

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held at the Capitol, Havana, Cuba, on Thursday,
11 March 1948 at 10.30 a.m.

Chairman: Mr. COLBAN (Norway)

CONTINUATION OF THE DISCUSSION OF THE CHILEAN AND PERUVIAN AMENDMENT TO ARTICLE 93 (document E/CONF.2/C.6/106).

Mr. MULLER (Chile) pointed out that there had not been a substantial discussion of the position of non-Members with respect to Article 15 in the Co-ordinating Committee and that the problem had been referred to the Committee on Article 93. The Heads of Delegations, therefore, had not laboured under the misapprehension that they were taking a decision on the question of non-Members.

The amendment was designed to make available to non-Members the provisions of Articles 15 and 42, provided that they fulfilled the obligations contained in those Articles. Sufficient safeguards were set forth in Article 15 (5) and (6) to make possible the use of the automatic criteria. If that were not to be permitted, any agreement could be blocked by a two-thirds vote.

The representative of the UNITED STATES had wanted to know what guarantee could be given that the non-Member would fulfil the obligations in Articles 15 and 42. First, the Member would have to prove to the Organization that the agreement complied with the provisions of those Articles and if after the agreement was concluded the non-Member departed from those provisions, the obligation of the Member under the Charter as a whole would demand that the agreement came to an end. The spirit and practical application of the Charter could not be better promoted than by a Member assuming responsibility for the activities of the non-Member.

Mr. ALAYZA (Peru) drew the United States representative attention to the fact that the Organization would have no guarantees concerning the conduct of Members, for the Charter referred only to compensation and the

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waiving of obligations and made no mention of sanctions. Taking this into consideration, it was unnecessary to ask for special guarantees with respect to non-Members.

Mr. GAIFFIER (Belgium) reiterated that the adoption of the amendment would mean an undertaking to place obligations on non-Members. Secondly, it had to be clearly understood that a country had to fulfil all and not just certain obligations if it wished to have access to the Organization.

Mr. POLITIS (Greece) said that he felt bound by the decision of the Heads of Delegations that no substantive changes should be made in the Articles which had been considered by the Co-ordinating Committee. The amendment represented a substantive change which he could not accept. He also pointed out that the Sub-Committee had never intended that the Organization should impose obligations on non-Members.

Mr. KUMMLIN (Sweden) pointed out that the compromise arrived at in connection with Article 93 could be easily upset. His Government had always been opposed to preferences and certainly no one had ever contemplated Article 93 as a vehicle for broadening the provisions of Article 15.

Mr. TORRES (Brazil) said that it had always been his understanding that the automatic criteria were to be applied to Members only. If that assumption were to be changed, it would give non-Members an advantage over Members. Further, the adoption of the amendment would make for a serious breach in the agreement which had been reached in the Co-ordinating Committee. If it were to be accepted, he would have to reserve his position on Article 93 and would also feel free to raise certain points concerning Article 15 which he had accepted in a spirit of Latin American solidarity.

Mr. SAEVZ (Mexico) considered that the amendment endangered the compromise arrived at in the Co-ordinating Committee and therefore, for the first time, he would have to dissent from the views of Latin American representatives. All preferences put non-parties to the particular agreement in a disadvantageous position and new preferences could only be justified on the grounds of the promotion of economic development which would result in a greater volume of trade. Preferences for economic development would only lead to the expansion of trade if the parties to the agreement accepted the non-discriminatory obligations of the Charter. In his opinion, the provision of a two-thirds majority vote was the minimum guarantee with respect to preferential agreements with non-Members.

Mr. MARTEN (United Kingdom) did not consider that Article 93 had been intended to prevent preferential agreements with non-Members but felt that the Organization had to approve them by a two-thirds majority vote.

/Mr. MULLER

Mr. MULLER (Chile) raised a point of procedure concerning the moral obligation which existed with respect to the Co-ordinating Committee report. There was no question of breaking a compromise. The question had not been discussed in the Co-ordinating Committee until the very last moment, at which point his delegation had reserved its position and had been given a right to raise it again in connection with Article 93.

The amendment provided that the Member would have to prove that the non-Member was prepared to fulfil the obligations contained in Articles 15 and 42 and that the Organization would be able to put an end to the agreement in the case of abuses. The arrangement suggested by the United States representative would make the establishment of any such agreements impossible and might have the result of preventing certain countries from joining the Organization.

Mr. KOJEVE (France) said that the discussion had shown that Article 93 needed to be changed slightly so as to reflect the principle that preferences with non-Members could only be ruled out on economic grounds. If the agreement did not go against the provisions of the Charter, the Organization would not oppose it. It would be wrong to penalize a Member for geographical reasons, that is, for having a non-Member as a neighbouring state. A note might be included in the report to the effect that nothing should be placed in the way of a preferential agreement with a non-Member if the Member, party to the agreement, was not forced by it to go against the provisions of the Charter.

Mr. EVANS (United States) drew attention to the practical difficulties which would face the Organization in deciding whether or not the non-Member was complying with the automatic criteria. There would be nothing to prevent a non-Member from putting up the margin of preference or imposing any degree of restriction and the Organization would be helpless to stop it.

He pointed out that even if the words "between Members" in Article 15 (4) were removed, it still would not permit the establishment of preferences with non-Members by means of the automatic criteria. Article 93 had not been designed to prevent preferences with non-Members, however, and after a vote had been taken on the amendment, he would suggest that the first part of it be added to Article 93.

Mr. BENDA (Czechoslovakia) agreed with the representative of Greece that it had never been intended to extend the jurisdiction of the Organization to non-Members. To maintain the position of neutrality which his delegation had always taken with respect to preferences for economic development, he would abstain in the vote on the amendment.

/Mr. ALAYZA

Mr. ALAYZA (Peru) drew the Brazilian representatives attention to the fact that the amendment was not out of order as the Chairman of the Co-ordinating Committee had ruled that it should be taken up in connection with Article 93. It referred to the effect which Article 15 had on Article 93.

In the Joint Sub-Committee of the Second and Third Committees the Lebanese representative had made a statement to the effect that there was nothing in the Charter which would prevent the establishment of preferences with non-Members. The representative of the United States had tacitly accepted those remarks.

Mr. LA ROSA (Italy) was opposed to any change in Article 93.

Mr. MILLER (Chile) repeated that he had reserved his position on this question in the Co-ordinating Committee and that therefore it was incorrect to suggest that the Heads of Delegations were committed to the position put forward by the representative of the United States.

Mr. TORRES (Brazil) agreed that if the Chilean representative had reserved his position, he was within his rights to press for the adoption of the amendment. However, the question had not been raised in the Sub-Committee or in the meetings of the Latin American representatives and in the former a decision had actually been taken that preferences granted under the automatic criteria should be limited to Members.

Mr. D'ASCOLI (Venezuela) drew attention to the fact that the Chilean and Peruvian representatives had always been of the opinion that some safeguard should be introduced in Article 93. The representative of the United States had opposed it.

He supported the amendment but wished to know for sure if the Latin American representatives had reserved their position on this question in the Co-ordinating Committee as otherwise he would be forced to abstain in the vote.

Mr. HAKIM (Lebanon) said that as a member of the Co-ordinating Committee he considered it reasonable for the Chilean and Peruvian representatives to have assumed that they could introduce their amendment to Article 93. However, the question should be decided on its merits and not in connection with the work of the Co-ordinating Committee. He would vote for the amendment.

The amendment was rejected by a majority of 27 to 13.

Mr. EVANS (United States) moved the addition of the following paragraph to Article 93:

"Notwithstanding the provisions of paragraph 2, Members may enter into agreements with non-Members, according to paragraphs 3 of Article 15 or 6 of Article 42 (b)."

/The United States

The United States proposal was approved by the Committee and subject to the reservations of the representatives of Chile, Peru, Bolivia and Argentina. Article 93 as a whole was approved by the Committee.

REPORT OF THE AD HOC SUB-COMMITTEE ON PARAGRAPH 5 OF ARTICLE 1 (E/CONF.2/C.6/107)

Mr. GAFFNER (Belgium), Chairman of the Sub-Committee, explained that certain representatives had felt that ratification of the Charter by certain countries would be facilitated by including in Article 1 a provision stressing the desirability of customs unions.

Mr. KOJEVE (France) said that three arguments had been raised against the proposal to include the provision in Article 1. The political argument had been met, while the arguments that the subject matter was covered elsewhere in the Charter and that customs unions were an exception to the general rule did not seem to him of great importance. In Europe, in Latin America and in the Middle East governments had interested themselves in the establishment of customs unions and it therefore would be appropriate to emphasize their usefulness in Article 1.

Mr. AMINI (Afghanistan) felt that reference to economic programmes of limited applicability could not be made in Article 1. Further, there was some doubt as to whether customs unions would always result in an increase in the volume of world trade. In his opinion the provision in Article 42 should be sufficient to satisfy the representative of France.

Mr. MARTEN (United Kingdom) considered customs unions desirable from the world point of view and drew attention to the importance at the present time of the closer integration of Western Europe.

Mr. HAKIM (Lebanon) said that he had supported the principle of this provision since the London discussions and that if the voluntary nature of the agreements were maintained they should be universally encouraged. He supported the inclusion of the provision in Article 1.

Mr. SAKNZ (Mexico) opposed the French proposal on political grounds. Integration was desirable in connection with countries like those of Central America and Middle East but assumed a more suspect character with respect to weak countries with a strong neighbour.

The representatives of Greece, Turkey and Luxembourg supported the inclusion of the provision in Article 1.

Mr. WILCOX (United States) pointed out that Article 1 set forth objectives to which each and every country was expected to aim. Customs unions while desirable, would not appeal to the parliaments of all countries represented at this Conference. For that reason he supported the inclusion of the provision in Article 42 only.

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The representatives of Uruguay, Netherlands, China and Belgium were unable to accept the French proposal.

The Committee approved the inclusion of the text in Article 42 and rejected the proposed addition to Article 1.