

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF TWELFTH MEETING

Held at the Capitol, Havana, Cuba, on Monday
22 December 1947, at 10.30 a.m.

Chairman: Mr. ABELLO (Philippines)

CONTINUATION OF GENERAL DISCUSSION ON ARTICLE 12

Mr. GOMEZ ROBLES (Guatemala) recognized the importance of international investment in the promotion of economic development. However, there had been certain detrimental foreign investment in the past which had retarded economic development. It was essential for a country to reserve the right to participate in certain activities to its own nationals.

The Guatemalan delegation was of the opinion that a provision should be included in paragraph 2, to deal with undesirable and unexpected inflows or outflows of capital which could have serious deflationary or inflationary effects.

Guatemala was not in favour of the deletion of the Article, but preferred the Mexican amendment to the original text, as it more appropriately dealt with the problems which could arise in connection with international investment.

Mr. TINOCO (Costa Rica) stated that foreign investment should be fostered so as to give equal consideration to the interests of capital-exporting and capital-importing countries.

Paragraph 1 contained safeguards of the interests of capital-importing countries, but paragraph 2 would alarm prospective investors without increasing the rights of capital-importing countries. For that reason he was inclined to support the suggestion of the United States representative to delete the paragraph. He would also favour the insertion of an obligation on the part of the states concerned to negotiate bilateral agreements regarding the investment of capital, as suggested by the United States. Paralleling this should be an obligation to negotiate agreements for the elimination of double taxation. Paragraph 3 should be retained.

/Mr. GARCIA OLDINI (Chile)

Mr. GARCIA OLDINI (Chile) drew attention to the mutual lack of confidence which presently characterized relations between potential capital-exporting and capital-importing countries, thus immobilizing the flow of foreign investment.

While paragraph 2 seemed quite acceptable to capital-importing countries it might be necessary to state that it would not always be possible for countries to treat foreign capital on an equal basis with national capital.

Under the United States amendment, the provisions of paragraph 2 which were favourable to underdeveloped countries would be withdrawn in favour of bilateral negotiations. As negotiations between a powerful and a weak country would make for the disadvantage of the latter, particularly since capital was badly needed, he was not enthusiastic about the United States proposal. He felt, however, that it might be modified to include safeguards for capital-receiving countries.

Article 12 was one-sided and should be amended to stress the obligation of countries with favourable balances of payments on current account to promote the movement of capital to regions which were badly in need of it. It also would be desirable to ensure the adequate participation of national capital in the financing and administration of enterprises.

Finally, it would be appropriate for the Organization to set up local bodies to collect information and establish contact between countries with capital to export and those which were eager to receive it.

Mr. HURTADO (Venezuela) said that except for reasons of national security the legislation of his country did not discriminate between the treatment of foreign and domestic capital. The final sentence of paragraph 1, however, was unacceptable to his delegation. International agreement could not be based on vague provisions which might expose countries to outside pressure regarding matters of domestic policy which affected foreign investments. Paragraph 2 (a) set forth certain safeguards but did not cover all cases and therefore a more complete list of principles would need to be laid down in connection with the international agreement on foreign investments which might be concluded under Article 11, paragraph 3.

The Venezuelan delegation would be unable to accept the deletion of paragraph 2 without amendment of the last sentence of paragraph 1. It was also opposed to certain provisions of paragraphs 2 (a) (iii) and (iv) involving a principle of consultation which was in contradiction to the Venezuelan Constitution.

Mr. MONGE (Peru) had proposed no amendments but supported the amendments of Argentina, Chile and Venezuela. He favoured the retention of Article 12 in some form because its general effect was to encourage foreign investment.

/The last sentence

The last sentence of paragraph 1 should be deleted and paragraph 2 should be retained, although the rights of consultation included in paragraphs 2 (a) (iii) and (iv) should be modified because they encroached on the sovereignty of States. If the Committee voted to delete paragraph 2 Peru would support the Venezuelan proposal to delete the last sentence of paragraph 1.

Mr. COOMBS (Australia) said that, at the outset of the Geneva discussions, the Australian delegation had opposed the inclusion in the Charter of an Article of the type of Article 12. The Government of Australia, considering that foreign investments involved political questions, wished to keep itself free to deal with foreign investments in accordance with its national policies. As finally drafted, however, Article 12, together with its footnotes, protected the essential rights of countries receiving investments, and Australia was prepared to accept Article 12 in its present form.

Referring to the amendment proposed by the delegation of the United States of America, Mr. Coombs said that his delegation would have to reserve judgment until it was clear how the essential protection of capital-importing countries now embodied in paragraph 2 would be maintained if the obligations contained in that paragraph were replaced by a general obligation to "enter into" and "carry out" negotiations.

An Article relating to investments should make it clear that an investment must be acceptable to the country receiving it, and that the rights of a Government to resume national ownership of an investment by transfer to its own nationals or by transfer to itself as a Government, were essential requirements. The Australian delegation would be willing to take part in any redrafting of Article 12 which might be considered necessary.

Mr. BRUDZINSKI (Poland) supported the views expressed by the representative of Australia, and shared the opinion of the representative of France that Article 12, as at present drafted, was an acceptable expression of principles governing international private investments. He supported the amendments submitted by the delegations of Czechoslovakia, New Zealand and of Denmark, but could not agree with that submitted by the delegation of the United States of America. If paragraph 2 of Article 12 were deleted, the delegation of Poland would support the proposal made by the delegation of India that the whole of Article 12 should be deleted.

/Mr. TRABOULSI (Syria)

Mr. TRABOULSI (Syria) supported the amendment submitted by the delegation of India, since he felt that Article 11 contained adequate provision for the fair treatment of foreign capital. If, however, the Committee felt that the general principles of international investment were not sufficiently clearly laid down in Article 11, then the delegation of Syria would suggest that Article 12 should be redrafted in accordance with the proposals contained in the amendments submitted by the delegations of Czechoslovakia and Venezuela, and that paragraph 2 be deleted.

U NYUN (Burma) said that usurious foreign loans to agriculturists in his country had shown that the nationals of capital-importing countries, rather than foreign investors, were in need of protection. The Government of Burma would have to study the effect of existing foreign investments on its general economy before it could commit itself to undertakings which might not be in the best interests of that economy. The delegation of Burma considered that the general provisions of Article 11 were sufficient safeguard for foreign investors and endorsed the proposal of the representative of India that Article 12, as at present drafted, should be deleted. If that Article were retained, the delegation of Burma would suggest that the obligations to be imposed on countries receiving investments should be confined to future investments and should have no relation to existing ones.

Mr. PERRY (Canada) pointed out that the delegation of Canada had not submitted any amendment to Article 12 although it was not completely satisfied with the form which that Article assumed in the Geneva draft. His country offered the widest opportunities for foreign investment and the greatest security for existing and future investments, as called for in paragraph 1, but there were other international obligations which might require that control should be imposed temporarily upon the volume of capital funds flowing out of a country. Reference in paragraph 2 to the International Monetary Fund made it clear that the commitments accepted in Article 12 were to be regarded as complementary to, and not competitive with, the obligations accepted under the Articles of Agreement of that Fund.

Referring to the amendment submitted by the delegation of the United States of America, he said his delegation saw some merit in implementing paragraph 1 by bilateral negotiations. It considered, however, that Article 12 should be studied very carefully in Sub-Committee and, if necessary, redrafted.

Mr. de VRIES (Netherlands) considered that Article 12 should be read in conjunction with the other Articles of the Charter relating to economic development. The amendment proposed by the United States of America that international investments should be covered only by bilateral agreements

/did not take

did not take sufficient account of the interests of third countries, which were better protected by the present paragraph 2. If no provision were made to safeguard third countries, new preferences with respect to the treatment of foreign investments might creep in to the detriment of the most-favoured-nation treatment which members of ITO should extend to one another under the Charter.

Mr. THOMPSON-McCAUSLAND (United Kingdom) agreed with the remarks of the representative of Chile regarding the barriers of mistrust which separated potential investors from the potential fields of investment. This reflected the new concept that the primary purpose of foreign investment was to enable underdeveloped countries to plan and build up a balanced economy. Under these conditions private enterprise did not now have the predominant say as to the manner in which the investment should be carried out. Governments on both sides intervened. The delegation of the United Kingdom felt that no legislative action by an international organization could give confidence to private enterprise in the field of international investment. Although it sympathized with the proposal of the United States delegation that paragraph 2 in its present form should be deleted, the delegation of the United Kingdom supported the remarks of the representative of Australia that the Charter should lay down the principles on which negotiations regarding investments should be conducted. Any suggestion that negotiations should be carried out under compulsion to reach a conclusion should be removed from whatever text might finally be agreed upon. The delegation of the United Kingdom would be willing to serve on any Sub-Committee set up to consider the matter.

The CHAIRMAN said the general discussion of Article 12 was terminated. At the next meeting, to be held on 23 December at 4.00 p.m., Article 12 would be considered paragraph by paragraph and there would be a general discussion of Article 13.

The meeting rose at 1.10 p.m.
