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CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

Preparation for the fourth session of the UNCTAD-Working
Group Position of the Community and the Member States.

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INTRODUCTION

1. In May 1972, at its third session, held in Santiago, the United Nations Conference on Trade and Development (UNCTAD) adopted Resolution 45 (III) relating to the elaboration of the "Charter of Economic Rights and Duties of States". The Resolution noted the urgency "in the international community to establish generally accepted norms to govern international economic relations systematically". The Resolution also indicated that "it is not feasible to establish a just order and a stable world as long as the Charter to protect the rights of all countries, and in particular the developing States, is not formulated".
2. An UNCTAD Working Group, in which, with the exception of Ireland and Luxembourg, all the States of the Community and also the Commission are represented, was given the task of elaborating the Charter. Since the beginning of 1973 the Working Group has held three sessions. Its fourth and final session will take place in June 1974. The General Assembly will have to decide on the text of the final draft which will determine, inter-alia, the final legal nature of the instrument.
3. Some provisions have already been agreed upon by the Working Group. Most, however, call for further examination or have been dealt with only in preliminary consultations.
4. In any case, discussions on the Charter have reached a stage where the Community authorities must examine the questions arising and work out a common position on the provisions envisaged.

GENERAL CONSIDERATIONS

5. The recent energy and raw-materials crisis has made it a matter of more immediate relevance to draw up a Charter formulating in the long term the economic rights and duties of States. Economic and political developments have underscored the importance of establishing a balance between the mutual rights and obligations of industrialized and developing countries alike. This incidentally is the conclusion of President Boumédiène when he refers in his letter to the UN Secretary-General on the convening of the Extraordinary Session of the General Assembly to the need to establish a new system of relationships based upon equality and the common interest of all States .

6. The Charter is therefore part of a long-term process of development as well as being of immediate importance. In the shorter term the object is to take account of the attitude of different countries and the concessions they would be prepared to make to one another in the formulation of the principles of the Charter.

7. In their Declaration of 21 October 1972, the Heads of State and Government of Member States expressed their conviction that the Community must "respond even more than in the past to the expectations of all the developing countries".

To a large degree the general principles envisaged in the Charter may be placed within the context of this Declaration.

8. Independently of the situation as regards the extent to which the specific provisions of the Charter may be expressed in terms of binding obligations, it is clear that the Charter may have a considerable political impact. The significance of the Charter as an instrument which will provide the guidelines that States will henceforth observe in their economic relations has been at the centre of much of the discussions, and is certainly an issue to which the developing countries attach great importance. If the Charter, in its final form, proves in fact to be generally acceptable and is adopted by the General Assembly by a majority representative of all the major groups, it is unlikely that its effects will be confined to those of a mere declaration of general intention. As an instrument resulting from

long negotiations and which had received widespread support, the Charter could have a certain influence on the evolution of international law. Its provisions might be quoted in future negotiations or in diplomatic correspondence for example, and even if the Charter is not binding, like a treaty text, it would be difficult for a State or regional group against whom it is invoked to ignore its provisions.

9. A positive approach leads to the same conclusions. If the industrialized countries want the Charter to reflect the world economic order which they desire, it follows that it is in their interest to assign appropriate political importance to it. The European Community should play a special part in this respect.

10. Through their general character, the principles of the Charter, whatever their legal nature, may affect the attitude both of the Member States and of the Community. Moreover, many of the principles refer expressly to international trade or employ concepts which may cover it in such a way as to come within the field of the Community's commercial policy (Article 113); the principles may also affect other activities of the Community, e.g. within the context of the policy on Association. Although other principles tend rather to concern the activity of the Member States, virtually all of these principles are, nevertheless, of particular interest to the Common Market. It follows not only that the Community must adopt its position with regard to the Charter but also that the Member States must, as required by Article 116, proceed by common action on this matter.

11. In this context, the Commission considers it desirable for the Community to be, within the limits of its own powers, an object of the rights and duties provided for by the Charter. It should therefore be made clear that the Charter does not apply only to States but also to regional groups to which the Member States have transferred powers falling within the scope of the Charter.

SPECIFIC CONSIDERATIONS

12. If the Community wishes to obtain the best results, it must continue to take up a common position, as it did at the previous sessions of the Working Group.

13. Annex I to this communication contains detailed comments by the Commission regarding all the provisions that have not yet been agreed upon by the UNCTAD Working Group. Common positions are proposed, especially in

respect of the following particular points: ¹

- (i) legal nature: the future instrument should not have a coercive character and, as such, should not create new rights and duties (see transitional paragraph).
- (ii) sovereignty over natural resources: all the versions submitted for this provision call for detailed examination before the fourth session of the Working Group (see remarks, Chapter II § 2).
- (iii) regional cooperation: to the text formulated by the Working Group (see remarks Chapter II § 7) should be added a sub-paragraph dealing with the application of the provision of the Charter to regional groups to which the Member States have transferred certain powers;
- (iv) transnational companies: The Community should reconsider the request from certain Member countries to delete this provision (see remarks, Chapter II § 11);
- (v) generalized preferences: the Community could consider deleting the indirect reference to the erosion of preferences in the text already adopted by the Working Group (see remarks, Chapter II § 14);
- (vi) development aid: the Community's position should be at least as positive as that expressed by its members within the Working Group on development cooperation and in the Washington communiqué of 13 February 1974 on the energy crisis (see remarks, Chapter II § 15);
- (vii) east-west trade: the wording of a provision concerning the granting of the most-favoured -nation clause and related questions should be based upon the results of negotiations in progress within the Conference on Security and Cooperation in Europe (see remarks, Chapter II § 19).

COORDINATION

14. As in the past, the Member States' common position will be coordinated on the spot and presented by the State exercising the Presidency. As for matters coming under the Community's jurisdiction, it will be for the Commission to put forward the Community position.

¹ The report on the third session of the Working Group, in its original version, i.e. English, will serve as a reference paper (TD/B/AC.12/3 dated 8 March 1974)

ANNEX I

COMMENTS CONCERNING THE DRAFT "CHARTER OF ECONOMIC RIGHTS
AND DUTIES OF STATES" ^{1/}

^{1/} as contained in the Report of the Working Group on the Charter of Economic Rights and Duties of States on its third session, held at the Palais des Nations, Geneva, from 4 to 22 February 1974 (document TD/B/AC.12/3, 8 March 1974).

A) The following provisions have been agreed upon in the Working Group on the Charter.

PREAMBLE

Paragraph	I	of. TD/B/AC. 12/3, p.3
"	II	" , p.3
"	II bis.	" , p.3
"	II ter.	" , p.3
"	III	" , p.3/4
"	IV. Introduction and (o):	" , p.4
"	VI	" , p.4
"	VII	" , p.4
"	VIII	" , p.4

CHAPTER II

Paragraph	1	cf. TD/B/AC. 12/3, p.8
	6	" , p.8
	16	" , p.8
	18	" , p.8

7

B) The following comments relate exclusively to texts which require further consideration by the Working Group on the Charter.

	<u>Page of relevant texts in document TD/B/AC.12/3</u>	<u>Page of comments given by Commission</u>
<u>PREAMBLE</u>		
Paragraph IV (a)	4/5	1
IV (b)	5	1
IV (d)	5	1
V	5	1
VI bis	5	1
Transitional paragraph <u>1/</u>	6	2
<u>CHAPTER I</u>		
First line	6	3
Principle (e)	7	3
(k)	7	3
<u>CHAPTER II</u>		
Paragraph 2 <u>2/</u>	15/16	5/5 bis
3	8/9	6
4	9	7

1/ text deferred for consideration at a later stage.

2/ paragraphs that have only been the subject of discussions and preliminary consultations and also require further consideration.

Paragraph	5	9	8
"	6 bis	9	10
"	7	10	11
"	8	10	12
"	9	11	13
"	10 ^{2/}	17	14
"	11	11	15
"	12	11/12	16
"	13	12	17
"	14	12/13	18
"	15	13	19
"	17	13/14	21
"	19	14	23

Other provisions relating to Chapter II ^{3/}	18/19	24
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CHAPTER III

Paragraph	1	19/20	25
"	2	20/21	26

<u>CONCLUDING PARAGRAPH</u>	21	27
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<u>CHAPTER IV</u>	annexe II	28
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<u>CHAPTER V</u>	annexe II	28
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^{3/} Proposals relating to Chapter II not yet considered.

PREAMBLE

PARAGRAPH IV(a)

Recommended Community Position

In order to be consistent with the position taken on the subject matter in Chapter II, paragraph 5, Alternative 1 should be supported. The word "achievement" is therefore to be replaced by "promotion" and the words "and equitable" in brackets should be deleted.

PARAGRAPH IV (b)

Recommended Community Position

Continue to support variant 1 as it stands and oppose the addition of the amendment suggestion by the USSR "on the basis of equality and without discrimination".

PARAGRAPH IV (d)

Spain is unlikely to press for the inclusion of the text in brackets in view of the agreed last phrase of paragraph III(c).

PARAGRAPH V

Recommended Community Position

Support variant 1 with the deletion of both the texts in brackets "for all countries" and "for all nations".

In view of the raw materials issue in Chapter II, Paragraph 2, it is in the interest of the Community to support the last part of the sentence, still in brackets, which reads "...which is an important element of the sustained development and expansion of the economies of all countries".

PARAGRAPH VI bis.

Recommended Community Position

Delete this paragraph which duplicates IV (b) of the Preamble.

Fall-back position

Consider a language which would avoid the use of the term "peaceful co-existence" and a possible reference to the application of the MFN clause in East-West trade.

cf. TD/B/AC.12/3, pp. 4 and 5

TRANSITIONAL PARAGRAPHRecommended Community Position

Continue to support variant 2; refuse variants 1, 3 and 4 since all would give the Charter a legally binding character.

Fall-back position

It may prove difficult to maintain Alternative 2 as it stands. A merger of elements contained in Alternatives 3 and 4 could be considered; along the following lines:

" The General Assembly solemnly declares [adopts] the following principles concerning the economic rights and duties of States and where applicable groupings of States, to provide a common basis for international economic relations and to protect the rights of all States and particularly the rights of developing countries".

CHAPTER I

FIRST LINE

Recommended Community Position

Prefer 'should' to 'shall'

PRINCIPLE (e)

Recommended Community Position

Support variant 2

PRINCIPLE (k)

Recommended Community Position

Preference is given to Alternative 1 because of the conciseness of the text. The Community could also consider Alternative 3 since it mentions explicitly all States and contains the important concept of differentiation with regard to developing countries.

CHAPTER II

CHAPTER II § 1

RIGHT TO CHOOSE ECONOMIC SYSTEM

Text agreed upon in Working Group.

cf. TD/B/AC.12/3, p.8

SOVEREIGNTY OVER NATURAL RESOURCESRecommended Community Position

Continue to insist on Alternative 4, the agreed text by Community Members participating in the working group on the Charter. Such insistence is particularly warranted even if Alternative 4 does not deal with the supply issue in a manner which adequately safeguards Community interests. Most of the other variants are unacceptable, in particular the language submitted by Iraq and Yugoslavia - Alternative 1 - (which reflects the view of a considerable number of members of the group of "77").

Background for the present position

It should however be recalled that the version put forward by the services of the Commission in December 1973 read as follows:

"States should refrain from withholding export of their natural resources for political reasons."

In January 1974 the Council working group on UNCTAD working matters agreed to the following wording:

"The exercise of this sovereignty and these rights shall take account of the requirements and inter-dependence of the economies of all States and the necessity to safeguard a sure and continuous supply of natural resources."

During the 3rd session of the working group on the Charter in Geneva, this last phrase was changed by the Community Member States participating to become part of the present Alternative 4.

"the exercise of this sovereignty and these rights shall take account of the requirements and inter-dependence of the economies of all States and the necessity to contribute to the balanced expansion of the world economy." 1)

of. TD/B/AC.12/3, pp. 15 and 16

- 1) It should be noted that the English version of this last sentence, reproduced in the document TD/B/A.C. 13.3, page 16, should read as follows: "the exercise of this sovereignty and these rights shall take account of the requirements both of the inter-dependence of the economies of all States and of the necessity to contribute to the balanced expansion of the world economy."

Fall-Back position

In the course of negotiations EEC member countries may wish to consider a reserve version. This could consist of a merger of the first paragraph of the Alternatives 4 (Community) and 6 (USA), which would be followed by the last paragraph, unchanged, of the EEC variant. For the sake of clarity the nationalization issue could be taken out of paragraph 2 to become part of Chapter II, paragraph 10.⁽ⁱ⁾ The reserve variant would then read as follows:

"All States enjoy, within the framework of international law permanent sovereignty over their natural resources and the right freely and fully to dispose of those resources in the interest of the economic development and well-being of their peoples. In the exercise of this sovereignty and this right, States shall take account of the requirements both of the interdependence of the economies of all States and of the necessity to contribute to the balanced expansion of the world economy."

(i) in which position the sub-paragraph also stands more chance of overcoming the strong opposition by the Group of "77".

CHAPTER II § 3

INTERNATIONAL TRADE: BILATERAL AND MULTILATERAL ARRANGEMENTS

Recommended Community Position

Support Alternative 1 as cleared in the drafting group, i.e. omit the phrases in brackets, except the words "irrespective of any" in the first sentence. Consider omitting "consistent with its international obligations" at the end of the second sentence.

Comment

Supporting "irrespective of any" avoids reference to discrimination based on differences in political, economic and social systems, and indirectly to the application of the MFN clause in East-West trade.

cf. TD/B/AC.12/3, pp. 8 and 9

CHAPTER II § 4

THE RESPONSIBILITY OF EVERY STATE TO WORK FOR THE ADVANCEMENT OF ITS PEOPLE.Recommended Community Position

The Community should continue to support the text agreed upon in the drafting group, but without the split infinitive (3rd. line of English text).

Fall-back position

Since the texts in brackets point, inter alia, to external obstacles which hinder mobilisation and use of the resources of States to implement economic reforms, the following sentence could be placed at the end of the text of the drafting group: "Each State should endeavour to cooperate in such mobilisation and use."

CHAPTER II § 4

THE RESPONSIBILITY OF EVERY STATE TO WORK FOR THE ADVANCEMENT OF ITS PEOPLE.

Recommended Community Position

The Community should continue to support the text agreed upon in the drafting group, but without the split infinitive (3rd. line of English text).

Fall-back position

Since the texts in brackets point to obstacles which hinder mobilisation and use of the resources of States to implement economic reforms, the following sentence could be placed at the end of the text of the drafting group: "Each State should endeavour to cooperate in such mobilisation and use."

cf. TD/B/AC.12/3, p.9

CHAPTER II § 5

INTERNATIONAL DIVISION OF LABOUR

Recommended Community Position

Support of Alternative 1 (result of the work of the drafting group) with slight modifications to read as follows:

"States should cooperate in promoting a more rational international division of labour and in encouraging structural changes in the context of a balanced world economy in harmony with the needs and interests of all countries, especially developing countries."

Comment

The language suggested supports the notion of structural changes in the world economy without subscribing to any measures or programmes to be undertaken in this respect. It presents the international division of labour as a continuous process which States can promote to become more rational than at the present stage.

cf. TD/B/AC.12/3, p.9

CHAPTER II § 6

RESPONSIBILITY FOR COOPERATION

Text agreed upon in Working Group.

cf. TD/B/AC. 12/3, p.8

CHAPTER II § 6bis.

PARTICIPATION OF STATES IN THE INTERNATIONAL DECISION-MAKING PROCESS

Recommended Community Position

Support the language as agreed upon in the drafting group, but maintain the clause "in particular through the appropriate international organisations in accordance with their rules", the deletion of which had been proposed by China.

CHAPTER II

§

SUB-REGIONAL, REGIONAL AND INTER-REGIONAL COOPERATION

Recommended Community Position

Support the text as cleared in the drafting group and reject the text in brackets:

1. "States have the right, in agreement with the parties concerned, to participate in sub-regional, regional and inter-regional cooperation in pursuit of their economic and social development. All States engaged in such cooperation have the duty to ensure that their policies and the policies of those groupings to which they belong are [non-discriminatory] outward-looking, consistent with their international obligations and with the needs of international economic cooperation and have full regard for [do not harm] the legitimate interests of third countries, especially developing countries."

2. Add a second sub-paragraph (i) to take account of groupings with specific competences as follows:

" The principles of the present Charter shall also apply, where appropriate, to groupings to which the Member States concerned have agreed to transfer certain competences as regards matters that come within the scope of the present instrument."

cf. TD/B/AC.12/3, p.10

(1) See reservations recorded in the Report of the Working Group, para. 12, page 22, of Doc. TD/B/AC.12/3, in Annexe 1.

CHAPTER II § 8

THE RIGHT OF STATES TO BENEFIT FROM ADVANCES AND DEVELOPMENTS IN SCIENCE AND TECHNOLOGY

Recommended Community Position

Alternative 2 proposed by the Community should be maintained.

1. Fall-back position No. 1

Consider the merger of the Community alternative and the acceptable portion of the text submitted by the "77"; modified in the sense that it does not prescribe a duty.

"Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development. Access thereto and transfer thereof shall be facilitated, proper regard being paid to the special needs of developing countries as well as to the rights of holders of such technology in a spirit of mutual cooperation.

Every State should cooperate in the establishment, strengthening and promotion of scientific research and technological activities which help to expand and transform the economies of all countries, especially developing countries, to contribute to the creation of technologies adapted to the needs and realities of these countries, and to reinforce their own research."

2. Fall-back position No. 2

"Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development. Access thereto and transfer thereof shall be facilitated, proper regard being paid to the special needs of developing countries as well as to the rights of holders of such technology in a spirit of mutual cooperation.

"Every State shall cooperate in the establishment, strengthening and promotion of scientific research and technological activities which help to expand and transform the economies of all countries, especially developing countries, to contribute to the creation of technologies adapted to the needs and realities of these countries, and to reinforce their own research."

CHAPTER II § 9

EQUITABLE PARTICIPATION BY STATES IN WORLD TRADE

Recommended Community Position

Support Alternative 2, the outcome of the drafting group's work.

Fall-back position

The Community could also subscribe to Alternative 1 which draws more extensively from the Tokyo/GATT declaration than Alternative 2.

cf. TD/B/AC.12/3, p.11

CHAPTER II § 10

REGULATION OF FOREIGN INVESTMENT

Recommended Community Position

Maintain Alternative 4, submitted by the Community and the USA.

Fall-back position

Since a change in the USA position cannot be precluded and since they may consider a merger with Alternative 1, proposed by Mexico, provided that due recognition is given to the "relevant norms of international law", consider the adoption of the first sentence of Alternative 1. The language could also include a concept introduced by Japan and Chile (cf. Alternatives 5 and 7) namely to require foreign investment to conform to the development objectives and priorities of States. The sentence would therefore read as follows:

"Every State has the right to regulate and control foreign investment within its jurisdiction and to require such investment to conform to its objectives and priorities in the field of development."

Comment

The first sentence of Alternative 4 or of Alternative 1, could be followed by invoking the nationalization issue - logically it could be dealt with under this paragraph and not in connection with sovereignty over natural resources (para. 2) - together with disputes on compensation (cf. the Mexican variant on paragraph 10 and the Iraq/Yugoslavia variant on paragraph 2). To the first sentence should therefore be added the following safeguard clause:

"Every State has the right to nationalize, expropriate or requisition the resources under its jurisdiction on grounds of public utility, security or national interest. This right shall be exercised in accordance with international law, in particular with regard to the payment to the owners of prompt, adequate and effective compensation."

" Any dispute on compensation which may arise shall be resolved in accordance with international law, including any pertinent instruments concluded by the States concerned. "

REGULATION OF TRANSNATIONAL CORPORATIONS

Recommended Community Position

In view of the sensitive character of the issue it does not seem possible that the Community and its Member countries can maintain the position to ask for the deletion of this paragraph. Even a holding position as agreed upon by Member States in January 1974 can very probably not be maintained in the forthcoming negotiations. Moreover a settlement of the issue is also in the interests of the Community concerning activities of non-Community Transnationals on its own territory. It should be remembered that decisions of the European Court have underlined that the activities of such corporations, even outside the territory of the Community, come within its competence. The following course can therefore be considered:

1. Accept the first sentence of Alternative 1, including the texts in brackets.
2. There are, however, grave difficulties over the second sentence which should be rejected.

Paragraph 11 could therefore read:

"Every State has the right to regulate and control transnational corporations, in a non-discriminatory way, within its national jurisdiction and to take measures necessary to ensure that such corporations comply fully with its laws, rules and regulations."

Fall-back position

If it proves impossible to limit paragraph 11 to the first sentence, the following second sentence is suggested for consideration: "Every State shall be ready to consider [to give favourable consideration to] requests from other States to assist in the fulfilment [implementation] of this right in the requesting State."

cf. TD/B/AC.12/3, p.11

CHAPTER II § 12

DISARMAMENT AND USE OF THE RESOURCES FREED FOR DEVELOPMENT PURPOSES

Recommended Community Position

It is for Member States to decide whether they wish to support this point being dealt with in the Charter, or whether it should be deleted as proposed by China.

cf. TD/B/AC.12/3, pp. 11 and 12

CHAPTER II § 13

COOPERATION TO ENCOURAGE ECONOMIC GROWTH

Recommended Community Position

Support the text as cleared in the drafting group.

Fall-back position

Consider agreeing with the text in the first bracket, however modified as follows: "..., while respecting the principle of sovereign equality of States, ..."

Comment

The second bracket should be omitted since its content is already dealt with in the word "cooperate". The text in the last bracket should be rejected since it would imply that unwarranted conditions are in fact being imposed on developing countries and since the notion of sovereignty is already contained in the supported text.

cf. TD/B/AC.12/3, p.12

GENERALISED PREFERENTIAL TREATMENT WITHOUT RECIPROCAL CONCESSIONS FROM DEVELOPING COUNTRIES.

Recommended Community Position

Alternative 1, text of the drafting group, should be supported after the following modifications have been made:

- "Developed countries should establish a mutually acceptable and generalised system of tariff preferences, without reciprocity or discrimination, to the benefit of developing countries consistent with the relevant agreed conclusions and the relevant decisions as adopted on this subject in the framework of the competent international organisations."
- The ensuing sentence in Alternative 1 should be separated from the first sentence and indented. From the first part of this sentence "developed countries should also give serious consideration ..." the word "also" should be deleted.
- It would be preferable to eliminate the indirect reference made in the last sentence to the erosion of preference, but in the light of the deliberations in Geneva there is a danger that this would not be acceptable to the "77". The argument could be advanced that the last sentence appears to repeat the substance put forward in Chapter II, Paragraph 17, and could therefore be omitted. If this sentence is nonetheless retained, it should - as in the previous sentence - stand as a separate sub-paragraph.

It is recalled that language introduced in this respect by Brazil and modified in the course of the deliberations read as follows:

" In the context of their international economic relations, developed countries shall avoid an adverse impact of such relations upon the advantages which developing countries derive from general tariff preferences and other differential measures so as to promote the sustained development of the national economies of the developing countries."

TRANSFER TO DEVELOPING COUNTRIES OF FINANCIAL RESOURCES UNDER FAVOURABLE TERMS AND CONDITIONS

Recommended Community Position

Since Alternative 1, as originally submitted by the United Kingdom is more restrictive than positions subsequently taken by the Community Member States in the Council Working Party for Development Cooperation and in the final Communiqué of the Washington Energy Conference of 13th February 1974⁽ⁱ⁾, the Commission recommends that consideration be given to the following text:

"All States should make strenuous efforts to ensure an effective increase of official development assistance and to encourage the flow of private resources to developing countries, in order to reinforce the efforts of these countries to accelerate their economic and social progress. Official development assistance should be transferred to the recipient developing countries under favourable terms and conditions in conformity with the particular circumstances of each recipient country or group of recipient countries."

cf. TD/B/AC.12/3, p.13

(i) para. 10; agreed by all Member States.

CHAPTER II § 16

ECONOMIC COOPERATION AMONG DEVELOPING COUNTRIES

Text agreed upon by Working Group.

cf. TD/B/AC.12/3, p.8

TAKING ACCOUNT OF THE INTERESTS OF THIRD COUNTRIES IN MUTUAL ECONOMIC RELATIONS

Recommended Community Position

Continue to consider Alternative 1, as discussed in the drafting group with language proposed by Community Members. " All States have the duty to conduct their mutual economic relations in a manner which takes [fully] into account the [legitimate] interests of third countries."

Fall-back position No. 1

"All States have the duty to conduct their mutual economic relations in a manner which seeks to avoid to the maximum extent possible prejudicing or adversely affecting the interests of third countries, in particular developing countries."

Fall-back position No. 2

"All States have the duty to conduct their mutual economic relations in a manner which avoids to the maximum extent possible prejudicing or adversely affecting the interests of third countries, in particular developing countries."

Comment

The fall-back positions above stem from the impression gathered in the course of the 3rd session of the working group that the concept of "takes fully into account" may prove unacceptable to the group of "77". The notion put forward by the "77" of "in a manner which (does not prejudice or adversely affect)" is unacceptable for the Community.

If the Community does not succeed in inserting into the final text of Chapter II, paragraph 2 undertakings in respect of reliable and steady supplies of raw materials, in order to cover this requirement - at least to a certain extent - the term "legitimate" with respect to the interests of third countries should be avoided in paragraph 17. Should, however, paragraph 2 involve obligations for reliable and steady supplies of raw materials, the concept of "legitimate interests" can be retained in paragraph 17.

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CHAPTER II § 18

SPECIAL ATTENTION TO LEAST DEVELOPED COUNTRIES

Text agreed upon in Working Group.

cf. TD/B/AC.12/3, P.8

RELATIONS BETWEEN COUNTRIES WITH DIFFERENT ECONOMIC AND SOCIAL SYSTEMS

Recommended Community Position

Maintain Alternative 4 (EEC) since it covers in a satisfactory manner the notion of the differences in the structure of the trading systems, of facilitating the trade between countries of different systems and of the need for mutual advantages and obligations. However, in the light of the outcome of the negotiations on CSCE, expected to be finished in May 1974, new language may be considered during the 4th session of the working group.

Fall-back position No. 1

With this reservation a possible ball-back position may be to precede the EEC alternative with the first sentence of Alternative 1 proposed by Mexico, Yugoslavia and Algeria, namely:

"States have the duty to co-exist in tolerance and live together in peace, irrespective of differences in political, economic, social and cultural systems, and to take into account the changes that are occurring in the world in the economic, political and technological spheres."

Fall-back position No. 2

Consider supporting Alternative 3 (USA) with the suggestion of replacing the words "to remove obstacles" by progressively "to reduce obstacles".

cf. TD/B/AC.12/3, p.14

OTHER PROPOSALS RELATING TO CHAPTER II NOT YET CONSIDERED BY THE
WORKING PARTY

From the 12 texts submitted by a number of delegations and concerning various issues, only the proposal made by France dealing with trade in commodities should be considered and supported by the Community.

CHAPTER III § 1

SEA BED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

Recommended Community Position

Support variant 3 (but delete text in bracket because it duplicates the first sentence).

Comment

In view of the forthcoming Conference on the Law of the Sea, the Community should continue to reserve its position pending the outcome thereof.

cf. TD/B/AC.12/3, pp. 19 and 20

CHAPTER III § 2

PRESERVATION OF THE ENVIRONMENT

Recommended Community Position

Support Alternative 2 because of the link established with the principles set forth in the declaration of the United Nations Conference on the Human Environment. Reject variant I which is too demanding and goes too much into detail.

cf. TD/AC.12/3, pp. 20 and 21

CONCLUDING PARAGRAPH

Recommended Community Position

Neither the Iraqi nor the Philippine proposal are desirable from the Community viewpoint. However, some suitable wording to conclude the Charter, which respects the Status of the document, would be appropriate.

cf. TD/B/AAC.12/3, p.

CHAPTERS IV AND V OF THE DRAFT OUTLINE PREPARED AT THE FIRST SESSION OF THE WORKING GROUP IN FEBRUARY 1973, BUT NOT SINCE RE-EXAMINED.

CHAPTER IV

IMPLEMENTATION

Recommended Community Position

Support the proposal made by Member States of the Community to delete the title and paragraphs 1 and 2. There seems no call for a 'CONCLUDING SECTION' (but see remark made under 'CONCLUDING PARAGRAPH' above).

cf. TD/B/AC.12/3, Annexe II

CHAPTER V

FINAL PROVISIONS

Recommended Community Position

Support the proposal made by Member States of the Community to delete this Chapter.

cf. TD/B/AC.12/3, Annexe II