

United Nations
CONFERENCE
ON
TRADE AND EMPLOYMENT

Nations Unies
CONFERENCE
DU
COMMERCE ET DE L'EMPLOI

UNRESTRICTED
E/CONF.2/C.2/SR.11
23 December 1947
ORIGINAL: ENGLISH

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at the Capitol, Havana, Cuba,
on Saturday, 20 December 1947, at 4.00 p.m.

Chairman: Mr. ABELLO (Philippines)

COMPOSITION OF THE JOINT SUB-COMMITTEE OF COMMITTEES II AND III

The Committee approved the proposal of the Chairman and of the CHAIRMAN of the THIRD COMMITTEE that the Sub-Committee should be composed of representatives of the following countries: Argentina, Belgium, Brazil, Canada, Chile, El Salvador, France, Haiti, Iran, Poland, Sweden, Syria, Turkey, United Kingdom, United States, Venezuela.

ARTICLE 12

Mr. ADARKAR (India) opened a general discussion of the Article and stated that since Article 12 had been proposed at Geneva for the first time, the Indian and other delegations opposed it, on the ground that the subject was too complicated to deal with without adequate preparation; nevertheless, as it was generally accepted, the delegation of India had recommended its adoption to its Government. The amendment proposed by the United States had, however, caused India to revert to her previous view, as she was not in favour of keeping the rule and deleting the exceptions. The obligations of lending and borrowing countries were set forth in general terms in Article 11, but the last sentence of Article 12, paragraph 1, imposed a further explicit obligation on the borrowing country which would upset the balance of the Charter.

No country with any regard for international goodwill would take any unilateral action affecting existing investments without settling with the countries concerned. He asked what would be the character of the negotiations envisaged in paragraph 2. If it was written into the Charter that each Member should negotiate upon request, it would deprive that Member of the right of taking unilateral action. The United States amendment was a retrograde step in that it removed those exceptions which permitted unilateral action in certain cases. Moreover, if negotiations failed, would the machinery of the Organization impose pressure upon a country which was considered responsible for such failure, as in the case of tariff negotiations under Article 17? The cases were not parallel, as tariff negotiations

/assumed reciprocity,

assumed reciprocity, whereas a country, for example, might initiate negotiations about existing investments without being able to offer further loans in the future.

Further, the word "investment" was ambiguous; it might mean fully-owned direct investment or it might refer to a minority holding of shares in a company. The United States amendment suggested that in a case where shares were partly owned by nationals and partly by foreigners, any necessary or desired action would have to be carried out through negotiations by the Governments concerned. He believed the amendment of this paragraph as proposed by the United States would either result in interference in the domestic affairs of a country or give rise to practical difficulties. He proposed the out-right deletion of Article 12.

Mr. NASH (New Zealand) said that at Geneva his country had opposed the proposed text, but they would now approve any text that would facilitate investment so long as there were no suggestion of compulsion. Without investment there could be no economic development. Regulation of investment would, however, be helpful. Neither New Zealand nor any of the new countries would have reached their present stage of development without investment from the older countries. The principle of national treatment was a correct one.

He opposed the United States amendment because of the compulsion to negotiate which paragraph 2 suggested. The phrase: "international investments acceptable to them" should be amended. Investment as such was not to be derogated but no private organization should have an unqualified right to go to a country and utilize its resources; the borrowing country should have the option of rejecting an offer. All countries would suffer without foreign investment, but it should be controlled. Nothing in the Article should be so construed as to oblige a member to have any international investment made in his country without prior approval of that country.

Mr. NOVQA (Mexico) stated that the lesser developed countries were so not because they had too many resources to develop but because they had no resources, and must obtain them from other countries either through international credits or loans, or by foreign investment. He opposed the representative of India, believing there should be in the Charter a mention made of the rules governing investments but agreed with the representative of New Zealand that there should be no element of compulsion for one country to receive the investment of another. If, however, a country attracted foreign investment, and accepted it, security and non-discriminatory treatment should be guaranteed to the investor. It must also be recognized that any rules laid down must not conflict with or require the alteration of domestic legislation. The Mexican amendment was designed to achieve these ends.

/He reserved the

He reserved the right to make further comments when the Article was discussed paragraph by paragraph.

Mr. HAIDER (Iraq) agreed with the representative of India that the question was very complicated; there were already adequate provisions in Article 11 and Article 69, paragraph c (1). Article 12 should therefore be deleted completely, but the Conference should pass a resolution to form a study group to consider thoroughly the problem of investment and prepare recommendations or agreements laying down in detail the principles which should cover investments, and embodying the provisions already existing in Articles 11 and 69.

Mr. SKAUG (Norway) recalled that at Geneva his delegation had thought paragraph 1 might be interpreted as giving more extensive rights to foreign investors than was just, and that paragraph 2 was obscure. He proposed no amendment to paragraph 2, because the United States amendment covered the point. Norway was a heavy importer of foreign capital, and this had contributed to her economic development in modern times. She had carried on negotiations with foreign investors and would continue to do so, and therefore did not agree with the representative of India that the obligation to negotiate would be of any danger.

Norway withdrew its reservation (page 24, document E/CONF.2/C.2/9) in support of the United States amendment, and supported the New Zealand amendment to paragraph 1, withdrawing the Norwegian amendment to that paragraph.

Mr. HASNIE (Pakistan) believed that the New Zealand amendment was not contrary to the attitude of his country. Pakistan wished to attract investment but looked to the suppliers of capital for a sympathetic understanding. There was little objection to Article 12 so long as it was contained within reasonable bounds.

The principle that compensation should be fixed in advance, referred to in the Belgian Note under Article 12, paragraph 2 would not always be practicable; any attempt to elucidate Article 12 by such a note would lead to difficulties.

Mr. RUBIN (United States) said that the United States considered that international private investment was of the greatest importance in connection with the economic development of those countries as yet undeveloped, and would help in solving balance of payment difficulties. The balance of the Charter referred to by the delegate of India was unimportant so long as the objectives of the Charter were achieved. There was no intention to restrict national sovereign rights; the United States was entirely in agreement with the principle expressed by New Zealand, although there might be some difficulty with the exact wording of the text, particularly in respect to the fact that each country would have an obligation to undertake the screening of investments.

/The United States

The United States believed it desirable to insert, as in Article 12, paragraph 1, of the Charter, provisions for such investments, which would recognize that countries had their sovereign rights with regard to capital invested in them, and would also ensure safety for those investments.

Mr. McLIAM (Ireland) expressed a practical and empirical rather than a theoretical view. The Irish Government would not be able to accept any interpretation or amendment of Article 12 which would require the modification of its existing legislation. Ireland was in need of foreign capital, but wanted the majority ownership of her industry to remain in the country. She had in 1932 legislated the Manufactures' Act, according to the terms of which 51 per cent of the capital and 66 2/3 per cent of the voting rights of all manufacturing concerns must be in the hands of nationals; the concerns must also have a majority of Irish directors. Licences, however, were granted to non-nationals to set up and own industries of an approved type, particularly in fields not covered by existing industry owned by the Irish. There was no question of expropriation of foreign capital or discriminatory treatment. The Act applied to manufacturing concerns only. Irish domestic legislation was in support of the letter of the Draft Charter, and clashed in no way with Article 12.

Mr. BRIGNOLI (Argentina) said that all nations were interested in the recognition of measures to facilitate productive investment. Argentina had granted many facilities to foreign investments; the Argentine decree of 20 April 1943 was designed to prevent only the inflow of temporary and speculative capital during the war. In July of the current year his country had taken further measures to stimulate investments profitable to the investors as well as to itself. He therefore favoured facilities for foreign investments but countries should retain the right of free determination with regard to those investments. Foreign investments should be subject to risks of all commercial enterprises. The principle of non-intervention of Article 12, paragraph 1, was not sufficiently taken into account in the succeeding paragraphs. With regard to paragraph 2 (iv) he noted that Argentina's Constitution and laws provided guarantees for public and private investments and for full compensation in case of transfer of ownership. The Charter, however, should only establish equality as between foreign investments, but not as between foreign and domestic investments.

Mr. LIMA (El Salvador) recognized that investments were indispensable for economic development; consequently it was important to establish, in the Charter, the necessary regulations determining the specific difference between public and private investments. Favourable conditions were necessary
/to promote investments

to promote investments in addition to Charter principles.

Quoting standards from the report on conditions for foreign investments by the Special General Committee of the League of Nations, he thought that it would be unnecessary to appoint an investment study group.

Article 12 should be examined in conjunction with all amendments presented to it and a new text should be worked out in conformity with the principles enunciated by the different countries.

Mr. TORRES (Brazil) noted that foreign investments were welcome in his country and had played an appreciable part in its economic development. Recent legislation had encouraged foreign investments. Co-operation among nations to promote private, public and international investments and subsequent social progress was most desirable. His country had suggested at the London Conference recognition in the Charter that capital played an important part in economic development. He consequently supported the retention of Article 12 with the understanding that countries would take their own legislative measures with regard to their internal conditions. Paragraph 1 of that Article was entirely acceptable. The establishment of rules for treatment of foreign investments, as attempted in paragraph 2, was advisable but seemed impracticable so far. He suggested that the United States amendment to paragraph 2 (document E/CONF.2/C.2/9, page 17) might be improved by the substitution of the word "may" for "shall". He supported the principle of paragraph 3 of Article 12 as recognizing a desirable trend and attempting to reinforce it.

Mr. LIEU (China) agreed with preceding speakers regarding the importance of foreign investment for economic development. In view of the importance of the principle of non-interference in the internal policies of members recognized in paragraph 1, he could not support the suggestion to delete the entire Article 12.

A provision was necessary to prevent special privileges for foreign investments in countries importing capital. Contrary to some representatives, he felt that the principle of non-intervention in paragraph 1 was necessary, in addition to the New Zealand amendment, to prevent foreign investments from turning later into political instruments. He agreed that Governments should be able to exclude foreign investments from certain branches of industry. He supported most parts of Article 12, stressing the importance of provision for equal treatment of foreign and national investments.

Mr. FARINA (Uruguay) also noted that foreign investments had played a considerable part in the economic development of his country, although sometimes they had retarded it. He had proposed an amendment of substance to Article 12, limiting it to the declaration of principles in paragraph 1.

/The laws of his

The laws of his country afforded equal treatment to foreign and domestic investments and guaranteed full property to foreign investors. The amount of compensation, in case of transfer of property, was determined by the highest tribunals.

Mr. BLAZEK (Czechoslovakia) considered that the provisions of Article 12 were important to all countries. The question was what price should be paid by countries for foreign investments. In that connection he supported the New Zealand amendment to paragraph 1. In case of nationalization investors had to receive just compensation, but on the same conditions as domestic investors; he supported the principle affecting confiscation of property contained in the note to paragraph 2 on page 13 of the Charter. The matter of compensation for investments raised the question of capital movement. He supported the Danish amendment; many countries were parties to the Agreement of the International Monetary Fund which provided that in case of balance of payments difficulties preference could be given in the use of foreign exchange to current transactions. While Article 12 needed improvement, it should not be deleted.

Mr. SHAMMA (Lebanon) supported the views of the representative of Iraq. Lebanon depended greatly on foreign investments for economic development. In view of the adequate provisions in Articles 11 and 69 of the Charter he supported the deletion of Article 12.

Mr. COREA (Ceylon) supported the proposal made by the representative of Uruguay to make Article 12 a "declaration of faith" since the provisions contained in the various paragraphs were generally accepted. The last sentence of paragraph 1 laid down too extensive an obligation. As regards paragraph 2 (b) he thought that the principle might be recognized, although the paragraph could be deleted. He could not support the new United States amendment to paragraph 2 because countries should not be compelled to carry on negotiations with regard to investments. Paragraph 3 was superfluous in any case. His delegation had submitted an amendment to paragraph 1 similar in substance to the New Zealand amendment but wider in scope.

Mr. CLERMONT-TONNERRE (France) thought an Article in the Charter should be devoted to the important question of international investments. Only the principles should be established; the rest of the problem was too complex for definition in the Charter. There was general agreement with regard to (1) the importance of international investments for economic development, (2) the undesirability of forcing countries to accept foreign investments without their assent and control over them and (3) the desirability of ensuring sufficient guarantees. He supported Article 12 as embodying those principles and establishing an equilibrium between the interests of investor and debtor

/countries which would

countries which would be upset by too many amendments. If it was impossible to retain Article 12 in its present form, then he would support the United States proposal to delete paragraph 2. He reserved further remarks on that amendment. Paragraph 1 contained precise principles and should be maintained.

Mr. de la CAMARA (Cuba) shared the general view with regard to the importance of foreign investments. Past abuses of investors and debtors should be avoided in the future. To promote investments just provision should be made for equality of treatment and free acceptance of investments. He supported paragraph 1 and the United States amendment concerning freedom of acceptance.

The CHAIRMAN announced that his list of speakers contained the following countries: Guatemala, Venezuela, Costa Rica, Chile, Peru, Australia, Poland, Syria and Burma. The Committee would meet again on the following Monday at 10.30 a.m.

The meeting rose at 7.10 p.m.
