

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Capitol, Havana, Cuba, Thursday, 11 March 1948, at 6.30 p.m.

Chairman: Mr. B. N. BANERJI (India)

1. CONSIDERATION OF RECOMMENDATION OF THE THIRD COMMITTEE REGARDING
CHAPTER V (E/CONF.2/C.3/81, C.4/22).

The CHAIRMAN stated that the Third Committee recommended to the Fourth Committee that a satisfactory solution be found to the relation of shipping services to Chapter V in order to avoid conflict with the Inter-Governmental Maritime Consultative Organization. The delegation of the United States had presented a proposal (E/CONF.2/C.5/21) which was later revised (E/CONF.2/C.4/24). The latter document was under consideration.

Mr. TERRILL (United States) said that when Committee III was considering the Report of the Sub-Committee concerning Article 18A, it had been suggested that the recommendation to amend Article 50 to exclude shipping from the provisions of Chapter V was outside the scope of Committee III. The amendment would have excluded all aspects of shipping, and it could not be said that the Organization would not be concerned with effects upon international trade of certain shipping practices.

It was impossible to define in the abstract the boundary between purely shipping matters and international trade matters. For that reason an Interpretative Note to appear in an annex was suggested to the effect that the provisions of Article 50 shall not apply to matters relating to shipping services which are subject to the Charter of IMCO; a consequential note would be inserted in the Committee Report.

Mr. CORIAT (Venezuela) supported by Mr. MADJID (Afghanistan) doubted that the provisions of Article 50 could conflict with IMCO since paragraph 3 stated that where appropriate matters referred to ITC would be transferred to the interested specialized agency. It had not been thought necessary to exclude telecommunications from Article 50 although there already exists a specialized agency in that field.

Mr. GUERRA (Cuba) stated that in Committee III the Cuban delegation had

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supported the position of Venezuela and Afghanistan regarding the proposed amendment to Article 50. He agreed that with proper judgment there should be no conflict, but felt that some definition of the respective fields of activity would be useful.

The Convention of IMCO clearly defined the scope of its purposes and functions, and a cross reference in the ITO Charter, as the United States had proposed, would make it clear that trade aspects of shipping fall within the scope of ITO.

Mr. TERRILL (United States) observed that if a member of ITO who was not a member of IMCO used ITO as a means of getting a case considered by IMCO it would create an intolerable situation for IMCO regarding non-members. The United States delegation had every sympathy for smaller countries having to become members of many organizations, but IMCO was of an advisory and consultative nature and the expense would be nominal. Further, in order that IMCO might reflect all interests, the smaller countries should become part of that specialized agency.

The representatives of Belgium, Mexico and the Netherlands supported the United States proposal.

Mr. JOHNSON (New Zealand) said he could not support the United States proposal; although the powers under Article 50 were almost as limited as IMCO powers, the obligations and facilities of paragraph 2 were advantageous and should be maintained in respect of shipping.

Mr. LECUYER (France) said that although his delegation had supported Article 18A, it was convinced by the United States arguments that conflict might arise from Article 50 itself, and he agreed that some clarification was necessary.

Mr. JIMENEZ (El Salvador) opposed the United States suggestion because it appeared further to weaken Article 50. The ITO offered more possibilities for the defense of smaller countries than did membership in IMCO, and Article 50, weak as it was, should continue applicable to shipping.

Mr. MUNOZ (Chile) supported the remarks of the representatives of Venezuela and New Zealand.

Mr. MA (China) preferred the text contained in document E/CONF.2/C.4/21. He was inclined to oppose the deletion of shipping services from Article 50 for the reasons given by the representatives of Afghanistan, New Zealand and Venezuela.

Mr. MacLIAM (Ireland) said the only difference of opinion was in regard to procedure: if Article 50 were maintained, the ITO in forwarding grievances could only make either general or specific observations; if the observations
/were to be

were to be of a general character they would merely be a repetition of the Charter and if they were to be specific ITO would have to intrude into a highly technical field where it was not competent. The United States amendment would prevent unnecessary duplication of effort.

Mr. SHACKLE (United Kingdom) supported the United States proposal for the reasons given by the representatives of Ireland and France.

Mr. GONZALEZ (Uruguay) felt that the amendment would not solve the possible conflict of competence as to whether a case should be considered under the jurisdiction of ITO or IMCO and noted that under ITO decisions of the Executive Board could be appealed against to the Conference.

Mr. GUERRA (Cuba) noted that the functions of IMCO were laid down in such a way that shipping practices adversely affecting international trade could not be considered as falling within the purview of IMCO. By elimination, those matters were recognized as the responsibility of the ITO. The United States proposal simply acknowledged a line of demarcation. The United States proposal strengthened the whole function of ITO regarding restrictive business practices whether by shipping or by any other means.

Mr. MADJID (Afghanistan) thought that from the practical standpoint, for the purposes of a business man or government official, it would be difficult to determine to which of the two organizations a matter should be referred. Because of this uncertainty, quite apart from other objections, the proposal would result in delay and indecision in dealing with any practice relating to shipping since there would be doubt as to which organization was competent in each case. He inquired whether it was not true that in practice the insertion of this note would mean the virtual exclusion of all shipping activities from the scope of Chapter V.

Mr. JADDOU (Iraq) said that the proposed note would prevent the application of certain provisions of the Charter; there could be no conflict between the two organizations since Article 50 required ITO to transfer complaints.

Mr. TERRILL (United States) stated that the representative of Cuba had admirably covered the situation. IMCO had no obligation to consider matters of international trade. As a matter of fact, even if Article 50 were entirely deleted, any restrictive business practice would be covered by other Articles of the Charter. A true spirit of compromise had been shown by those who had agreed to the elimination of Article 18A on the condition that a note, such as the one suggested by the United States delegation, be added.

Mr. CORIAU (Venezuela) reiterated his previous statement that paragraph 3 obviated any possibility of conflict between the two organizations.

Mr. WOULEROUN (Luxembourg) thought that the statement of the representative

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of Cuba was straightforward and convincing; the United States proposal simply gave the line of demarcation between the powers and functions of ITO and IMCO.

Mr. PAPATZONIS (Greece) said that he had supported the addition of Article 18A to the Charter, but he felt the United States proposal was a satisfactory solution.

To a request by the representative of China that a definition of the functions of each organization in respect of shipping be included in the Report of the Committee, Mr. TERRILL (United States) said that the provisions of paragraph 4 of Article 50 covered the point in directing the ITO to enter into consultation with specialized agencies.

The United States proposal (document E/CONF.2/C.4/24) was adopted.

The following delegations withdrew their reservations to Article 50: Pakistan, Denmark, Norway, India, Sweden, and Greece.

The following delegations made or maintained reservations to Article 50: Chile, El Salvador, Venezuela, and New Zealand.

The meeting closed at 8.15 p.m.