

SIXTH COMMITTEE: ORGANIZATION

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

NOTES ON THE EIGHTH MEETING

Held 26 February 1948 at 2.30 p.m.

Chairman: Mr. FORTHOMME (Belgium)

The Sub-Committee examined the amendments presented to the draft adopted as a basis of discussion (see documents E/CONF.2/C.6/W.112/Rev.1 and E/CONF.2/C.6/W.112/Rev.1/Corr.1).

Amendments to Paragraph 1

After discussion it was agreed that the word "preclude" in the English text should be retained.

The representative of Australia presented the following redraft of his amendment:

"Nothing in this Charter shall be deemed to preclude any Member from concluding or maintaining with non-Members commercial treaties which do not contravene the provisions of this Charter, nor from maintaining economic relations with non-Members."

He suggested that in view of the absence of the representative of Czechoslovakia and the inability of that representative to comment upon his proposal, an alternative version of the amendment which would be acceptable to him would be to redraft the paragraph as follows:

"Nothing in this Charter shall preclude any Member from maintaining economic relations with non-Members."

The representatives of Greece, France, Iran, Sweden, Italy and the United Kingdom preferred the original text of paragraph 1. The representatives of Belgium and Lebanon supported the first of the two alternative amendments suggested by the representative of Australia whilst the representative of the United States expressed favour of the second of these alternatives. The representative of Cuba said the first alternative would be acceptable to him provided that the words "in practice" should be inserted between "which do" and "not contravene".

/The Chairman asked

The Chairman asked the representatives who had supported the original text whether or not they did so on the understanding that this text meant that Members parties to existing treaties contrary to the provisions of the Charter could maintain those treaties, at the same time pointing out that most of such treaties would in all probability not be inconsistent with the Charter.

The representative of the United Kingdom replied that his delegation considered that it could not accept the Charter and at the same time maintain existing treaties conflicting with its provisions. However, the Members themselves would have to decide whether or not a conflict existed and if so, what action they would take, subject, of course, to the procedures of Chapter VIII.

The Chairman then closed the discussion on paragraph 1 on the understanding that a working party to be set up would consider the draft further.

Paragraph 2

The Chairman suggested that to meet the difficulty encountered in paragraph 1 the first sentence of paragraph 2 should be redrafted as follows: "Members recognize that it would be inconsistent with the intent of this Charter that any arrangement with non-Members should be for the purpose of obtaining other Members." He made this suggestion in view of the fact that the use of the word "seek" in the first sentence and the words "any new arrangement" in the second sentence gave the impression that it was intended to exclude existing treaties from Article 93.

The interpretive note suggested by the delegation of the United Kingdom was accepted although it was agreed that this should be a note to paragraph 1 rather than to paragraph 2 and that the need for such a note to paragraph 3 would be ascertained when the new text of that paragraph had been drafted.

The Chairman's suggestion to amend paragraph 2 was referred to the working party.

The representative of the United States, commenting upon the amendment suggested by the representative of Lebanon, said that paragraph 2 as it was drafted was very narrow in that firstly it was limited to new arrangements and secondly the intention was that such arrangements must by their terms exclude another Member from their benefits. Any such arrangement would, to his mind, therefore clearly violate a moral obligation under the Charter if it did not violate the actual provisions of paragraph 1.

The representative of Lebanon said that he would consider his proposal further and reserved the right to raise it again at a later stage. The

/representative of

representative of the United Kingdom suggested that the following note to paragraph 2 should be inserted in the report of the Sub-Committee and in the report of the Sixth Committee:

"The Sub-Committee understands that, in general, the second sentence of paragraph 2 applies to treaties or agreements which, by their terms, preclude the extension to other Members of the benefits provided for in such treaties or agreements. This interpretation does not rule out the possibility that, when a Member wilfully accomplishes the same result by other means, the second sentence should be held to apply."

It was agreed that this note should be circulated to representatives and discussed in the working party and later in the Sub-Committee.

Paragraph 3

Upon the representative of the United States expressing his preference for the original text, the representative of France withdrew his redraft of this paragraph, stating that he had proposed it only as a means of avoiding other difficulties encountered in the Sub-Committee.

The representative of Lebanon made a similar reservation to his amendment to this paragraph as the one which he had entered regarding his amendment to paragraph 1.

The Sub-Committee accepted the addition of the word "materially" before the word "injures" suggested by the representative of the United Kingdom. The addition of the word "economic" before "interests" was also accepted temporarily. The representative of Cuba suggested that this addition should be of the word "commercial" rather than "economic" and it was noted that this suggestion might be raised again at a later stage if the representative of Cuba wished.

The suggestion by the representative of Iran was referred to the working party.

Paragraph 4

The representative of Australia withdrew his suggestion.

Paragraph 5

The suggestion by the representative of Cuba was accepted.

The CHAIRMAN said that the interpretive note suggested by the representative of Iran contained considerations which, from the whole text of Article 93, it was clear should be in the mind of the Executive Board when making its recommendations pursuant to paragraph 5. He therefore considered that it would be appropriate to record the substance of this

/suggestion in the

suggestion in the report of the Sub-Committee rather than in an interpretive note.

The representative of Iran said that if all members of the Sub-Committee were of this opinion and agreed to record it in the report, he would not insist upon having an interpretive note. The Sub-Committee agreed with this opinion and to the course of action suggested by the Chairman.

The suggestion by the representative of Lebanon that Article 93 should provide for a transitional period was held over pending the report of the working party.

A working party consisting of the representative of Australia, Belgium, Cuba, Iran, Lebanon, Sweden, the United Kingdom and the United States was then established to redraft Article 93 upon the basis of the draft suggested by the delegation of Czechoslovakia and in the light of the amendments submitted thereto.
