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BACKGROUND INFORMATION IN CONNECTION WITH PROPOSAL FOR
"A CODE OF INTERNATIONAL INVESTMENT"

(Prepared by the Secretariat in connection with Item 18 of the
Provisional Agenda of the Economic and Employment Commission,
Document E/CN.1/1).

1. During the consideration of the Terms of Reference of the Sub-Commission on Economic Development at the Third Session of the Economic and Social Council, the Delegation of China submitted a memorandum containing the following statement:

"Capital investment for the economic development of the under-industrialized countries can take the forms of governmental loans, loans from an international body such as the International Bank for Reconstruction and Development, and private credit arrangements and direct investment. Under the present world conditions, it is possible that governmental and international loans will be quantitatively more important than private direct investment and loans. But the latter are not to be overlooked. The creation of conditions under which the possible abuses of international investment can be avoided and its benefits reaped is, therefore, a primary concern of the Sub-Commission on Economic Development.

"The establishment of an international code relating to foreign investments should, therefore, be considered. This code should include various conditions and standards of practice relating to international loans and other forms of international investment.

"The two-fold purpose of such a code is to encourage foreign investment on the one hand and to eliminate its possible abuses on the other."*

2. At the same meeting the Delegation of the United States submitted a related suggestion that the Sub-Commission on Economic Development "conduct studies into the need for, and methods of, the international incorporation of private business firms conducting business operations on an international

or world scale."**

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* Document E/AC.11/9, pp.2-3
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Document E/AC.11/7, p.3

/3. The purpose

3. The purpose of the present memorandum is to call attention to certain studies and recommendations previously made regarding the above subjects.

4. The proposal of the Delegation of China refers to so-called private international investment. For purposes of the present statement this is taken to mean foreign investments made by private individuals or business firms which may take the form of:

(a) Direct investment in real property, in natural resources and in business concerns owned or operated by a foreign investor, either personally or in association with others;

(b) Equity investment in company shares and similar rights;

(c) Fixed-interest investment by private investors in medium or long-term private or public loans, credits and advances to private borrowers and public authorities.

5. Considerable work was done on various aspects of private international investment by the Committees and Secretariat of the League of Nations.

In particular, a special joint committee of the League of Nations issued a preliminary report in 1946 entitled "Conditions of Private Foreign Investment." This provides a comprehensive statement of the problem and is therefore attached to the present memorandum for the information of the Commission. Previous reports by the League of Nations on special aspects of the question, include:

(a) "Model Conventions for the Prevention of International Double Taxation and Fiscal Evasion" (Report of League of Nations Fiscal Committee, Second Regional Conference, 1945);

(b) "Report of the Committee for the Study of International Loan Contracts" (League of Nations, 1939)

This report contains, inter alia, a draft convention for the creation of a tribunal to arbitrate differences arising from international loan contracts.

6. The definition of the problem as seen by the League of Nations special joint committee on private foreign investment is indicated by the following excerpts from its report:

/"The need

"The need for an international code relating to private foreign investment is felt in various quarters. According to its advocates, a code should provide certain general standards of conduct for the guidance of the various interests concerned in capital-receiving countries and the guidance of private investors and enterprises engaged in capital venture abroad. It is suggested, moreover, that such a code, or parts of it, could be formalized through international conventions.

"Some of the ground has been prepared by various committees of the League of Nations, such as the Economic Committee, the Fiscal Committee, the Committee on International Loan Contracts and also by other organizations, such as the International Chamber of Commerce and the Inter-American Development Commission. These various bodies have made useful contributions on particular points; but no comprehensive body of rules has been formulated to cover the subject as a whole.

"The elaboration of practical norms fully embracing the various aspects of private foreign investment in its many ramifications is a task which this Committee may not have the opportunity to conclude; nevertheless, it is urgent. These facts have prompted the Committee to publish without delay the first results of its discussions, as a preliminary contribution to the problem. But our report is not more than an attempt to indicate the essentials of an international code relating to private foreign investment. The competent organs of the United Nations will, it is hoped, pursue the work towards the formulation and recognition of international standards in respect of private investment relations."

7. The Preparatory Committee of the United Nations Conference on Trade and Employment has given some consideration to various aspects of international investment. While the recommendations of the Preparatory Committee must go through several further stages before entering into force, they are included here for information purposes. Chapter IV, Article 12 of the Draft Charter of the International Trade Organization contains the following relevant provisions:

- "(1) Members recognize that progressive economic development is dependent upon the availability of adequate supplies of
 - (a) capital funds; and
 - (b) materials, equipment, advanced technology, trained workers and managerial skill.
- "(2) Members agree to impose no unreasonable impediments that would prevent other Members from obtaining access to facilities required for their economic development.
- "(3) Members agree to co-operate within the limits of their power to do so, with the appropriate international organizations of which they are members in the provision of such facilities.

/"(4) Members

"(4) Members agree that, in their treatment of other Members, business entities or persons supplying them with facilities for their industrial and general economic development not only will they conform to the provisions of their relevant international obligations now in effect or which they may undertake pursuant to Paragraph (5) of Article 66 or otherwise, but also that in general they will take no unreasonable action injurious to the interests of such other Members, business entities or persons.

"(5) The Organization shall receive from any affected Member or with the permission of that Member from business entities or persons within its jurisdiction, complaints that action by another Member is inconsistent with its obligations under paragraphs (2), (3), or (4). In the event of such complaint, the Organization may, at its discretion, request the Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end."

Article 66, Section 5, referred to in the fourth section of Article 12, reads as follows:

"(5) The Conference* may develop and, by the affirmative votes of two-thirds of its Members, recommend for their acceptance, conventions and agreements with respect to any matter within the competence of the Organization. Each Member undertakes that it will, within eighteen months after such recommendation by the Conference, make a decision upon it. Each Member shall notify the Director-General of the action taken and, in the event of rejection of such recommendation, shall furnish a statement of the reasons therefor."

Article 61, Section 5 of the Draft ITO Charter is also relevant and includes the following function of the International Trade Organization:

"To make recommendations for, and promote the acceptance by Members of, international agreement designed 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 agreements on the treatment of foreign nationals and enterprises, on the treatment of commercial travellers, on commercial arbitration and on the avoidance of double taxation."

* The Conference is the plenary body of the ITO consisting of representatives of all members of the Organization.