

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE I (ARTICLE 94)

NOTES OF THE SECOND MEETING

Held Saturday, 10 January 1948, at 10.30 a.m.

Chairman: Mr. TINOCO (Costa Rica)

1. Proposals by the Delegations of India and Iraq Concerning the "Essential Interests" of a Member.

The CHAIRMAN suggested informally for consideration by the Sub-Committee, in connection with the proposals of India and Iraq, that the following paragraph might be added:

"(c) to compel any Member which has suspended its trade relations with any other country [Member] for reasons other than economic, to re-establish such relations, provided that it has notified the Organization of its decision to suspend such trade [commercial] relations."

After some preliminary comments by individual members of the Sub-Committee, discussion of these matters was deferred until the next meeting.

On the question raised by the original amendments of Iraq and India, the representative of Czechoslovakia felt that any provision of this sort would be out of place in the Charter if its inclusion meant authorization for a Member to take justice into its own hands if it felt that it had suffered some injury. The representative of Iraq declared that his reason for proposing such a provision had not been to legalize any measure or course of action but merely to prevent them from being declared illegal in the ITO Charter; in other words, his intention was to have the Charter remain silent on the question of the legality or illegality of essentially political measures, leaving the determination to the appropriate organ of the United Nations or other competent authority.

The representative of India felt that it was necessary to determine at an early stage whether the article was to cover "security interests", "political interests", or "the essential interests" of a Member. In view of the difficulty of defining the first two terms, he felt that the last term might be the most appropriate. He thought it would be relevant to any

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discussion of the appropriate term to reach some understanding on the applicability of Articles 89 and 90 to action represented as falling within Article 94. If such action is subject to the procedures of Articles 89 and 90 it would be open to other Members or to the Organization to inquire into the purpose for which the action was taken and, accordingly, to take or authorize counter action if at the time it appeared that the provisions of Article 94 were being abused. The knowledge of the possibility of such counter action would serve as a deterrent to any misuse of the exceptions. The CHAIRMAN remarked that the relationship between Articles 89 and 94 was being considered by Sub-Committee G of Committee VI and that it might be examined by the present Sub-Committee towards the end of its work when the nature of Article 94 would have become more clearly defined.

In connection with the discussion of this item the representative of the United States indicated that it might also be necessary to introduce an amendment into Article 43 to cover action "necessary to the enforcement of police measures or other laws relating to public safety". Several members expressed their agreement with this proposal.

2. Proposals by the Delegation of Costa Rica Concerning Readjustment of Specific Duties in Case of Legal Devaluation of the Importer's Currency and Concerning the Maintenance of Existing Monopolies

The representative of Costa Rica indicated that his delegation withdrew these two amendments since, in its judgment, their purpose was already being taken care of in the discussion of other provisions of the Charter in another committee.

3. Proposal by the Delegation of India Concerning the Special Situation of India and Pakistan as Newly Established Independent States

The representatives of India and Pakistan felt it would be agreeable to them, as suggested by some members of the Sub-Committee, that the words "...pending the establishment of their mutual trade relations on a definitive basis" be added at the end of the proposed paragraph as in the General Agreement on Tariffs and Trade, and that the sense of the interpretative note included in the General Agreement might be recorded in some appropriate manner. The representative of the United States noted that comparable provisions in the General Agreement had appeared in connection with the article on "Territorial Application - Frontier Traffic - Customs Unions" rather than with the article on "Security Exceptions". He felt that it might be desirable to consult with Committee III concerning the provision. The representative of India observed that his delegation had suggested the insertion of the provision at the present point in order that it should not intrude into the more specific provisions elsewhere in the Charter, particularly as this provision would be of a relatively temporary character.

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The representative of India requested an opportunity to consult with his delegation on the suggestions which had been made and the points which had been raised.

4. Proposal by the Delegation of Czechoslovakia Concerning the Treaties of Peace and Concerning Special Regimes Established by the United Nations for Separate Territories.

The representative of Czechoslovakia explained that his proposal had been made for the purpose of making it clear that nothing in the Charter was to be regarded as overriding in any sense the provisions of the peace treaties or arrangements which might be made under the United Nations for special regimes such as that for Trieste or for any Trust Territories.

The representative of Italy explained that the proposal made by his delegation in relation to Article 16 was being revised in a manner which, he felt, would satisfactorily avoid any conflict with the provisions of the Peace Treaty relating to Trieste. He felt that any reference in the Charter to the status of the peace treaties should be avoided. He considered such a reference unnecessary in respect of existing peace treaties since to the best of his knowledge nothing in the peace treaties conflicted with any provision of the present Draft Charter. He felt that such a reference was not relevant in the case of future peace treaties since, according to his understanding, the present document could not be regarded as overriding subsequent treaties. The representative of Czechoslovakia maintained that the Charter should explicitly recognize that the peace treaties are major instruments which override the Charter in the case of conflicting provisions. The members of the Sub-Committee and the representative of Italy undertook to consider further a suggestion that the first part of the paragraph proposed by the representative of Czechoslovakia be amended to read "Nothing in this Charter shall override any of the provisions of any treaty of peace in force at the time of the entry into force of the Charter..."

At the conclusion of the meeting the CHAIRMAN indicated that at the next meeting the Sub-Committee would consider further each of the points discussed inconclusively at the present meeting (as well as the Australian proposal if the Working Party is in a position to report by that time) with a view to reaching conclusions on each of the points; and that at the following meeting the Sub-Committee might meet with the representatives of the Fifth Committee, as the Joint Sub-Committee of the Fifth and Sixth Committees, to consider the proposal for an exception concerning inter-governmental commodity agreements relating to national security, on which a new proposal had been circulated as E/CONF.2/C.6/W.23/Add.1.

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