

JOINT SUB-COMMITTEE OF COMMITTEES II AND VI

REVISED DRAFT REPORT OF JOINT SUB-COMMITTEE OF COMMITTEES II AND VI
ON ARTICLES 9, 10 AND 11

1. The Joint Sub-Committee was appointed at the sixth meeting of Committee II and the fifth and seventh meetings of Committee VI with terms of reference:

"1. To examine Articles 9, 10 and 11 of Chapter III, proposed amendments thereto and any proposed new articles relating to the positive functions of the Organization in promoting economic development in the light of the discussion in Committee II with a view to making recommendations as to the texts of these articles and any organizations provisions which may be required as a consequence thereof.

2. To examine the proposal of the Mexican delegation for the establishment of an Economic Development Committee of the Organization taking into account any conclusions reached under paragraph 1 and any other relevant considerations.

3. In making recommendations under paragraphs 1 and 2 to take into account the functions of other organs of the Organization and of the United Nations and Specialized Agencies in general in the field of economic development and any financial implications.

4. To report to both Committee II and Committee VI."

2. The Joint Sub-Committee was composed of representatives of:

Australia	France	Turkey
Belgium	Iraq	United Kingdom
Brazil	Mexico	United States
China	Pakistan	Venezuela
Colombia	South Africa	

Dr. H. C. Coombs (Australia) was elected Chairman of the Sub-Committee.

3. A number of representatives of delegations who were not members of the Sub-Committee attended as observers and in many cases took part in the discussion on particular amendments for which they were primarily responsible or in which they had special interest. Representatives of the International Bank for Reconstruction and Development and of the Food and Agricultural Organization, as well as the Director of the Fiscal Division of the Economic Affairs Department of the United Nations gave their views to the Sub-Committee.

/4. The Sub-Committee

4. The Sub-Committee had held twenty-seven meetings at the date of approval of this report. It examined Articles 9, 10 and 11 and all the amendments and proposals submitted to it in connection with these articles as listed in Annex A in accordance with paragraphs 1 and 3 of its terms of reference.

As a result of its examination the Sub-Committee decided to recommend:

- (i) revised texts of Articles 9, 10 and 11 as set out in Annex B;
- (ii) a resolution to be adopted by the Conference as set out in Annex C;
- (iii) changes in Article 69 as set out in Annex D; and
- (iv) inclusion in Chapter IX of the text set out in Annex E.

It was agreed that the aforementioned recommendations disposed of all the amendments and proposals listed in Annex A.

5. In accordance with the decision of Committee II at its sixteenth meeting to establish Sub-Committee D to examine and submit recommendations concerning the footnote to Chapter III on "Reconstruction" the Joint Sub-Committee did not consider the question of the inclusion of any reference to reconstruction with respect to any of the changes recommended in Articles 9, 10 or 11.

6. The representatives of Belgium and the United States expressed the view that Article 11 did not prevent any government from taking such action as might be reasonable or justifiable to protect the savings of its nationals, such action being subject to review by the Organization. However, the Sub-Committee considered the text of the article to be clear and, therefore, agreed unanimously that it was not necessary to include any explanation in the report.

7. With respect to paragraph 1 (b) of Article 11 the Sub-Committee took the view that "national treatment" would be taken as evidence that the treatment did not constitute "unreasonable or unjustifiable" action. However, it was agreed that cases could arise where national treatment could not properly be considered to be reasonable or justifiable. The Sub-Committee took the view that in interpreting the words "unreasonable or unjustifiable impediments" in paragraph 1 (a) and the words "unreasonable or unjustifiable action within its territories injurious to the rights or interests of nationals of other Members" in paragraph 1 (b), it would be necessary to consider other relevant provisions of the Charter, such as Article 12, and these words would not be taken to prohibit any action permitted by other Charter provisions.

8. With respect of paragraph 2 of Article 11 the Sub-Committee took the view that agreements promoted or recommended for adoption under paragraph 2 of Article 11 would not fall within paragraph 4 of Article 74.

9. With respect to paragraph 2 (b) of Article 11 the Sub-Committee took the view that, while it was difficult to be precise at this stage as to the nature of appropriate measures, more equitable and widely spread use of the means to economic development could be achieved by joint action by Members.

/It seemed

It seemed desirable, therefore, that it should be made clear that the Organization had the necessary authority, with due respect to the functions and activities of other inter-governmental organizations, to make recommendations for and promote agreements whether bilateral or multilateral to provide for such joint action, if study of the circumstances suggested that such a course were desirable. The Sub-Committee drew attention to the fact that whether any agreements would in fact be concluded was dependent upon the willingness of governments to enter into them and that the scope of such agreements would be dependent upon the discretion of the governments concerned. The Sub-Committee felt that the proposed paragraph 2 (b) would enable the Organization to make recommendations and promote agreements to assist countries encountering difficulties as a result of actual or prospective shortages. The Sub-Committee considered that:

- (a) the promotion of an agreement to facilitate an equitable distribution of skills, arts, technology, materials and equipment, was not restricted by the use to which these facilities were put, i.e. if these facilities were essential to established industries as well as to economic development, the Organization could recommend an agreement in appropriate circumstances;
- (b) without presuming to judge whether such action would in fact be desirable, the text approved would permit the Organization, if it believed that speculation was affecting the equitable distribution of the facilities referred to in paragraph 1 and it judged that such action was relevant and appropriate, could recommend and promote agreements between governments providing for measures against speculation;
- (c) the authority granted to the Organization to make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials and equipment would enlarge the scope of the co-operation and the assistance which the Organization could give to Members in accordance with Article 10 and would be of assistance to countries which were having difficulties in obtaining the capital goods, equipment and materials which they required.
- (d) "industrial patents" were included in the term "technology".

10. With reference to the text recommended to be included in Chapter IX and set out in Annex E, the Sub-Committee noted that this text would be

/acceptable

acceptable to the Italian delegation in disposing of the new article proposed by them to be inserted between Articles 69 and 70 (E/CONF.2/C.6/12, page 4) and the amendment submitted by them to Article 81 (E/CONF.2/C.6/12, page 13). The Sub-Committee agreed that this text would require the Organization in cases where the economic circumstances of Members were relevant, to give consideration to all of the factors affecting those economic circumstances. Among such factors might be the degree of assistance extended to a Member by other Members or by existing inter-governmental organizations.

11. It was agreed that the words "within the limits of their power" in paragraph 1 (a) of Article 11 were clearly expressed by the words in the French text "dans la mesure ou ils le pourront" and that the Central Drafting Committee should be asked to consider what were the most appropriate English words. It was agreed that the English word "enterprise" in paragraph 1 (b) of Article 11 had the technical meaning used by economists, i.e. the activities of an entrepreneur. It was agreed that the Central Drafting Committee should be asked to consider the most appropriate word or words to express this idea in French.

ANNEX A

AMENDMENTS AND PROPOSALS SUBMITTED TO JOINT SUB-COMMITTEE
IN CONNECTION WITH ARTICLES 9, 10 AND 11

Item No.	Article	Paragraph	Name of Country	Pages of Revised Annotated Agenda (E/CONF.2/C.2/9) where not otherwise stated
1.	9	-	Ceylon	2
2.	9	-	Mexico	2
3.	10	2	Burma	3
4.	10	2	Pakistan	3
5.	10	2	Turkey	3
6.	10	Additional	Mexico	4
7.	10	Additional	Mexico	4
8.	11	1	Italy	5
9.	11	1	Chile	5
10.	11	1	Uruguay	5
11.	11	1	Mexico	5 and 6
12.	11	1	China	6 and 7*
13.	11	2	Mexico	8
14.	11	2	Burma	8
15.	11	2	Norway	8
16.	11	2	Chile	9*
17.	11	3	Afghanistan	10
18.	11	Additional	Peru	10 and 11*
19.	11	4	Mexico	11
20.	New 11A	-	Chile	12 and 13*
21.	12	Additional	Chile	20 and 21
22.	12	Additional	Costa Rica	21
23.	New 12A	-	Colombia	25, 26, 27 and 28

* Also E/CONF.2/C.2/9/Add.4/Corr.3

ANNEX B

TEXT OF ARTICLES 9, 10 AND 11 RECOMMENDED

(Additions to and deletions from the text of the Geneva Draft are shown by underlining and square brackets respectively)

Article 9

Development of Domestic Resources and Productivity

Members shall within their respective territories take action designed progressively to develop, and where necessary to reconstruct, industrial and other economic resources and to raise standards of productivity through measures [consistent] not inconsistent with the other provisions of this Charter.

Article 10

Co-operation for Economic Development

1. Members shall co-operate with one another, with the Economic and Social Council of the United Nations, with the Organization and with other appropriate inter-governmental organizations in facilitating and promoting industrial and general economic development.

2. With a view to facilitating and promoting industrial and general economic development and consequently higher standards of living, especially of those countries which are still relatively undeveloped, and subject to any arrangements entered into between the Organization and the Economic and Social Council and appropriate inter-governmental organizations, the Organization shall, within its powers and resources, at the request of any Member:

(a) (1) study its natural resources and its potentialities for industrial and general economic development and assist in the formulation of plans for such development;

(ii) furnish [any Member which so requests] it with appropriate advice concerning its plans [and] for economic development and the financing and carrying out of its programmes for economic development [.];

or (b) [shall] assist it to procure such advice [.] or study.

[Such advice or assistance shall be furnished upon] These services are to be provided on terms to be agreed and in such collaboration with appropriate regional or other inter-governmental organizations as will use fully the competence of each of them. The Organization shall, upon the same conditions, likewise aid members in procuring appropriate technical assistance,

/3. With a view

3. With a view to facilitating and promoting industrial and general economic development especially of those countries which are still relatively undeveloped the Organization shall co-operate fully with the Economic and Social Council of the United Nations and appropriate inter-governmental Organizations on all phases of economic development within their special competence and in particular in respect of finance, equipment, technical assistance and managerial skills.

Article 11

Means of Promoting Economic Development

1. Progressive industrial and general economic development requires among other things adequate supplies of capital funds, materials, modern equipment and technology, and technical and managerial skills. Accordingly, in order to stimulate and assist in the provision and exchange of these facilities,

(a) Members shall co-operate in accordance with Article 10 in providing or arranging for the provision of such facilities within the limits of their power, and ~~[no Member shall]~~ Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such facilities for their economic development ~~[.]~~ ;*

(b) no Member shall take unreasonable or unjustifiable action within its territories injurious to the rights or interests of nationals of other Members in the enterprise, skills, capital, arts or technology which they have supplied.

3/ 2. The Organization may in such collaboration with other inter-governmental organizations as may be appropriate

(a) make recommendations for and promote ~~[international]~~ bilateral or multilateral agreements on measures designed

(i) to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another;

(ii) to avoid international double taxation in order to stimulate the flow of foreign private investments;

(iii) to enlarge to the greatest possible extent the benefits to Members from the fulfilment of the obligations under this Article.

(b) make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials and

* In addition to the changes indicated what was the first part of the second sentence in the Geneva Draft has become the second part of sub-paragraph (a) and what was the second part of the second sentence in the Geneva Draft has become the first part of sub-paragraph (a).

equipment with due regard to the needs of all Members;

(c) [including the elaboration and] formulate and promote the
adopting of a general agreement or statement of principles as to the
conduct, practices and treatment of foreign investment.

[4.] 3. The term "nationals" as used in Articles 11 and 12 comprises natural
and legal persons.

/ANNEX C

ANNEX C

PROPOSED RESOLUTION TO BE ADOPTED BY THE CONFERENCE

The United Nations Conference on Trade and Employment, having considered the problem of the industrial and general economic development and reconstruction of the Members of the International Trade Organization; and

Having noted the related activities of other inter-governmental organizations and specialized agencies; and

Having determined that positive measures for the promotion of the economic development and reconstruction of Members are an essential condition for the realization of the purpose stated in Article 1 of the Charter of the International Trade Organization and to the accomplishment of the objectives therein set forth; and

Having regard to the provisions of Articles 10, 69 and 84 of the Charter,
Therefore resolves:

1. That the Interim Commission of the International Trade Organization* is hereby directed to examine
 - (i) the powers, responsibilities and activities in the field of industrial and general economic development and reconstruction of the United Nations, of the specialized agencies and of other inter-governmental organizations, including regional organizations;
 - (ii) the availability of facilities for technical surveys or studies of: the natural resources of underdeveloped countries; or the possibilities of their industrial development, whether general or in relation to the processing of locally produced raw materials or other particular industries; or for the improvement of their systems of transportation and communications; or with respect to the manner in which investment of foreign capital may contribute to their economic development;and in the light of this examination to report to the Organization upon
 - (a) the structure and administrative methods,
 - (b) the working relations with the United Nations, the specialized agencies and other inter-governmental

* If no such Commission is formed, a special committee shall be named.

/organizations including

organizations including regional organizations which will enable the International Trade Organization most effectively to carry out its positive functions for the promotion of the economic development and reconstruction of Members.

2. That the report and recommendations of the Interim Commission* shall be submitted in such a manner and at such a time as will enable the Conference of the International Trade Organization to take appropriate action at its first session.

* If no such Commission is formed, a special committee shall be named.

ANNEX D

RECOMMENDED CHANGES IN ARTICLE 69

(Text of Geneva Draft with recommended additions and deletions indicated by underlining and square brackets respectively)

Article 69

Functions

The Organization shall perform the functions provided for elsewhere in this Charter. In addition the Organization shall have the following functions:

- (a) to collect, analyse and publish information relating to international trade, including information relating to commercial policy, business practices, commodity problems and industrial and general economic development;
- (b) to encourage and facilitate consultation among Members on all questions relating to the provisions of this Charter;
- (c) to undertake studies on, make recommendations for, and promote international bilateral or multilateral agreements on, measures designed
 - (i) to assure just and equitable treatment for foreign nationals and enterprises;
 - (ii) to expand the volume and to improve the bases of international trade, including measures designed to facilitate commercial arbitration and the avoidance of double taxation; and
 - (iii) to carry out on a regional or other basis, having due regard to the activities of existing regional or other organizations, the functions specified in paragraph 2 of Article 10;
 - (iv) to promote and encourage establishments for the technical training that is necessary for progressive industrial and general economic development; and
 - (v) generally to achieve any of the objectives set forth in Article 1,
- (d) generally to consult with and make recommendations and, as necessary, furnish advice and assistance to Members regarding any matter relating to the operation of this Charter, and to take any other action necessary and proper to carry out the provisions of this Charter;
- (e) to co-operate with the United Nations and inter-governmental organizations in furthering the achievement of the economic and social objectives of the United Nations and the restoration and maintenance of international peace and security;

/(f) in such

(f) in such collaboration with the Economic and Social Council of the United Nations and with other inter-governmental organizations as may be appropriate to undertake studies on the relationship between world prices of primary commodities and manufactured products, to consider and, where appropriate, to recommend international agreement on, measures designed to reduce progressively any unwarranted disparity in those prices.

ANNEX E

ADDITIONAL TEXT RECOMMENDED TO BE INCLUDED IN CHAPTER IX

In the exercise of its functions the Organization shall have due regard to the economic circumstances of Members, to the factors affecting those circumstances and to the consequences of its determinations upon the interests of the Member or Members concerned.
