

SIXTH COMMITTEE ORGANIZATION

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

NOTES UPON THE SIXTH MEETING

Held 20 February 1948 at 10.30 a.m.

Chairman: Mr. FORTHOMME (Belgium)

The Sub-Committee adopted the text recently circulated by the delegation of Czechoslovakia as a basis for discussion (see document E/CONF.2/C.6/W.108).

The representative of Czechoslovakia explained that the basic idea of the draft was that each government was responsible only for its own conduct, that Members should behave properly in their mutual relations and that they should not have preferences outside the family of governments which comprised the Organization.

Paragraph 1 of the draft embodied the principle that Members should be free to continue their normal commercial relations with non-Members, this being not only in the interests of Members themselves but also in the interests of promoting the principles of the Charter.

Paragraph 2 expressed the moral principle that Members should not be mischievous, the practical consequences of this being that a Member should not enter into new arrangements with non-Members by which non-Members would be precluded from extending to other Members the benefits of such arrangements. By the use of the word "preclude" it was intended to stress that the action of the Member was put in question and not the decision taken or the means adopted by the non-Member.

Paragraph 4 was a recognition of the conclusion of the League of Nations that the decision as to how far the most-favoured-nation clause could be extended to multilateral treaties had to be left to each particular country.

The recommendations mentioned in paragraph 5 might be of any kind. They might, for example, be aimed at finding a "modus vivendi" with non-Members or they might propose action against non-Members. In this case probably these recommendations would entail changes in the obligations of Members and they should therefore be dealt with in accordance with Article 95.

/The representative

The representative of Argentina welcomed the draft of the delegation of Czechoslovakia as a step forward. He would refer the text to his government and pending the receipt of instructions he reserved his position.

The Sub-Committee then commenced an examination of the draft submitted by the delegation of Czechoslovakia paragraph by paragraph.

Paragraph 1

The representative of Belgium queried whether there was not some conflict between this paragraph and paragraph 2.

After it had been generally agreed that paragraph 1 represented a statement of general principle which was qualified by paragraph 2, the Chairman suggested that so as to ensure that there was not any possibility of conflict the word "however" should be inserted after "recognize" at the commencement of paragraph 2 and that the word "seek" in the first sentence of that paragraph should be changed to "maintain."

The Sub-Committee generally agreed that any conflict between paragraphs 1 and 2 would probably be resolved by insertion of the word "however" as suggested by the Chairman.

The representative of France suggested that the word "preclude" in the English text should be changed to read "prevent" to bring it into conformity with the French text.

The representative of Australia questioned whether Members were to be allowed to maintain all existing commercial treaties with non-Members or only those which were not contrary to the Charter. He suggested that paragraph 1 should be amended so as to read:

"1. Nothing in this Charter shall preclude any Member from concluding or maintaining commercial treaties with non-Members, which in practice do not contravene the principles of the Charter, or from maintaining economic relations with them."

The representative of Iran suggested that the following words should be added to the end of paragraph 1: "if such agreements do not conflict with the provisions of the Charter."

It was agreed that paragraph 1 together with the amendments which had been suggested should be referred to a working party to be established at a later stage.

Paragraph 2

The representative of the United Kingdom suggested that the following words should be inserted at the commencement of the second sentence of paragraph 2: "Subject to the provisions of Chapters IV and VI of the Charter" and that a corresponding amendment should be made to the introductory phrase

/of paragraph 3

of paragraph 3. He explained that his delegation considered the reference to Chapter VI was necessary in view of the fact that conflict might arise between the provisions of Article 93 and Article 57 (1) (c).

The representatives of the United States, Belgium, Czechoslovakia, and Greece doubted whether the proposal of the representative of the United Kingdom was necessary while the representative of Australia thought that some link should be made between Article 93 and Article 57 although he thought that it would be more appropriate to make this link in paragraph 3 rather than in paragraph 2.

The Chairman pointed out that he considered the terms of Article 93 should be clear and precise and that rather than insert such references as "subject to the provisions of Chapter ____" reference should be made to the specific point in mind. He accordingly suggested that no change in the respect suggested by the representative of the United Kingdom should be made in the text of paragraph 2 but that it might be recorded in the report of the Sub-Committee that it was considered no conflict existed between this paragraph and Article 57 (1) (c).

The representative of the United Kingdom stated that he would be prepared to accept the text of paragraph 2 without amendment provided that the following interpretive note was accepted:

"Nothing in this Article shall be construed to prejudice or prevent the operation of the provisions of Article 57 (1) regarding the treatment to be accorded to non-participating countries under the terms of a commodity control agreement which conforms to the requirements of Chapter VI."

It was agreed that this text should be considered at the next meeting and that a decision should then be taken whether it should form the text of an interpretive note or of a paragraph in the report of the Sub-Committee. In the latter case a recommendation might also be made that the text should be included in the report of the Sixth Committee itself.

The representative of China asked the three following questions:

- (a) Was it the intention to exclude existing arrangements inconsistent with the provisions of paragraph 2 from Article 93;
- (b) Would a new arrangement conforming to the provisions of the first sentence of paragraph 2 but inconsistent with the provisions of the second sentence, or vice versa, be permitted; and
- (c) Would recourse to the procedures set forth in Chapter VIII be permitted in the case of differences arising from Article 93.

The Chairman, replying to the representative of China, stated that the working party would consider the first question asked by him, that it would

/not seem

not seem that the two sentences of paragraph 2 were meant to be independent but that the working party might consider whether there was any ambiguity between them and make provision accordingly, and that he thought the right of complaint under the procedures set forth in Chapter VIII was unlimited.

It was agreed that before the next meeting the Secretary would circulate all the amendments which had been suggested to the draft adopted as a basis of discussion in the hope that when these amendments had been seen in writing and had been discussed it might not be necessary to establish a working party.