

**United Nations
CONFERENCE
ON
TRADE AND EMPLOYMENT**

**Nations Unies
CONFERENCE
DU
COMMERCE ET DE L'EMPLOI**

UNRESTRICTED
E/CONF.2/C.2/SR.13
23 December 1947
ORIGINAL: ENGLISH

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at the Capitol, Havana, Cuba, Tuesday, 23 December 1947 at 4.00 p.m.

Chairman: Mr. ABELLO (Philippines)

CONTINUATION OF GENERAL DISCUSSION OF ARTICLE 12

Mr. DUNAWAY (Liberia) described the legal status of foreign investments in Liberia. He favoured a general code of equity and fair play for such investments along the lines of Article 11 and the first paragraph of Article 12. It did not seem feasible to include detailed rules of conduct to govern the Member states and private investors as in paragraph 2. He felt the policies of the several states and the forms of investment were too varied to be harmonized in one document.

He thought the New Zealand amendment expressed a right inherent in any sovereign state, but had no objection to it. The United States proposal to compel a Member state to negotiate about a loan seemed a fruitless proposal as no Member state could demand the right of investment in another state or demand that another state invest in it. The ITO should not be responsible for supervising investments or disputes arising about them, but could render assistance by furnishing information on the legal status of foreign investments.

The effect of the amendment of Ceylon concerning the status of existing investments was not clear. If it was in anticipation of repudiation of contracts it would certainly not enhance the investment of private capital in Member countries.

Mr. HEIDENSTAM (Sweden) agreed with the views of the United Kingdom that there was a lack of capital all over the world for foreign investments and that investors were shy of investing abroad. Furthermore, governments in some countries restrained direct foreign investments because of foreign exchange stringency. Article 12 was important because of the necessity of providing "moral" security to investors and should be retained. Underdeveloped countries trying to do away with the Article were defeating their own interests.

The CHAIRMAN stated that the general discussion had shown wide differences of opinion and the need for referring Article 12 to a Sub-Committee /for revision

for revision. Before such referral he invited a discussion of proposed amendments, paragraph by paragraph.

Paragraph 1

Mr. USMANI (Pakistan) was in general agreement with the spirit of Article 12 but felt that the language must be changed to remove the apprehensions of countries shy about receiving foreign investments. He revised his first amendment to Article 12 changing the term "economic exploitation" to read "exploitation" to avoid interpretative problems. If exploitation through foreign investments was not to be permitted it should be clearly stated, directly, since the reference to "national policy" in paragraph 1 might not fully cover all forms of exploitations. The second amendment of Pakistan to paragraph 1, sought to avoid the use of superlatives which might imply the idea of preferential treatment for foreign capital as opposed to national capital.

Mr. NOVCA (Mexico) proposed to re-word the last sentence of paragraph 1 of Article 12 and to delete paragraph 2. To be approved by the Mexican delegation this Article must be consistent with the legislation of his country, which determined which investments were acceptable to it. This idea was already contained in the first sentence of paragraph 1, but it would be desirable to repeat it.

Mr. COREA (Ceylon) explained that his amendment to paragraph 1 was not intended to shut out investments, but to make it clear that Article 12 did not force investments on countries not desiring them. When investments were made without approval they might have no relation to the economic plan of the undeveloped country. In answer to the remarks of the representative of Liberia, he felt there was not intention in his amendment to repudiate existing investment contracts. He agreed with the proposal of Uruguay to delete paragraph 1 and substitute a paragraph stressing the general importance of foreign investments for economic development. If this amendment found no support in the Sub-Committee he would favour deleting the last sentence.

Mr. de LEON BELLOC (Argentina) explained that the purpose of the Argentine amendment was to prevent commitments greater than the country could possibly fulfill. He felt it should be left to the countries needing foreign investments to provide security and opportunity for such investments as they were the most interested parties. If the Argentine amendment were not adopted Argentina would support the proposals of Venezuela to delete the last sentence of paragraph 1.

Mr. FARINA (Uruguay) said that since all economically underdeveloped countries were interested in investments coming to their countries they should not prevent foreign capital coming to help their economy. The Uruguayan amendment sought to stress the desirability of such investment.

/Mr. AMINI (Afghanistan)

Mr. AMINI (Afghanistan) supported the New Zealand amendment to paragraph 1.

Mr. DJEBARA (Syria) stated that certain existing investments might contain contractual agreements which discriminated against national interests. If the amendment of Ceylon meant that such contracts might be modified that would be just and he supported it. If not, he asked that the problem should be studied more thoroughly in Sub-Committee.

Mr. LLOSA (Peru) stressed the importance of foreign investments in contributing to economic development and wished the Sub-Committee to take into account the amendments which were intended to prevent such investments from becoming a basis for interference in domestic affairs.

Mr. NOVOA (Mexico) proposed deletion of paragraph 2 because detailed standardization of rules for foreign investments was not practicable. He supported the Mexican proposal for an additional provision in Article 12 embodying the "Calvo doctrine" under which a foreign investor was considered subject only to the laws of the country in which the investment was located and not under the legal protection of his own government. This principle was embodied in the Constitutions of several Latin-American countries. The proposed new paragraph 3 in the Mexican amendment was consistent with the statement of the United Kingdom delegate. Mexico was prepared to co-operate in the establishment of companies with mixed foreign and domestic capital as envisaged in paragraph 3 of present Article 12.

Mr. de LEON BELLOC (Argentina) could not agree with the proposed deletion of paragraph 2 as proposed by the United States because the bilateral negotiations proposed would not be between equals. He supported the recognition of the Calvo Doctrine, as proposed by Mexico.

Mr. RUBIN (United States) replying to the remarks of Mexico and Argentina stated that the United States did not approve the Calvo doctrine. The United States Government entertained representation by foreign governments on behalf of their nationals who had investments in the United States.

Mr. LIEU (China) sympathized with other capital importing countries and supported the remarks of the representatives of Mexico, Argentina and Uruguay. He opposed the principle of national treatment and supported the Argentine amendment to paragraph 2, which he wished to have retained. Deletion of paragraph 2 would leave the whole situation uncertain.

Mr. HEILPERIN (International Chamber of Commerce) supported the deletion of paragraph 2 of Article 12 and the footnote to Article 12. He felt foreign investments would remain predominantly private and, therefore, the private investor must be induced to venture abroad. Paragraph 2 of Article 12 went far to destroy the purpose of the Article. If paragraph 2 was not deleted it would be better to have no Article 12.

/Mr. BLAZEJ (Czechoslovakia)

Mr. BLAZEJ (Czechoslovakia) felt that all of paragraph 2 was important. If it should be deleted the delegation of Czechoslovakia would revise its position.

It was decided to set up a Sub-Committee to consider Article 12, the representatives of the following countries to be members of such a Sub-Committee: Australis, Brazil, Canada, Ceylon, Czechoslovakia, Egypt, India, Mexico, Netherlands, New Zealand, Sweden, United Kingdom, United States of America, Venezuela.

2. ARTICLE 13: GENERAL DISCUSSION

Mr. FARINA (Uruguay) said his delegation could not support the contention that assistance given by Governments of under-developed countries to their industries and agriculture should be restricted, if it involved protective measures. Uruguay was a small country and more than once had had to supply such assistance to its agriculturists and cattle breeders who were threatened by restrictions imposed by the countries buying from them. He drew attention to the Uruguayan amendment to paragraph 1 which proposed recognition that governmental assistance was required for the establishment, development of reconstruction of industry and agriculture and not merely of particular industries or branches of agriculture.

Mr. LIEU (China) said that his Government would have difficulty in carrying out the provisions of the Article as at present drafted. In, building up her economy an undeveloped country might wish to take urgent steps involving protective measures to assist industries to develop, and if the matter had first to be submitted to the ITC, such a country might suffer great damage to its economy while awaiting a decision by the Organization. If, however, a Member complained about the effects of a measure taken, the Member imposing the measure would be under obligation to furnish an explanation of his action.

Mr. HLA MAUNG (Burma) said the amendment proposed by his delegation was intended to improve and speed up the procedure to be followed when a member of the ITO, in the interests of its programme of development or reconstruction, considered it desirable to adopt any non-discriminatory measures which would conflict with Chapter IV.

Mr. AKASAT (Turkey) said that Articles 13 and 15 contained very strict provisions, and the Turkish delegation considered that governments of undeveloped countries should have the right to impose measures to protect their growing industries without prior consultation with the ITO. The effect of measures could not be judged in advance. If such governments had first to consult with ITO, and then await the Organization's decision, the industries which they sought to protect might suffer severely.

/Mr. de LEON BELLOC (Argentina)

Mr. de LEON BELLOC (Argentina) emphasized the importance of not establishing a super-organization. The functions of ITO should be those set out in Article 69. It should be left to individual states to take decisions concerning their commercial policy.

Mr. GUTIERREZ (Cuba) said that the economically under-developed countries had to be given just opportunities to establish protective measures. However, when such measures were inconsistent with the provisions of the Charter, there would have to be consultation with the ITO. In a spirit of compromise, the Cuban delegation in Geneva, had accepted the principle of prior consultation. During periods of crises, however, a country had to be allowed the right of establishing measures without prior consultation.

The CHAIRMAN suggested a plan of work, whereby Article 13 would be discussed not paragraph by paragraph but by groups of amendments. After such discussion Article 13 would be referred to a Sub-Committee for further consideration.

At the suggestion of Mr. GUTIERREZ (Cuba) the Chairman stated that his proposed plan of work could be circulated as a document.

Mr. GARCIA-OLDINI (Chile) drew attention to the necessity of knowing the fate of other Articles of the Charter before it would be possible to arrive at a satisfactory decision concerning Article 13. He hoped that consideration in Sub-Committee could be delayed to that end.

The meeting rose at 7.05 p.m.
