

United Nations
CONFERENCE
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Nations Unies
CONFERENCE
DU
COMMERCE ET DE L'EMPLOI

RESTRICTED
E/CONF.2/C.2/B/W.12
21 January 1948
ORIGINAL: ENGLISH

SECOND COMMITTEE: COMMERCIAL DEVELOPMENT

SUB-COMMITTEE B ON ARTICLE 12

NOTES OF SIXTH MEETING

Held on Tuesday, 20 January 1948 at 3.00 p.m.

Chairman: J. G. TORRES (Brazil)

CONSIDERATION OF REPORT OF WORKING PARTY ON ARTICLE 12

The Sub-Committee considered the report of the Working Party on Article 12 (C.2/B/W.11), which was explained by the delegate for Australia.

The delegate for the United States suggested that the Sub-Committee include in its report to Committee II an interpretative note on a question raised by the delegate for Venezuela. After the Venezuelan delegate stated that the note proposed by the United States delegate was satisfactory, the Sub-Committee agreed to the suggestion. The text of the note is as follows:

"In response to a question raised by the Delegation of Venezuela, it was agreed during the course of discussion of Article 12 that legislative or constitutional requirements, existing at the time that an investment is made and providing for recourse only to national courts, would not in themselves be reviewable pursuant to Chapter VIII. Chapter VIII provides for review by the Organization of whether nullification or impairment of a benefit accruing to a Member under the Charter has taken place, even if the nullification or impairment arises out of a measure completely consistent with the Charter, or "any other situation", even if there is no violation of the Charter, and without involving the power of the Organization to pass or judge upon the validity of the measure itself taken by a Member, or of a decision taken by a Member's national courts."

On the proposal of the delegate for Ceylon it was agreed to add the words "whether and" to paragraph 1 (c) (ii) of Article 12 so that it reads "to determine whether and to what extent and upon what terms it will allow future foreign investments".

The delegate for Mexico proposed the following amendment to paragraph 2 (a) of Article 12:

/"(a) Subject

"(a) Subject to paragraph 1 sub-paragraph (c) of this Article and any agreements entered into under paragraph 1 sub-paragraph (d) to provide consider reasonable opportunities for investments acceptable to them and adequate security for existing and future investments and as far as possible to avoid discrimination between foreign investments;"

After discussion it was agreed to add the phrase "acceptable to them" as proposed, but in view of the lack of support for the other two amendments, the Mexican delegate agreed to withdraw them.

The delegate for New Zealand raised a question regarding the interpretation of the last phrase of paragraph 2 sub-paragraph (a) which reads "and, as far as possible, to avoid discrimination as between foreign investments;". He felt that it conflicted with the provisions of paragraph 1 sub-paragraph (c) (ii). After different interpretations of the meaning of paragraph 2 sub-paragraph (a) were put forward by several Members and several amendments had been suggested to clarify the interpretation of the sub-paragraph, it was agreed that the delegates for Australia, New Zealand, and Sweden should meet informally before the next meeting with a view to submitting an agreed redraft of the sub-paragraph.

On the proposal of the delegate for Canada it was agreed that the Sub-Committee's report should state that the phrase "international agreements" referred to in paragraph 2 sub-paragraph (b), was interpreted to include the Articles of Agreement of the International Monetary Fund.

The delegate for Czechoslovakia raised a question whether a country would be deemed to have fulfilled its obligation to negotiate under paragraph 2 sub-paragraph (b) if it stated at the outset of such negotiations that it was contrary to its national policy to receive direct private investments and if, as a result of this position, the negotiations were terminated. It was the sense of the Sub-Committee that the provision in question did not involve any obligation to conduct further negotiations with respect to this type of investment if the nation's policy was as stated by the delegate for Czechoslovakia.

On the suggestion of the CHAIRMAN it was agreed that the Secretary should prepare a draft report of the Sub-Committee for consideration at its next meeting.
