

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF THE TWENTIETH MEETING

Held at the Capitol, Havana, Cuba, Monday,
16 February 1948 at 10.30 a.m.

Chairman: Mr. R. BETETA (Mexico)

CONSIDERATION OF REPORT OF JOINT SUB-COMMITTEE OF COMMITTEES II AND VI
ON ARTICLES 9, 10 AND 11 (Document E/CONF.2/C.2/36)

Mr. COOMBS (Australia), Chairman of the Joint Sub-Committee of Committees II and VI, in presenting the Report of the Joint Sub-Committee, said that the Sub-Committee's work had resulted in giving both strength and precision to the obligations and rights of Members in relation to economic development, and in clarifying the functions of the Organization. A number of changes would be observed in the redraft of Articles 9, 10 and 11, and a change had also been recommended in Article 69 which had a similar general purport to the aforementioned Articles. The Joint Sub-Committee had also considered the various proposals which had been put forward for amplifying the methods by which the Organization would proceed with its task of fostering and promoting the economic development of its Members, and its relations with other bodies operating in the same field.

As the Sub-Committee took the view that questions of organizational methods of work and relations with other bodies should, in the first instance, form the subject of detailed study by the Interim Commission, it had drafted a resolution for the consideration of the Committee.

The Joint Sub-Committee also recommended that a new Article should be inserted in Chapter IX requiring the Organization to take into account, in the exercise of its functions, the economic circumstances of Members, and the way in which the economic development of Members had been assisted or retarded by the operation of the Charter.

CONSIDERATION OF ARTICLES 9, 10 AND 11 - ANNEX B

Articles 9 and 10 were approved.

Article 11

Paragraph 1

Mr. CHARLONE (Uruguay) referred to the French text and pointed out that the words "des competences techniques" and the words "des procedes ou

/moyens

"moyens techniques" both appeared in paragraph 1 (b) whereas only the words "competences techniques" appeared in the preamble to paragraph 1. Therefore paragraph 1 (b) in the French text was wider than paragraph 1 (a). The CHAIRMAN said that in the English text paragraph 1 (b) and 1 (a) were equally wide. It was accordingly agreed that the Central Drafting Committee should be asked to bring the French text into conformity with the English text as regards this point.

Mr. CHARLONE (Uruguay) said he had some reservations to make regarding situations which might arise through the application of paragraph (b) in connection with national tribunals of Uruguay. His country did not apply unreasonable or unjustifiable measures and had never practiced a policy of discrimination. Foreign interests - and between them and the capital and property of Uruguayan citizens no distinction was made - enjoyed constitutional, legal, administrative and judicial guarantees. Uruguayan tribunals had given judgment against the State when they had considered that its conduct had been unfair and not in accordance with the law as regards the treatment accorded in particular cases to the private interests of nationals of other countries.

Thus Uruguay had clearly established principles in its constitutional system in the case of any dispute regarding the private interests of foreign nations. Uruguay could not admit the competence of any court other than the national tribunals. In this connection, he noticed that paragraph 6 in the Report said that the constitutional provisions of certain Members had been brought to the attention of the Sub-Committee. The constitutions of some Members provided that any controversies arising out of contracts in which the State or one of its sub-divisions was a party were to be resolved by national tribunals. This was not the only case which should be taken into consideration, Uruguayan municipal law did not admit of any other jurisdiction in cases where the State and private citizens, whether Uruguayan or foreign, were parties. He insisted that these explanations be recorded because the question was of a more serious character in connection with investments made prior to the Charter. Foreign investors were perfectly aware of the system of guarantees accorded to them in the country in which they established themselves.

The CHAIRMAN suggested that the point raised by the representative of Uruguay should be considered when the Report was discussed paragraph by paragraph.

Paragraph 1 of Article 11 was approved.

Paragraph 2 of Article 4 was approved without comment.

/Mr. GOSSCHALK

Mr. GOSSCHALK (Committee Secretary) said that in Annex B additions to the Geneva draft were underlined and deletions placed in square brackets. Owing to an oversight, paragraph 4 of the Geneva text, which had been deleted in the Sub-Committee, had not been indicated in that manner. Paragraph 4 of the Geneva draft read "The term 'nationals' as used in Articles 11 and 12 comprises natural and legal persons".

Mr. HOLMES (United Kingdom) considered that paragraph 4 of the Geneva draft should be reinserted in the text as there was an advantage in making it clear beyond doubt that the term "nationals" as used in Article 11 and in Article 12, meant both private individuals and also what were known as legal persons.

Mr. NOVOA (Mexico) said his delegation had accepted the deletion of paragraph 4 as a compromise solution, and if it were to be reinserted, the delegation of Mexico would reserve its right to discuss again paragraphs 1 and 2, which they had accepted on the condition that paragraph 4 was deleted.

Mr. TINOCO (Costa Rica) said he supported the deletion of paragraph 4 as it would be difficult to decide how far the term "nationals" was to cover a corporation, which included shareholders of different countries. He therefore suggested that Article 11 as drafted by the Sub-Committee should be approved.

Mr. CORIAT (Venezuela) agreed with the remarks of the representative of Mexico, and said that he could not accept the retention of paragraph 4 of Article 11 of the Geneva draft.

Mr. COOMBS (Australia), Chairman of the Joint Sub-Committee, said that the deletion of paragraph 4 was part of a compromise reached in the Joint Sub-Committee. On the merits of the case he felt that the paragraph should be deleted as it was merely a definition and, as such, was not an appropriate one for incorporation in Article 11. It was his understanding that, except where the instrument concerned made the contrary quite clear, any court would interpret "nationals" to include natural and legal persons.

Mr. RUBIN (United States of America) said his delegation had been instrumental in suggesting that paragraph 4 should be deleted because it felt that some delegations considered that it might affect, in one way or the other certain national legislation. He felt that the paragraph was superfluous and, in any case, where it was considered relevant an international court would construe the word "national" in the usual way so that corporate persons would be included to the extent provided in the substantive portions of the paragraph. He would therefore prefer to see paragraph 4 deleted.

/Mr. HOLMES

Mr. HOLMES (United Kingdom) asked whether he was to understand that the deletion of paragraph 4 of Article 11 as it appeared in the draft Charter made no practical difference and that the term "nationals", as used in Articles 11 and 12, would be regarded, where appropriate, as including both so-called natural and legal persons? If there were any doubt about the matter he felt that the case for the retention of paragraph 4 was a strong one.

In any case he considered it desirable that the matter should be explained in the Report: possibly that would be a solution of the difficulty if it were accepted that the deletion of paragraph 4 made no difference to the meaning intended by the term "nationals". The word "superfluous" might have several meanings, and its exact meaning in connection with paragraph 4 should be made clear in any explanations which might be given in the Report.

Mr. RUBIN (United States of America) suggested that a note, worded as follows, might be included in the Report:

"Since paragraph 4 of Article 11 was understood by certain delegations as possibly affecting their legislation requiring certain types of activity to be carried on by national corporations, and since it was felt that the provisions of the paragraph would make no substantive difference in the text, the paragraph was deleted."

Mr. TINOCO (Costa Rica) suggested that a working party comprising the representatives of Mexico, the United Kingdom and the United States of America should be set up to consider the matter.

Mr. de GAIFFIER (Belgium) asked that a decision concerning the deletion of paragraph 4 should be deferred until the written text of the proposal made by the representative of the United States of America had been received.

Mr. HOLMES (United Kingdom) considered the proposal to establish a working party a reasonable one and supported the remarks of the representative of Belgium.

Mr. COOMES (Australia) suggested that the deletion of paragraph 4 should be provisionally approved with the full recognition of the right of any representative to ask for the question to be reopened if a satisfactory solution was not arrived at by the working party.

Mr. NOVOA (Mexico) reserved the right of his delegation to reopen the discussion on paragraphs 1 and 2 of Article 11 if it did not agree with the solution arrived at by the working group.

Mr. HOLMES (United Kingdom) agreed with the remarks of the representatives of Australia and of Mexico.

It was decided to set up a working group consisting of the representatives of Costa Rica, Mexico, the United Kingdom and United States of America to draft a paragraph for insertion in the Report of the Committee explaining the reasons for the deletion of paragraph 4 of Article 11 of the Geneva draft.

/Mr. CORIAT

Mr. CORIAT (Venezuela) pointed out that national corporations only could exist in Venezuela and Mr. de GAIFFIER (Belgium) suggested that it be recommended that the Organization study the problem of the definition of the word "national". The CHAIRMAN asked the Working Party to take into consideration these recommendations.

It was agreed provisionally to include paragraph 4 of the Geneva draft in Article 11.

ANNEX C: PROPOSED RESOLUTION TO BE ADOPTED BY THE CONFERENCE

Mr. LIEU (China) proposed the inclusion of the words "with the agreement of the members concerned".

Mr. HAIDER (Iraq) suggested the addition of the words "from such information as may be made available to them" after the word "examine".

The representatives of the United States, Colombia and Australia pointed out that the purpose of the resolution was merely to investigate the facilities for studies. There was no question of the Interim Commission making studies or encroaching on the rights of governments. The main information to be determined would be the availability of the facilities of specialized agencies and other inter-governmental organizations and if information was needed from governments, it could only be requested.

Annex C was approved by the Committee.

ANNEX D: RECOMMENDED CHANGES IN ARTICLE 69

The CHAIRMAN explained that only the changes in Article 69 came within the terms of reference of the Second Committee and that in fact Article 69 together with the changes recommended had already been approved by the Sixth Committee.

Annex D was approved by the Committee.

ANNEX E: ADDITIONAL TEXT RECOMMENDED TO BE INCLUDED IN CHAPTER IX AS A NEW ARTICLE

Mr. ARAUTO (Colombia) explained that the text was an attempt to meet the proposal of his and the Italian delegations to the effect that the Organization should have due regard not only to the economic circumstances of members but also to any economic aid which they might have received from relevant international organizations.

Annex E was approved by the Committee.

REPORT OF THE JOINT SUB-COMMITTEE OF THE SECOND AND SIXTH COMMITTEES

In reply to the representative of Belgium Mr. RUBIN (United States of America) said that paragraph 6 of the Report had been worked out between his Delegation and the Delegation of Venezuela. A similar provision had been approved in Committee II in connection with Article 12. It was not provided in this paragraph that a situation resulting from a decision of a national tribunal could be brought before the Organization. Nullification or

/impairment

impairment of a benefit accruing to a Member resulting from any situation whether arising from action in conflict with the Charter or from the application by a Member of measures permitted by or not treated at all in the Charter might be brought before the Organization and would be handled in the ordinary procedures set out in Chapter VIII, which of course included eventual recourse to the International Court. The purpose of the paragraph was to point out, however, that the question before the Organization in such a case was not the question of conflict or not with the provisions of the Charter. It was quite clear in Chapter VIII that a case might be brought before the Organization even though there was no conflict whatsoever with the Charter. Rather, the question which would come before the Organization under Chapter VIII was the question of whether a nullification or impairment of a benefit had actually taken place and that nullification or impairment of a benefit might occur without any violation whatsoever by any Member of any provision of the Charter. In those circumstances the action which the Organization would be able to take would be to allow compensatory release from obligations or concessions which had been granted by the complaining Member, if the words "complaining Member" could be used in this sense to mean the Member the benefit to whom was being nullified or impaired. The paragraph covered also a good deal of the point made by the delegate of Uruguay. It was drafted to meet a specific problem but that did not mean that other constitutional provisions of Members were in any way in conflict with provisions of the Charter.

Paragraph 6 was approved subject to consideration of the question raised earlier in the meeting by the representative of Uruguay.

The second sentence of paragraph 2 and paragraphs 8, 10 and 11 were approved without comment.

REPORT OF SUB-COMMITTEE D ON FOOTNOTE TO CHAPTER III ON "RECONSTRUCTION"
(Document E/CONF.2/C.2/35)

Mr. NOVQA (Mexico) Chairman of the Sub-Committee, explained that it had been agreed finally that the word "reconstruction" should be added to each reference to economic development in Chapter III. In Article 8 and Article 10 (2) and (3) it had been necessary to insert a more wordy formula. As many of the Articles of Chapter III were in a process of being changed and as it was a mere question of drafting, the Sub-Committee had recommended that the matter be referred to the Central Drafting Committee.

Mr. TORRES (Brazil) wished to know if the word "reconstruction" was meant to refer to the reconstruction of specific industries or to the economic life of a country as a whole. Secondly, could it be applied to industries which were old and needed modernization?

/Mr. NOVQA

Mr. NOVQA (Mexico) expressed the view that the word should be interpreted in the wider sense. Mr. LECUYER (France) said that the industries which made up the economic life of a country were linked one to another and therefore, he considered it necessary that "reconstruction" should refer to the economy as a whole and not merely to specific industries.

Mr. TORRES (Brazil) proposed to substitute some such words as "those countries to the extent that the economies of those countries have been devastated by war" for the words "those countries whose economies have been devastated by war" in Articles 8 and 10.

The CHAIRMAN announced that the Committee would continue its consideration of this question at the following meeting.

The meeting rose at 1.20 p.m.
