

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

REMARKS OF THE CUBAN DELEGATION ON THE PROPOSALS FOR
AMENDMENTS TO ARTICLES 9 AND 12, HAVING TO DO WITH
CAPITAL INVESTMENT, SUBMITTED BY THE DELEGATION OF
THE UNITED STATES (E/PC/T/W.123 AND E/PC/T/W.250).

The Delegation of the United States begins by proposing that
Chapter IV be entitled "Economic Development and International
Investment."

The Cuban Delegation is of the opinion that the investment of
international capital is not an end in itself, but only one of the
means that may be used to foster economic development. Con-
sequently, they feel that the title of Chapter IV should not be
amended.

The Cuban Delegation recognizes the extraordinary importance
of international investment at the present time, as it aids the
highly industrialized countries to mobilize otherwise non-
productive capital resources, while at the same time it increases
their exports of capital goods, and if applied adequately, it
facilitates the development of the under-developed countries.
Under these viewpoints, the Cuban Delegation submits that all
provisions concerning international capital investment should be
incorporated into a separate article, which may be entitled
Article 12-A. In drafting this Article, emphasis should be
placed on the necessity of a real integration of foreign and
domestic interests, under conditions mutually advantageous,
securing also, as far as possible, a co-operation of national and
foreign capital.

Therefore, in drafting the provisions intended to encourage
international investment, the guarantees for the foreign capital

should be combined with their indispensable counterpart, namely, adequate means to protect the countries where such investments are made against unfair and unreasonable terms, and interference on the part of creditors.

With regard to these deliberations, the Cuban Delegation suggests that the new Article which should be inserted between Articles 12 and 13, be entitled "International Investment for Economic Development". This title has been selected to indicate that it will cover only investments directed to that end even if of different nature, namely: a) responsible or equity investment (a share in industries or agricultural enterprises which participate in profits and losses); and b) other investment (especially loans at fixed interest, with or without participation in the profits).

As a basis of discussion and in order that the Committee may draft paragraph 1 of Article 12-A, the Cuban Delegation offers later a working text.

Having this in mind and the fact that the amendments proposed by the United States should be examined in the order in which they have been submitted, we shall express our opinion about them beginning with Article 9.

Article 9

For the reasons explained above, we do not consider it necessary to include in the title of Article 9 the reference to International Investments, inasmuch as these are dealt with under Article 12-A. For the same reasons, the Cuban Delegation considers that the new sentence suggested by the Delegation of the United States at the end of Article 9 is also unnecessary here.

Article 10

Since no amendment has been made to this Article by the Delegation of the United States, we have no comment to make.

Article 11

The Cuban Delegation considers acceptable the amendments suggested by the Delegation of the United States in connection with this Article, with the exception of the last sentence. To be consistent with an amendment of the Cuban Delegation -- already approved by the Committee and which has a close connection with the spirit which inspired the amendment of the United States -- the latter should be drafted as follows:

"...and assist in the procurement of appropriate engineering, financing and other technical assistance."

Article 12

The amendment relative to the title is accepted, and as to the paragraphs thereof, the Cuban Delegation wishes to make the following comments:

Paragraph 1: The amendment of the Delegation of the United States is acceptable.

Paragraph 2: The Cuban Delegation considers it preferable to keep the present paragraph 2 of Article 12, incorporating into the new Article 12-A the relevant provisions of the new paragraph 2 suggested by the Delegation of the United States.

In accepting paragraph 2 of Article 12 of the New York Draft, the Cuban Delegation considers it essential to delete the words "or otherwise" which appear in line 9, and to substitute the word "rights" for "interests" in line 10 of said paragraph.

Paragraph 3: In due time the Cuban delegation requested the entire deletion of this paragraph, on the grounds that the right of complaint because of non-fulfilment of the obligations of the Charter and the procedure for consultation and decision should be a single procedure applicable to all Chapters of the Charter.

Should it be agreed that a provision as to consultation is to be included in each Chapter, without prejudice to a uniform

procedure of decision in Chapter VIII, the Cuban Delegation suggests that paragraph 3 of Article 12 should be drafted as follows:

- "3. Any member by itself or on behalf of any affected business entity or person within that member's jurisdiction, may submit to the Organization a complaint that action by another Member is consistent with its obligations under this Article. No member shall unilaterally withdraw or suspend concessions, advantages, favors, privileges or immunities granted in any form to other Members on the ground that its Nationals do not receive fair or equitable treatment in the other Member's territory. The Organization may 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 12-A

International Investment for Economic Development

The Cuban Delegation feels that the substance of the amendment of the Delegation of the United States on "Capital Investment" should be covered by a new Article, the first paragraph of which could be drafted as follows:

"1. The Members recognize the importance of productive international capital movements, both public and private, and of responsible co-operation between national and foreign capital in promoting economic development under mutually advantageous conditions which would effectively contribute to this end, such as:

"(a) Investments in agriculture or industries which work exclusively for exports;

"(b) Investments in agriculture or industries which are restricted to work for the domestic market, delivering new articles not imported;

"(c) Investments in agriculture or industries which work for the domestic market, delivering articles apt to substitute goods imported;

"(d) Investments in agriculture or industries which work for the domestic and foreign markets at the same time; and

"(e) Investments in public utilities that facilitate a ricultural and/or industrial development".

Paragraph 2: In connection with sub-paragraph 2 (a) of the amendment suggested by the Delegation of the United States, the Cuban Delegation considers this subject already covered by paragraph 2 of Article 12, above referred to.

In connection with sub-paragraphs (b), (c) and (d) of the new text contained in Document E/PC/T/W/250, the Cuban Delegation considers that it substitutes in whole the text of paragraphs 2 and 2A of Article 12 as contained in Document E/PC/T/W 123, and, consequently, the comments of the Cuban Delegation only refer to the last text proposed in Document E/PC/T/W 250 by the Delegation of the United States.

Sub-paragraph (b): The Cuban Delegation considers that the new text proposed by the Delegation of the United States is acceptable.

Sub-paragraph (c): The Cuban Delegation considers that the new text proposed for this sub-paragraph is acceptable, with the exception of the reference to the "interest" and the "conduct of business", which terms are regarded as quite vague in their content and enlarges to a dangerous extent the scope of possible claims applying it to matters which, if not supported by the existing legislation, could not be juridically protected.

Sub-paragraph (d): This text could only be acceptable to the Cuban Delegation if the following is added at the end of the first sentence:

"...except when the placing under public management or occupation is the result of a penalty or the consequence of a violation of the national legislation."

New paragraph 4 of Article 12

In connection with the suggested addition of a paragraph immediately after paragraph 3 of the present Article 12 of the New York Draft, the Cuban Delegation considers it acceptable, except as regards the preparation and adoption of an International General Code on Investment Principles, as the Cuban Delegation

feels that the subject matter is not sufficiently matured for codification.

Guarantees for Nations in which Capital Investment is made.

In accordance with the thesis maintained by the Cuban Delegation that all nations should offer ample guarantees to international investment, it follows as a corollary that said guarantees should be counter-balanced by those which in turn are given to national capital and to the nations in which the investment is made.

In this sense, the Cuban Delegation proposes that a new article be added after Article 12-A, the text of which could more or less be as follows:

"Article 12-B. Nothing in this Chapter shall be construed as to prevent a Member from taking the necessary steps to assure:

- (1) That national capital will not be displaced.
- (2) That national capital be afforded an adequate opportunity to participate in the economic development, either industrial or agricultural, of the country;
- (3) That foreign investment may not receive a preferential treatment in comparison with national investment; and
- (4) That foreign investment may not be misused to impose decision upon a Member or otherwise interfere with its own national policies."