the following for paragraph 2 of Article 12 of the New York draft of the Charter:

2. In order to stimulate and assure the provision and exchange of facilities for industrial and general economic development, each Member shall take no unreasonable action injurious to the rights and interests of citizens or legal entities of any other Member country, in the enterprise, skills, capital, arts and technology which they have supplied.

Each Member shall accord to citizens and legal entities of other Members treatment no less favourable than it accords to its own citizens and legal entities with respect to opportunities for making investments and the treatment of existing and future investments; provided, however, that exceptions to such national treatment may be instituted or maintained if essential national interest so requires and if such exceptions are described in a statement filed with the Organization and published. In any event, each Member shall accord the citizens and legal entities of each other Member treatment no less favourable than that accorded to the citizens or legal entities of any third country.

Each Member shall accord adequate, effective and prompt compensation to the citizens and legal entities of any other Member who may have an interest in any property which may be taken into public ownership or placed under public management or occupation.

COMMENT:

(1) These provisions retain the substance of the original New York text; namely, agreement not to take unreasonable action injurious to the interests of foreign nationals in the
means of economic development which they have provided. It adds to the original text: (i) a statement of the purpose of the paragraph, and (ii) some of the specific items set forth in subparagraph (c) of Article 61, which reflect the prerequisites of economic development listed in paragraph 1 of Article 12. Neither of these constitutes a substantive change.

(2) These sentences are designed to give assurances to investors which will facilitate international investment and thus promote economic development.

NOTE: The following paragraph is suggested for addition to Chapter IV immediately following paragraph 2 of Article 12.

2 A. Any Member may file a statement with the Organization, in addition to statements filed and published under subparagraph (a), paragraph 2, of this Article, setting forth any requirements, conditions or restrictions applicable to the opportunities for making investment and the treatment of existing and future investments made by the citizens and legal entities of other Member countries. Such statement may be amended from time to time by the filing and publication of an amended statement. No Member shall impose any requirements, conditions or restrictions on any investment of any citizen or legal entity of any other Member country which are inconsistent with any statement which was on file with the Organization at the time the investment was made.

COMMENT:

This paragraph is advanced to promote the mutual interests of prospective suppliers and recipients of investment capital. It permits, but in no way requires, a Member to file with the Organization a supplementary statement concerning the treatment it intends to accord to investment in a particular industry or field of economic activity. Such a statement would have the effect of reducing an important element of the uninsurable risk previously associated with foreign investment.
NOTE: The following paragraph is suggested for addition to Chapter IV immediately following paragraph 3 of Article 12:

4. The Organization is authorized to make recommendations for and promote international agreement on measures designed to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another, including the elaboration and adoption of a general international code on investment principles.

COMMENT:

This paragraph has been added in view of the proposed establishment of a Commission on Economic Development and International Investment. It outlines the general functions of the Organization as to recommendations, and the formulation of general investment principles. The Organization has other specific functions provided in Article 11, paragraph 2; Article 12, paragraphs 2 and 2 A; and Article 13.

NOTE: Chapters I and VIII require certain additions in foregoing amendments to Chapter IV. These additions are indicated in the following paragraphs.

CHAPTER I
PURPOSES

4. To encourage the international flow of capital for productive investment through measures designed to assure fair and equitable treatment of the legitimate interests of investors.

5. To facilitate the solution of problems in the field of international trade, employment, investment and economic development through consultation and collaboration among Members.

COMMENT:

These additions are made for the reason that paragraphs 2 and 3 of Article 12 of the draft charter are directly
concerned with the treatment of investors. Moreover, subparagraph (c) of Article 61 specifically includes among the functions of the Organization the making of recommendations to Members on this subject.

CHAPTER VIII. ORGANIZATION

Article 61

Functions

In addition to the functions provided for elsewhere in this Charter, the Organization shall have the following functions:

(a) To collect, analyze and publish information relating to international trade, including information relating to commercial policy, business practices, commodity problems, and industrial and general economic development, and international investment.

(b) 

c) To make recommendations for, and promote international agreement on measures designated to improve the bases of trade and to assure just and equitable treatment for the enterprises, skills, capital, arts and technology brought from one country to another, including agreement on the treatment of foreign nationals and enterprises, the treatment of commercial travellers, commercial arbitration and the avoidance of double taxation.

COMMENT:

The deletions in paragraph (c) are suggested because the subjects under reference have been included in the suggested additions to Article 12 of Chapter IV.

d) 
e)
Article 72

Establishment

The Conference shall establish a commission on commercial policy, a commission on business practices, a commodity commission, a commission on economic development and international investment, and may establish such other commissions as may be required. The commissions shall be responsible to the Executive Board.

Note: The following paragraph is suggested for addition to Chapter VIII following paragraph 77.

Article 77-A

Functions of the Commission on Economic Development and International Investment

The Commission on Economic Development and International Investment shall have the following functions:

(a) To conduct studies relating to the promotion of industrial and economic development and international investment as provided for in paragraph 4 of Article 12.

(b) To advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter IV and regarding the exercise of the functions of the Organization, insofar as they relate to industrial and economic development, and the promotion of international investment.