SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF TWENTY-FIFTH MEETING

Held at the Capitol, Havana, Cuba,
Thursday, 5 February at 3.00 p.m.

Chairman: Mr. E. COLBAN (NORWAY)

1. SECOND READING OF ARTICLE 69 (Functions of the Organization) 
   
   (a) Amendment to paragraph (c) proposed by the delegation of Czechoslovakia 
   (document E/CONF.2/C.6/12 Add.3).
   
   It was agreed to postpone consideration of this amendment until the 
   Sixth Committee had received the Report of the Joint Sub-Committee of the 
   Second and Sixth Committees.
   
   (b) Amendment regarding sub-paragraph (c) (i) proposed by the delegation 
   of Mexico (document E/CONF.2/C.6/12 page 4)

   Mr. AMADOR (Mexico) stated that the matter of ensuring a just and 
   equitable treatment for foreign nationals and foreign enterprise fell within 
   the provisions of Article 12 of the Charter. The functions of the Conference 
   under Article 69 should be linked with the functions established in Article 12, 
   but not duplicated. If this precise intention of Article 69 were made clear, 
   Mexico would not press for deletion of sub-paragraph (c) (i) of that Article.

   Mr. KELLOGG (United States) pointed out that the same type of clause 
   appeared in practically all the constitutions of international organizations. 
   It would be an emasculation of the organization to remove this entirely 
   natural provision, and would make it weaker than its sister organizations.

   Mr. BLUSZTAJN (Poland) believed that the problem was not one of substance 
   but of drafting. The most important point in paragraph (c) was not in 
   sub-paragraph (i) but in (iii).

   Mr. KARMARKAR (India) proposed that the words of paragraph (c) (i) 
   should be amended to read: "to assure just and equitable treatment....with 
   due regard for national interests...."

   Mr. DAO (China) believed the sub-paragraph should be maintained.

   Mr. AMADOR (Mexico) was willing to accept the proposal of the 
   representative of India if amended to read: "...with due regard to existing 
   national legislation".

/Mr. MARTEN
Mr. MARTEN (United Kingdom) believed the addition of the words proposed by the representative of Mexico would alter the meaning of the sub-paragraph, and cause it to be over-ridden by any international legislation that was in existence or might be introduced.

Mr. COUILLARD (Canada) and Mr. KOJEVE (France) supported the text as it stood.

Mr. GARCIA OLDINI (Chile) saw the importance of the Mexican amendment. Without it paragraph (c) (i) might be used later as an escape clause to disrupt the provisions of Article 12. He suggested the words "with due regard to the provisions of Article 12" should be put at the end of paragraph (c) (i) instead of the direct reference to national legislation. In this he was supported by the representative of MEXICO.

Mr. MACHADO (Cuba) proposed that the words "...consistent with national interests" should be added to the Geneva text of paragraph (c) (i).

Mr. AMADOR (Mexico) said that the Mexican amendment to the Indian proposal made it clear that nothing would be done which would be inconsistent with what was laid down in Article 12. There should be no ambiguity.

Mr. FEDRANO (Argentina) supported the Mexican amendment to the Indian proposal.

Mr. POLITIS (Greece) pointed out that if it were in a state's interests to come to an agreement, it would if necessary change its own legislation. Paragraph (c) was calculated to encourage international agreements, not to oppose them.

Mr. MARTEN (United Kingdom) said any agreements regarding investments would surely be satisfactory to both parties. There were stringent safeguards in countries receiving capital particularly in Article 12. He would accept no limitation and would find it difficult to see why the terms should be subject to the unilateral legislation of the receiving country.

It was agreed that an ad hoc committee consisting of the representatives of Mexico, the United Kingdom, the United States, Belgium and India, should discuss the re-drafting of paragraph (c) (i) of Article 69.

(c) PROPOSAL BY THE DELEGATION OF ITALY TO INSERT NEW SUB-PARAGRAPH BETWEEN SUB-PARAGRAPHS (c) (i) and (c) (ii) (document E/CONF.2/C.6/12 page 4).

Mr. MONDELLO (Italy) withdrew his amendment, but reserved his right to make a general declaration on the matter at the Plenary Session of the Conference.

(d) PROPOSAL BY JOINT-SUB-COMMITTEE OF THE SECOND AND SIXTH COMMITTEES THAT SUB-PARAGRAPH (c) (iii) be renumbered (c) (v) (document E/CONF.2/C.2&6/A/W.2).

Referred to the Central Drafting Committee. /\(e\) PROPOSAL BY JOINT
(e) PROPOSAL BY JOINT SUB-COMMITTEE OF THE SECOND AND SIXTH COMMITTEES FOR NEW SUB-PARAGRAPHS (iii) and (iv) (document E/CONF.2/C.2&6/A/W.2 page 4).

The Joint Sub-Committee text was approved.


Mr. KELLOGG (United States) reserved his position with regard to paragraphs (d) (e) and (f) of Article 69 until the sub-committee's report on paragraph 1 had been received.

The text of paragraph (f) of Article 69 was approved.

Mr. DAO (China) believed that the functions of paragraph (f) suggested an anti-climax if placed at the end of the Article and should be inserted before sub-paragraph (d).

(g) PROPOSED RE-DRAFT OF ARTICLE 69 BY THE DELEGATION OF COSTA RICA (document E/CONF.2/C.6/12/Add.17).

It was agreed that the proposal of Costa Rica, approved by the Sixth Committee, together with that of China, should be referred to the Central Drafting Committee.


Article 95

Mr. TINOCO (Costa Rica) pointed out with regard to amendments which were so important that they had to be accepted by all Members which wished to continue in the Organization, that the Article did not state whether the resolution, which gave mandatory character to the amendment, should be taken by a simple majority or by a majority of two-thirds of the Members present and voting. The situation might be clarified by amending the second sentence of paragraph 2 to read: "The Conference may, in its resolution approving an amendment under this paragraph, determine by an affirmative vote of two-thirds of the Members present and voting that the amendment is of such a nature..."

Mr. GARCIA OLDUJII (Chile) agreed with the representative of Costa Rica, but believed that adding the words: "...determine by the same two-third majority that the amendment is of such a nature..." would be sufficient.

The CHAIRMAN pointed out that as it was the same resolution by which an amendment was adopted, it must of course be covered by the same rules. The repetition of the words "two-thirds of the Members", etc. seemed superfluous.

Mr. MARTEN (United Kingdom) stated that the Report stressed the one determination; whether or not the amendment would be accepted, or whether it required suspension, it had to be carried by two-thirds majority.
Mr. AMADOR (Mexico) was in agreement with the Chairman, and also with the interpretation given by the representative of the United Kingdom. As a member of the Working Group, he stated that the adoption of an amendment and the decision that such an amendment was of a special nature, were simultaneous actions.

Mr. TINOCO (Costa Rica) thought there would be no harm in adding the words suggested by the representative of Chile. "The Conference may..." also implied that the Conference might not...

It was agreed that the discussion would be recorded in the minutes, and that the Chilean proposal to add the words "by the same two-thirds majority" after the word "determine" in the second sentence of the second paragraph of Article 95, should be accepted.

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