

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE I (ARTICLE 94)

NOTES OF THE THIRD MEETING

Held Monday 12 January 1948, at 6.00 p.m. in the Capitolio

Chairman: Mr. TINOCO (Costa Rica)

1. Proposal by the Delegation of Australia.

The Sub-Committee unanimously approved the suggestion of the Working Party that the point raised by the delegation of Australia be covered by adding the words "of the Member or of any other country" after the words "military establishment" at the end of paragraph (b) (ii).

2. Proposals by the Delegations of India and Iraq Concerning Action in Respect of Trade for the Purpose of Protecting "Essential Interests".

The representative of India noted that, contrary to the possible impression conveyed by the notes of the second meeting (E/CONF.2/C.6/W.32, page 1), the intention of his remarks on that occasion had been merely to indicate that the words "essential security interests" in the present text of Article 94 might not be regarded always as embracing the "essential interests" referred to in his amendment.

The Sub-Committee agreed that a communication should be sent to the appropriate sub-committee suggesting that action necessary for the maintenance of "public order or safety", in the terminology of the 1937 Hague Convention, be covered as an exception under Article 43.

Concerning the proposals regarding the protection of essential interests, after some preliminary discussion, the completion of the discussion of this item was deferred pending the submission of an amendment to Article 94 by the representative of the United Kingdom relating to this matter.

3. Proposal by the Delegation of India Concerning the Special Situation of India and Pakistan.

The Sub-Committee agreed to the inclusion in the Charter of the following provision:

"Taking into account the special circumstances arising out of the establishment of India and Pakistan as independent states, and

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recognizing the fact that they have long constituted an economic unit, the Members agree that the provisions of the Charter shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis."

The Sub-Committee agreed also on the inclusion, in an appropriate manner, of an interpretative note to the following effect:

"Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Charter, but these measures would in general be consistent with the objectives of the Charter."

The representative of India indicated his preference for the insertion of the provision on these matters in the present Article rather than elsewhere in the Charter. The Sub-Committee agreed that consultation should take place with Committee III on the appropriate location of this provision.

4. Proposal by the Delegation of Czechoslovakia Concerning "Special Regimes" and the Treaties of Peace.

The representative of South Africa suggested that the question might be covered by adding a sub-paragraph to the following effect:

"(d) To require any Member to carry out obligations prescribed by the Charter which would conflict with extant provisions of any Peace Treaties which are in force."

There was some discussion of the extent to which it was necessary to refer at all to peace treaties and, if such a reference were to be made, whether it should be confined to the treaties following the Second World War or extended to cover those after the First World War and possibly even earlier treaties.

The representative of Turkey, on the invitation of the Chairman, advised the Sub-Committee of the importance which Turkey and other signatories of the Treaty of Lausanne attached to the Ottoman clause of that treaty. He indicated that if the rights established by that Treaty, following the First World War, were to be affected by the Charter those countries would not be able to accept the Charter.

The representative of Italy, on the invitation of the Chairman, explained the view of his delegation. He observed, in correction of the notes on the second meeting (E/CONF.2/C.6/W.32, page 3), that he had not intended to imply that any conflict existed between the amendment suggested
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by his delegation to Article 16 and the provisions of the relevant peace treaties. Furthermore, in his observation at the second meeting that there was no need for a reference to existing peace treaties he had intended to say not only that as a matter of fact he had found nothing in the peace treaty conflicting with any provision of the Charter, but that as a matter of law he was of the opinion that an existing peace treaty would clearly over-ride any conflicting provision of the Charter.

The Sub-Committee agreed that the Charter should contain a provision specifically recognizing that peace treaties over-ride, or prevail over, the Charter in the event of conflict, leaving the exact drafting of such a provision until a working party could propose a text. The Sub-Committee appointed as Working Party 2, for the preparation of such a text, the representatives of Czechoslovakia, the Union of South Africa and the United Kingdom. The Working Party was instructed to consider the original proposal and the other suggestions made during the Sub-Committee's discussion, taking account also of the language contained in the Geneva drafts of paragraph 6 in alternatives B and C of Article 93. The Sub-Committee was also requested to consult with the representative of Turkey on the special situation described in his statement.

The representative of Italy indicated that his delegation reserved the right to raise the question again at a later stage in the Conference in the light of any provision which might be made concerning the peace treaties.

5. Relation Between Article 94 and Articles 89, 90 and 91.

There was some preliminary discussion of this matter and there was a suggestion that, at a later stage when the discussion on these articles is further advanced in Sub-Committees G and I, it might be desirable to have a joint meeting. It was felt by some members of the Sub-Committee that it was within the competence of the present Sub-Committee to recommend whether or not, and if so to what extent, the provisions of Article 94 were exempt from the application of any other provisions of the Charter, but it was generally recognized that consultation between the two sub-committees in some manner might be desirable. There was some suggestion that action taken under Article 94 could not be prevented, or questioned, under other articles, but that the effects of that action might be the subject of consultation or complaint, and that a member affected by such action might accordingly seek release from some corresponding obligations.

The further discussion of this matter was deferred to a later date.

In connection with the drafting of Article 94 the Sub-Committee agreed to delete the word "taken" in paragraph (b) (iii) as being unnecessary since
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word "taking" already appeared in the preamble to sub-paragraph (b). The Chairman suggested that it might also be necessary to consider changing the order in the preamble to paragraph (b) in order to make it clear that the subsequent sub-paragraphs qualified the word "action" and not "interests". Further consideration of this possible drafting point was deferred.

The Sub-Committee agreed that the next meeting should be held jointly with the representatives of Committee V to consider Part B of E/CONF.2/C.5&6/W.1, together with the related proposal in E/CONF.2/C.5&6/W.1/Add.1.
