

SIXTH COMMITTEE: ORGANIZATION

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

NOTES ON FIFTH MEETING

Held 19 January 1948 at 6.00 p.m.

Chairman: Mr. FORTHOMME (Belgium)

Mr. STUCKI (Switzerland), upon the invitation of the Chairman, put three questions to the sub-committee as practical examples illustrating the doubts he had that the Charter should contain provisions regarding the acceptance by Members of advantages from non-Members. These three questions were as follows:

1. Switzerland was a non-Member and was importing considerable quantities of wheat. Wheat exporting countries, with the exception of the United States, had closed their doors to Swiss exports. Accordingly Switzerland, instead of dividing her requirements of wheat equally amongst wheat exporting countries, decided to take a relatively greater share from the United States than from any other country. Could the United States as a Member accept this privilege?
2. Switzerland was a non-Member and had extended credit to neighbouring countries devastated by war. When Switzerland asked for reimbursement one of these countries replied that she could only make reimbursement in merchandise. Switzerland then extended to that country a preferential tariff or a quota in respect of such merchandise. Could that country, a Member, accept such a privilege?
3. Switzerland was a Member and one of her neighbouring countries, for example, Austria, was not a Member. Austria asked Switzerland for a credit and in reply to a query by Switzerland as to how reimbursement was to be made, Austria stated that reimbursement could be made only by deliveries of wood which was in scarce supply throughout Europe. The normal thing for Switzerland to

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do would be to give Austria a preferential tariff on wood, but Switzerland being a Member this could not be done. Accordingly Austria restricted her export of wood, and licensed only exports of wood destined for Switzerland. Would Switzerland have the right to accept this privilege? Mr. Stucki said that, as he understood the various drafts of paragraph 1 which had been submitted to the sub-committee, Switzerland would not be able to accept.

Mr. MARTEN (United Kingdom) said that, in reply to the first question of the representative of Switzerland, he thought that the action Switzerland proposed to take would be permissible under the Charter if the United Kingdom draft of paragraph 1 (see page 4 of document E/CONF.2/C.6/W.46) were accepted for another Member would not be able to argue that it would obtain a larger quota of wheat imports into Switzerland or could expect to obtain such a larger quota if the United States did not accept the greater share offered to it.

The other two questions asked by the representative of Switzerland were special cases in that they concerned the payment of debts. These might be cases where a waiver of obligations should be sought from the Organization.

Regarding the third question asked by the representative of Switzerland he thought that this type of situation could only be settled by all the parties concerned getting together and agreeing on an equitable solution. The principles upon which that settlement should be based should be repayment of the amount owing to Switzerland and the ensuring that all countries neighbours of Austria received minimum quotas of Austrian wood. He thought that the questions posed by the representative of Switzerland were rather complex and the answers he had given were only provisional and subject to consultation with his delegation.

Mr. EVANS (United States) said that he could not at this stage give any final answer to the questions asked by the representative of Switzerland. The representative of the United Kingdom had partially answered these questions but full answers were difficult as the sub-committee had before it several texts. Answers additional to those given by the representative of the United Kingdom might be found in the fact that the provisions of Article 93 should be flexible and in the special provisions made in the Charter for exceptions. He thought that the sub-committee had now made sufficient progress with its discussions of paragraph 1 to enable a working party to be established.

Mr. AUGENTHALER (Czechoslovakia) said that if it were agreed that only customs duties and taxes were to be covered by paragraph 1 a working  
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party might do some useful work. However, if there was no agreement upon this point, he did not see what a working party could do.

Mr. MARTEN (United Kingdom) added a further remark to the answers he had given in his previous statement to the representative of Switzerland. In the second and third cases mentioned by that representative it was to be assumed that the neighbours of Switzerland which were concerned were in balance-of-payments difficulties. The Charter made special provisions to cover such situations.

Mr. STUCKI (Switzerland), replying to the representative of the United Kingdom, emphasized that the cases he had posed were not concerned with the question of what debtor countries could do but with what creditor countries could accept in payment of amounts owing to them. He appreciated fully the position of the representative of Czechoslovakia. However, the whole question concerned not only quotas but also taxes on exports. For example, in the third case he had quoted, Austria might, instead of limiting export licenses on wood to wood destined for Switzerland, impose a tax on the exportation of wood and might in the case of wood destined for Switzerland reduce that tax. This would amount to a measure of discrimination against other Members. Could Switzerland as a Member accept such an advantage?

Mr. DE GAFFIER (Belgium) said that he thought the sub-committee was in agreement upon the following points:

1. The Charter could not impose any obligations on non-Members.
2. The provisions of Article 93 should be flexible so as to allow Members which were creditor countries to accept a privileged treatment although at the same time taking account of the interests of Members. No Member should negotiate with a non-Member with the intention of discriminating against other Members. Each case must be judged on its own merits. The Charter could oblige Members to notify the Organization of negotiations with non-Members and provide for recourse at a later stage to the Organization.

Mr. AUGENTHALER (Czechoslovakia) did not agree with the remarks of the representative of Belgium. It would be most difficult to decide objectively what was the intention of a country. It was also impracticable to ask any sovereign state to submit its actions to the prior approval of the Organization.

The CHAIRMAN summed up the discussion as follows:

1. The provisions of the Charter should guide the actions of Members in their relations with non-Members.

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2. The treatment to be accorded to non-Members should not be punitive in character.

3. The relations between Members and non-Members resolved itself now into a matter of translating practical considerations into principles.

He did not think the time had come to set up a working party on paragraph 1. The sub-committee seemed to him to agree that relations between Members and non-Members should be as far as possible normal commercial relationships. On this basis of this understanding the sub-committee might proceed to a discussion of the principles of paragraph 2 of Alternative B.

Mr. AUGENTHALER (Czechoslovakia) said that at the first meeting of the sub-committee it had been agreed to take Alternative B as a plan of discussion despite the fact that at the Preparatory Committee Alternative A was felt by a majority of countries to be the only basis upon which agreement could be reached. Paragraphs 2 to 5 inclusive of Alternative B were totally unacceptable to his delegation, paragraph 6 of that draft had no place in the Charter and paragraph 7 amounted to an attempt at discrimination. Accordingly, if the sub-committee were to go on to discuss the remaining paragraphs of Alternative B, he did not feel that he could contribute anything to the discussion and therefore asked to be relieved of his membership of the sub-committee.

The CHAIRMAN, in reply to the representative of Czechoslovakia, said that the sub-committee had agreed to use Alternative B as an annotated agenda for its discussions. The debate on paragraph 1 had been exhausted and many drafts had been considered. To give the members of the sub-committee time for further reflection he had thought that the sub-committee could proceed to a discussion of the questions raised in paragraph 2, without prejudice, of course, to the ultimate decisions to be made regarding paragraph 1. The discussion upon paragraph 2 would show whether it would be necessary to proceed to an examination of the remaining paragraphs of Alternative B.

The substance of paragraph 2 of Alternative B was broadly that Members could carry on relations with non-Members subject, however, to the prior approval of the Organization. The drafts before the sub-committee proposed several alternatives to this principle, including the alternative contained in the first part of paragraph 1 of Alternative A.

He did not see that the withdrawal of the representative of Czechoslovakia from membership of the sub-committee would be of benefit  
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either to the Conference or to the delegation of Czechoslovakia. He therefore asked the sub-committee whether the Members wished to adjourn to a date to be fixed later or to proceed to a discussion of the questions raised in paragraph 2 of Alternative B.

Mr. RICHARD (France) suggested that the sub-committee should adjourn for a period of at least two days.

Mr. AUGENWALDER (Czechoslovakia) said that in case his silence during any discussion of the remaining paragraphs of Alternative B, were such a discussion to take place, were to be construed as assent, he wished to make it clear that paragraphs 2 to 7 inclusive of Alternative B were unacceptable to his delegation. The first characteristic of any sovereign state was freedom to conclude international treaties. He therefore could not accept any obligation of consultation by his government with the Organization regarding the conclusion of international treaties.

The CHAIRMAN said that he thought the remarks of the representative of Czechoslovakia showed that it would be possible for the sub-committee to proceed to examine questions raised in paragraph 2 of Alternative B because these remarks amounted to an argument in favour of one of the alternatives to paragraph 2 of Alternative B, namely, paragraph 1 of Alternative A.

Mr. NARAGHI (Iran) said that his delegation could not accept paragraphs 2 to 5 inclusive of Alternative B. He was in favour of the adjournment of the sub-committee for a few days.

It was agreed that in order to give members time for further reflection upon the outcome of the discussions, the sub-committee should adjourn for a period of three to four days. The next meeting would be held when delegates informed the secretary that they were ready to resume discussion.

The CHAIRMAN asked members to consider before they asked for a further meeting of the sub-committee what should be the subjects to be taken up at that meeting. There were three alternative courses of action -- firstly, to consider whether paragraph 1 of Article 93 should be confined to customs duties and taxes only or whether it should go further and cover such matters as quotas, secondly, to continue the discussion of the general principles to be the basis of Article 93, and thirdly, to commence an examination of the questions raised in paragraph 2 of Alternative B.

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