

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON ARTICLE 93 (RELATIONS WITH NON-MEMBERS)

SUMMARY RECORD OF THE FOURTH MEETING

Held 17 January 1948 at 3.00 p.m.

Chairman: Mr. FORTIOMME (Belgium)

Mr. SHAMMA (Lebanon) stated that the sub-committee had agreed that the Charter represented the maximum amount of advantages a Member might extend to a non-Member. The question now to be decided was the extent of the advantages a Member might receive from a non-Member. Whereas advantages a Member granted to a non-Member had to be given by that Member to all other Members, the situation was not the same in the case of advantages granted by a non-Member to a Member, as a non-Member was not bound by the most-favoured-nation clause in the Charter. The question then arose whether the Charter should prevent the conclusion of a commercial treaty between a Member and a non-Member because a non-Member was under no obligation to extend to all other Members the advantages it granted to the Member concerned. He gave the following example:

State B, a non-Member, and State A, a Member, wish to conclude a commercial treaty which would accord to products coming from State A a rate of tariff being one-half of the rate which State B would levy upon products coming from State A if no such treaty existed, in return for which State A would accord to State B advantages within the scope of the Charter. Would such a treaty be permissible under the provisions of the Charter? The situation might arise in such a case that another state, C, which is also a Member, wishes to import the same product into State B but it has not concluded a commercial treaty with State B which would accord it the lower tariff rate. State B would then be discriminating between States A and C and State C might well feel that it was being injured by this discrimination.

Accordingly, if the criteria of injury to the interests of other Members and discrimination, which had been mentioned at the previous meetings, were to be adopted, commercial relations between Members and non-Members would be excluded for the reason that non-Members would not extend advantages to
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all Members in return only for advantages extended to them by one Member. The Charter would therefore amount to sanctions being provided against the Member which desired to conclude a treaty of the type mentioned above with a non-Member and on the other hand would also provide for sanctions against non-Members. However, it was the general sense of the Sixth Committee that sanctions should not be applied against non-Members. Also the price of membership in the Organization should not be made exorbitant for certain Members which had to carry on commercial relations with non-Members.

It was therefore necessary for the sub-committee to devise a formula to regulate relations between Members and non-Members between the two following limits:

1. Members should not accord to non-Members advantages to a greater extent than they can accord to Members; and
2. There should be no sanctions, either against a Member or a non-Member.

Mr. MARTEN (United Kingdom), referring to the example given by the representative of Lebanon, said that in the draft he had proposed at the last meeting (document E/CONF.2/C.6/W.46) State C would not be entitled to complain that State A had obtained the right to import its products into State B at the lower tariff rate for this would not be an "economic benefit" as specified in that draft. State C would have the opportunity of obtaining the same advantage as State A if it saw fit to enter into negotiations.

Mr. EVANS (United States) agreed with the representative of Lebanon that the price for entering into the Organization should not be made exorbitant for any class of country. All the drafts before the sub-committee took this principle into account. He thought that the sub-committee should at this stage establish the general principles and later it could formulate a draft which would take care of the cases in which the interests of particular Members might be injured.

The CHAIRMAN said that the sub-committee seemed to be in agreement upon the general principle but that the practical problems involved made the formulation of a clear text difficult. He suggested the following draft statement of principle:

"No Member shall accept from a non-Member treatment that can be shown to prejudice the achievement of the purpose and objectives of the Charter or to nullify an advantage another Member can expect to receive under the Charter."

Mr. AUGENTHALER (Czechoslovakia) said that two points were clear - firstly, that a Member should not accord to a non-Member treatment more favourable

favourable than it accorded to other Members; and secondly, a Member should not engage in relations with a non-Member which would prevent other Members from applying the Charter.

He could not agree that a Member should not accept from a non-Member treatment it could not obtain from a Member. This would amount to trying to impose the provisions of the Charter upon non-Members.

Mr. MARTEN (United Kingdom) said that he completely agreed with the idea behind the Chairman's statement of the principle. However, he would prefer to see the statement of principle limited to the nullification of benefits and not extended to prejudice of the achievement of the purpose and objectives of the Charter.

The CHAIRMAN, in reply to the representative of the United Kingdom, said that he had not attempted to formulate specific wording. If his statement of principle proved acceptable, the sub-committee could turn to ascertaining the exact words of the text.

Mr. MACHADO (Cuba) said that he thought the general principle stated by the Chairman should not extend to advantages which were given by a non-Member to a Member by unilateral action and without any request by that Member.

Mr. EVANS (United States) agreed with the representative of Czechoslovakia that no obligation should be imposed upon Members to police the actions of non-Members. He would agree to insert words in the text to be drafted which would ensure this.

Mr. TANGE (Australia) said that he did not think acceptance of the Chairman's statement of principle would advance the sub-committee very far as it would draw it away again from the practical problems before it. The list of objectives set out in Article 1 of the Charter might conflict among themselves; for example, the expansion of international trade might conflict with the elimination of discriminatory treatment.

The CHAIRMAN replied to the representative of Australia that he was well aware of the difficulties he mentioned. However, he had intended the words "which can be shown" in his statement of principle to imply that consultation would take place in the Organization to overcome these difficulties.

Mr. RICHARD (France) said that it would be extremely difficult for Members to refuse advantages offered to them by non-Members. Another aspect of the problem was that of Members which were faced with agreements between non-Members and other Members. The problem was complex and if the provisions of the Charter were too rigid, Members might come to the conclusion that it was easier to deal with non-Members than with Members. He thought that the

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Chairman's statement of principle showed the way in which the sub-committee should proceed.

Mr. POLITIS (Greece) agreed with the Chairman's statement of principle. He thought it was important that the sub-committee should specify a moral code which would be followed.

Mr. AUGENTHALER (Czechoslovakia) said that the Chairman's statement of principle was satisfactory but only so far as it concerned customs duties and taxes. If it went any further, for example, into the field of quotas, it would prove unacceptable.

Mr. KUMLIN (Sweden) said that he thought the principle stated by the Chairman was satisfactory but the statement of it must be clear and unambiguous. However, it contained two subjective qualifications in the phrases "can be shown" and "can expect to receive." He therefore preferred the text of paragraph 1 of Alternative B which contained no qualifications.

Mr. DE GAIFFIER (Belgium) thought there was a wide measure of agreement upon the following points:

1. that the Organization could not impose its will upon non-Members;
2. that a Member can accept advantages extended to it by a non-Member by unilateral action and not upon the request of that Member; and
3. the actions of Members towards non-Members must be disciplined to some extent. They should not be able to accept advantages which would be detrimental to the interests of other Members.
