

JOINT SUB-COMMITTEE OF COMMITTEES II AND VI

NOTES OF ELEVENTH MEETING

Held at the Capitol, Havana, Cuba,
Tuesday, 6 January 1948, at 10.30 a.m.

Chairman: Mr. H. C. COOMBS (Australia)

1. The Sub-Committee continued discussion of the amendment to the first sentence of paragraph 1 of Article 11 submitted by Chile (page 5 of E/CONF.2/C.2/9). At the conclusion of discussion the sense of the meeting was found to be strongly against the inclusion of any reference to stable markets and remunerative prices.
2. The Sub-Committee considered the Mexican amendment to the second sentence of paragraph 1 of Article 11 (pages 5 and 6 of E/CONF.2/C.2/9). It also had before it the following alternative text:

"Accordingly, in order to stimulate and assure the provision of these requirements, Members shall co-operate in accordance with Article 10 in providing or arranging for the provision of such requirements within the limits of their power and Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such requirements for their economic development".

At the conclusion of the discussion there was still disagreement as to whether the words "and assure" in the first line should be included or not or whether there should be substituted some other word or form of words.

There was also the suggestion that the words "the provision of these requirements" in the first and second lines should be replaced by the words "the provision and exchange of these facilities" and that the word "requirements" in the last line should be deleted and the word "facilities" substituted. These outstanding questions were referred to Working Party No. 3.

3. The Sub-Committee then considered the Burmese amendment to paragraph 2 of Article 11 (page 8 of E/CONF.2/C.3/9). The CHAIRMAN pointed out that one of the main objections of the Burmese Delegation to the present text was that it was difficult to know who should be the judge of "unreasonable or /unjustifiable

unjustifiable actions injurious to the rights or interests of nationals of other Members". In his view the judge in the first instance would be the country taking the action. If, however, the action seemed unreasonable or unjustifiable to any other Member, the procedures of Articles 89 and 90 could be resorted to. In his view, therefore, the objections of Burma were invalid.

The intention of the Burmese amendment was to give equal but not better treatment to foreign investment than to national investment. It was pointed out by the Australian delegate that national treatment accorded to foreign nationals and investments would be considered *prima facie* as reasonable. The United States delegate, however, expressed the view that there were cases in which national treatment could not be considered reasonable or justifiable. In these cases, according to international law, a foreign country could not intervene as regards the treatment of the nationals of another country, but it could intervene as regards the treatment of its own nationals, even though they were accorded national treatment.

The delegate of Iraq expressed the view that measures of a religious, political or moral nature lay outside the scope of the Charter and a decision as to their reasonableness and justifiability lay with the Member applying the measures.

The sense of the meeting was strongly against the acceptance of the Burmese amendment.

4. The Sub-Committee began consideration of the Chilean amendment to paragraph 2 of Article 11 (page 9 of E/CONF.2/C.2/9).
