

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE III

SUMMARY RECORD OF MEETINGS

Fourth Meeting
held on 30 October 1946 at 3.0 p.m.

CHAIRMAN: MR. DIETERLIN (FRANCE)

DISCUSSION OF SUGGESTED REDRAFT OF ARTICLE 34 OF THE UNITED
STATES DRAFT CHARTER

Mr. MCGREGOR (Canada) introduced the redraft which he said was based upon Article 34 of the United States Charter, but which incorporated amendments suggested by various members. He referred to the following significant points of differences between Article 34 as originally drafted and as set out in the redraft:-

1. The phrase "Whenever such practices have harmful effects on the expansion of production and trade ... real income" corresponded to the phrase "Which thus have the effect of frustrating the purpose of the Organization ... real income in Article 34 (1) as originally drafted. Most members would probably agree that these words represented a better criterion.
2. Article 34 (2) of the Charter had established a prime facie presumption that certain stated practices "have the effect of frustrating the purpose of the Organization". The redraft did not maintain this presumption but had retained the list of practices as those which might be regarded as harmful.
3. The words in paragraph 2 of the redraft "If they appear to have such harmful effects" represented a compromise between "are capable of having harmful effects" and "appear likely to have harmful effects". He would have preferred the latter alternative.

4. Some members favoured the retention of the word "service" mentioned in Article 34(2)(a) of the Charter whilst others thought it should be abandoned. It had been retained in the redraft but exceptions might need to be specified when Article 40 was discussed. He thought the redraft would be acceptable to most members and moved that it be adopted as a basis for discussion.

Mr. WILCOX (United States) welcomed the redraft as in some respects a great improvement upon the original. He made the following points which he regarded as of great importance:-

1. The wording of Article 34(1) of the Charter involved a judgment on the practices which had the effect of frustrating the purpose of the Organization. The redraft was an improvement in this respect because it implied that certain practices sometimes had and sometimes did not have harmful effects, this being a matter for determination.
2. The *prima facie* presumption contained in Article 34(2) of the Charter had been included in order that greater pressure would be placed upon enterprises against whom a complaint had been lodged to appear and discharge the onus of proof thrown upon them. The United States delegation would prefer to see this presumption retained.

In these two respects the redraft represented a substantial softening of the provisions of the Charter. He agreed with the first change he had mentioned but not with the second. However, if the second change will lead to the securing of an agreed text, he would not press his objection. Finally he mentioned that he would prefer the wording "Appear likely to have such harmful effects" as the final phrase of paragraph 2 of the redraft.

Mr. ELSTAD (Norway) supported paragraph 1 of the redraft. Regarding paragraph 2 he maintained that it should be the task of the Organization to investigate whether practices were harmful whenever complaints were lodged.

Mr HOLMES (United Kingdom) stated that he would need time to consider the redraft but he could say already that he regarded it as a great improvement. He made the following observations:-

1. He sympathized with Mr. ELSTAD's remarks which he thought were based upon the desire to see in the Charter a provision that any legitimate complaint would be investigated.

2. Regarding the phrase "shall be subject to investigation effects" which concluded paragraph 2 of the redraft, it should be stated to whom the appearance had to be given.

3. It would be more in line with the Charter to omit the word "service" in paragraph 3(a) of the redraft and substitute therefor the word "goods".

4. He was not entirely satisfied with the phrase "one or more commercial enterprises" in paragraph 2(b) of the redraft.

5. He would have to reserve his position regarding the definition of public commercial enterprises in paragraph 2(a) of the redraft.

Mr. HAKIM (Lebanon) thought that it should be stated by whom investigation was to be undertaken. Also he thought that paragraphs 1 and 2 of the redraft were defective in that whereas the former spoke of measures to prevent restrictive practices and the latter of investigation, there was no mention of what might follow from an investigation. He therefore suggested that the last part of paragraph 2 should read "shall, if they appear to have such harmful effects, be subject to investigation by the Organization (and its members) which shall take appropriate decisions".

The CHAIRMAN explained to Mr. HAKIM that it was not possible to give final form to Article 34 at the present time. This could only be done after the remaining Articles of Chapter V had been considered.

Mr. MULHERKAR (India) preferred Article 34 of the Charter to the redraft. He did not agree with paragraph 2 of the latter because he thought it should not be left to a complainant to allege some practice was harmful, unless proven otherwise in a particular case.

He found no evidence in the redraft that his previous contention in favour of mentioning services, such as banking and shipping, had been considered. In due course he would introduce an amendment to give effect to this contention.

Certain exceptions to Chapter V were set out in Article 40 of the Charter. When this Article was considered, India would press for deletion of some of these exceptions as conflicting with the practices listed in Article 34.

Mr. LEENDERTZ (Netherlands) thought that the redraft was a valuable contribution to the Committee's work. However, he would require time to consider it. His preliminary thoughts were:-

1. The expansion of production was not an absolute objective and therefore the word "useful" should be inserted before the phrase "expansion of production" in paragraph 1.
2. The expansion of production and trade might not necessarily lead to the maintenance of high levels of real income. Therefore it would probably be better to rephrase the last part of paragraph 1 to read "whenever such practices by their influence on expansion of production and trade and the maintenance in all countries of high levels of real income produce harmful effects".

The CHAIRMAN invited members to submit observations in writing on the redraft to the Secretariat. He proposed the appointment of a sub-committee to study the remaining Articles of Chapter V of the Charter and asked that members not represented on the sub-committee should submit their observations in writing for study by the sub-committee. He proposed the following as members of the sub-committee:

Mr. WILCOX (United States)
Mr. McGREGOR (Canada)
Mr. HOLMES (United Kingdom)
Mr. THILTGES (Belgium)
Mr. LEENDERTZ (Netherlands)
Mr. MULHERKAR (India)
Mr. DIETERLIN (France) as Chairman of Committee III.

This proposal was accepted. The Chairman announced that a suggested amendment to Article 40 of the United States Draft Charter had been submitted by the Chilean delegation, and would be passed to the sub-committee for attention. He also announced an addition to the Agenda submitted by the Brazilian delegation.

In connection with the Brazilian delegation's proposal, the Chairman stated that the concern behind the proposal related to the objectives of the Conference as a whole. He pointed out that in paragraph 1 of the redraft the phrase "the maintenance in all countries of high levels of real income" expressly paid attention to this concern. He asked whether, in view of this, the Brazilian delegate would wish the Committee to devote a special part of its discussion to this question. He could assure the Brazilian delegate that the Committee would not lose sight of this question.

In view of the Chairman's statement and his assurance the Brazilian delegate agreed that the Committee would not need to devote a particular part of its discussions to a consideration of his proposal.

It was agreed the first meeting of the sub-committee should be held at 3.0 p.m. on Thursday, 31 October.

The Chairman thought that it would be unnecessary to call a further meeting of the Committee, until the sub-committee had completed its work. If the necessity arose, he would call a full meeting of the Committee at an earlier date.

The meeting rose at 5.20 p.m.
