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SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF EIGHTEENTH MEETING

Held at the Capitol, Havana, Cuba,
Thursday, 29 January 1948 at 3.00 p.m.

Chairman: Mr. E. ABELLO (Philippines)

CONTINUATION OF CONSIDERATION OF THE REPORT OF SUB-COMMITTEE B ON ARTICLE 12
(Documents E/CONF.2/C.2/29 and E/CONF.2/C.2/31)

Mr. RUBIN (United States of America) said that the text of Article 12 was not all that the United States would have wished in order to encourage the flow of international investment but that it was, nevertheless, a workable and worthwhile addition to the Charter. His delegation did not support the proposal made by the representative of Belgium that paragraph 3 should be deleted, but would support any amendment designed to strengthen Article 12.

Mr. SPEEKENBRINK (Netherlands) agreed with the remarks of the representative of the United States of America that it would have been desirable to provide more encouragement to investors in Article 12. He felt that the Article would have more meaning if paragraph 3 became sub-paragraph (a) of paragraph 2 and the present sub-paragraphs (a) and (b) became sub-paragraphs (b) and (c) respectively of paragraph 2, the words "Members shall" at the beginning of the present paragraph 3 being replaced by the word "to".

Mr. NASH (New Zealand) said that, in the opinion of his delegation, the new text of Article 12 was a great improvement on the Geneva text. It was specific and reasonable and ensured that at the time an investment was made the conditions the terms and treatment in connection therewith would be fully understood both by capital-investing and capital-receiving countries. Any criticism of the new Article was based on an insufficient analysis of that draft, and he considered that it would be to the advantage of all members of ITO if investment rules of the type contained in Article 12 were maintained and bilateral agreements made as the Article envisaged.

Mr. OTANEZ (Venezuela) proposed that sub-paragraph (a) of paragraph 3 of the Report of Sub-Committee B on Article 12 should be deleted. He also suggested certain drafting changes. In the third line of sub-paragraph (b) of paragraph 3 of the French text of the Report the word "seulement" should be
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inserted after the word "recours" instead of after the word "prévoyant"; in the tenth line of the same sub-paragraph the phrase "mais sans que cela implique" should replace the words "et cela sans impliquer"; the word "and" in the fourth line of paragraph 3, sub-paragraph (b) appearing on the second page of the English text of document E/CONF.2/C.2/29 being replaced by the word "but". The expression "any other situation" appearing in the same sub-paragraph should be modified if the identical expression appearing in Article 89 was changed.

Mr. ROWE (Southern Rhodesia) said that, although the Charter might bind Governments it would not bind individuals, and investors would not pay much attention to the Charter when looking for outlets for their capital. Referring to the amendment submitted by the representative of Belgium, he said it was clear that a country would decide to co-operate under paragraph 3 only if satisfied with the conditions to be established under paragraph 2 (b).

Mr. CHARLONE (Uruguay) said that as the new text of Article 12 was a great improvement on the text prepared at Geneva his delegation would support it. After reviewing briefly the two texts, he pointed out that Uruguay was interested in investments of foreign capital from those countries with which her balance of payments was in a suitable relationship.

Mr. PHILLIPS (International Chamber of Commerce) pointed out that the ICC did not object to the principles laid down in Article 12, but he felt that as at present drafted that Article might tend to discourage rather than to encourage long-term foreign investments. The Committee should clarify beyond all doubt some of the provisions, particularly those stating the rights of capital-importing countries in paragraph 1 (c). Emphasizing that the ICC represented the views of the world investing public, he wished that Article 12 would make clear that those investments would receive equal treatment in every respect with investments of nationals in the countries concerned. Any undue discrimination would serve to restrict investments.

CONSIDERATION OF AMENDMENTS PROPOSED TO ARTICLE 12 (Document E/CONF.2/C.2/31)

Mr. IGONET (France) and Mr. SUIETENS (Belgium) supported the amendment to paragraph 2, sub-paragraph (a) (ii) submitted by the delegation of Luxembourg, Mr. Suetens suggesting that the amendment should be amended to read:

"(ii) to avoid any unjustifiable discrimination as between foreign investments and as between foreign investments and national investments."

Mr. ADARKAR (India) said his delegation saw no objection to the proposal made by the representative of Luxembourg, but for the reasons stated at the preceding meeting of the Second Committee it was unable to accept the

/principle of

principle of national treatment for foreign investments contained in the Belgian amendment. It was undesirable to deprive capital-receiving countries of the right to restrict to national enterprises the use of financial and other aid which they might give, and any limitation of that right should be made only in the course of agreements envisaged under paragraph 2 (b).

Mr. NOVOA (Mexico) agreed with the remarks of the representative of India. If the modification proposed by the delegate of Belgium were accepted, many of the countries represented at the Conference would have to change their legislation and constitutions in order to carry out the provisions of Article 12.

Mr. RUBIN (United States of America) said his delegation would be prepared to accept the modification proposed by the representative of Belgium. He pointed out that at a meeting of the Sub-Committee a proposal had been submitted by the delegation of New Zealand, supported by the delegations of Australia and the United States of America, which was essentially the same as the proposal made by the representative of Belgium. The provisions of national laws and constitutions would not have to be changed if the change proposed by the delegation of Belgium were to be made in the text, since the principle of national treatment, insofar as expressed in those particular words, would be subject to paragraph 1, sub-paragraph (c) of Article 12. The rights set forth in that sub-paragraph guaranteed that the proposed undertaking was not so onerous as to make it impossible for any country represented at the Conference to accept it.

Mr. WOULBROUN (Luxembourg) supported the Belgian amendment to his amendment.

Mr. KUMLIN (Sweden) believed that, in the interests of the capital-receiving countries, the article should afford more security for investors. Sweden would support any amendment, such as those of Belgium and Luxembourg, which would give a stronger emphasis to the principle of non-discrimination between foreign investors.

Mr. SPEERENBRINK (Netherlands) associated himself with the three previous speakers.

Mr. BLAZEK (Czechoslovakia) supported the statement by the representative of India.

Mr. SUTENS (Belgium) said that if it was feared that the rule of non-discrimination would apply to past investments, he was prepared to propose that his amendment should refer only to future investments.

Mr. NOVOA (Mexico) believed the amendment of Belgium was contradictory to sub-paragraph (c) (ii) of paragraph 1.

/Mr. DEEMAN (Australia)

Mr. DEDMAN (Australia) agreed with the representative of Mexico. If the amendment of Belgium were accepted, he would be obliged to reserve his position concerning Article 12.

Mr. COREA (Ceylon) associated himself with the views of the representative of Australia. Neither the Luxembourg or Belgian amendment was acceptable to his delegation.

Mr. NASH (New Zealand) agreed with the representatives of Australia and Ceylon. The present text affirmed that it was undesirable in essence to discriminate, but it was clear that no foreign investment could be made without the agreement of the receiving country.

Mr. ADARKAR (India) asked what would be the position if it were stated as in paragraph 1 (c) that the requirements imposed on foreign investments could be discriminatory as between different foreign investments and as between foreign and national investments, and then it were said in paragraph 2 that Members should avoid discrimination? These points were contradictory. Non-discrimination was a very novel principle in international investment. It did not exist so far as the investing countries were concerned and therefore would be an unequal requirement if imposed on capital-investing countries. The present text should be accepted.

Mr. NORIEGA-MORALES (Guatemala) agreed with the representatives of Mexico, Australia, Ceylon and India.

Mr. GARRIDO TORRES (Brazil) thought a delicate balance had been achieved in the Sub-Committee's text which could not be improved by the full Committee. He proposed that the debate should be closed.

In reply to a suggestion by the representative of Ireland, the CHAIRMAN said he thought it undesirable to form a working party at this stage to discuss informally a text that might lie between that of the Sub-Committee and the Luxembourg amendment.

Mr. ICONET (France) supported the amendment of Luxembourg and said that in his opinion the amendment was one of drafting, not of substance.

Mr. GARCIA OLDINI (Chile), Mr. CHARLONE (Uruguay) and Mr. de la CAMARA (Cuba) opposed the Luxembourg and Belgian amendments.

The CHAIRMAN consulted the sense of the Committee and the Belgian and Luxembourg amendments were rejected.

The meeting rose at 5.15 p.m.
