

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at the Capitol, Havana, Cuba
Friday, 2 January 1948 at 10.30 a.m.

Chairman: Mr. Erik COLBAN (Norway)

The CHAIRMAN opened the meeting with the announcement that the representative of Switzerland had declined the chairmanship of the sub-committee on Chapter VIII; he therefore invited the Canadian delegate to accept that post. This was agreed.

CONSIDERATION OF ARTICLE 93

The CHAIRMAN called attention to the three Alternatives A, B, and C which had been included in the Draft Charter in the nature of working papers, and to the versions submitted by Belgium and Australia. He suggested that delegates take due regard of the various types of non-Member countries in the discussion.

Mr. AUGENTHALER (Czechoslovakia) saw the essence of the problem involved in Article 93 in the question whether the Organization should be empowered to request any Member to withhold the benefits of the Charter from a non-Member. In practice that would mean that if the Member had concluded a commercial treaty with a non-Member, the Organization could request the Member to terminate the treaty. That was a very serious matter inasmuch as most normal commercial treaties were reciprocally bilateral and the Member denouncing the treaty would not only take certain advantages away from the non-Member, but would himself lose other advantages in that country. It would depend on the individual case who would be hurt more in the ensuing customs war, the Member complying with the Organization's requirements, or the non-Member. In the League of Nations, provision had been made for mutual support of Member nations in the case of economic or financial sanctions being imposed on some country, but the present Charter contained no provisions that a Member applying discriminatory treatment against a non-Member and faced with economic difficulties would be supported by other Members.

Economic conflicts between nations might prove to be worse than diplomatic breaks and could easily lead to situations envisaged in Articles 34 and 35 of the United Nations Charter. Since economic conflicts might easily
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spread to other fields, the granting to the Organization of the right to impose sanctions would mean that Members joining it would not only have to surrender part of their sovereignty but possibly also the complete direction of their own foreign affairs. The Organization might thus become an offensive weapon of international politics.

His delegation felt that such a possibility would effectively prevent many countries from joining up with the Organization which would then become an association of countries in conflict with the rest of the world - the very opposite of the United Nations' aim. It would be in the interest of the Organization itself, therefore, if the Charter contained only provisions which left it to the discretion of the Members themselves to decide on their relations with non-Members.

Mr. de GAFFIER (Belgium) asked to defer the presentation of his delegation's version of Article 93 until later, when other speakers would have been heard, and in view of the complexity of the matter.

Mr. HOLMES (United Kingdom) called attention to the fact that a number of countries had not accepted the invitation to the Havana Conference and presumably would remain outside the Organization, and further, that one country was ineligible for membership under a United Nations resolution. In view of those facts, or strong probabilities, his delegation felt that it was essential that Article 93 should avoid committing Members in advance to a pre-determined mode of conduct with non-Members. The Organization as well as its Members should be left free to settle each particular case on its individual merits. On the other hand, it would be necessary to ensure that Members would not conduct their trade with non-Members in a way substantially injurious to other Members or contrary to the Organization's objectives. If a text were adopted granting benefits only to non-Members without imposing obligations on them, it would offer them no inducement to join up.

Some flexible control measures should therefore remain to govern the relations between Members and non-Members de jure or de facto. Alternative C was unduly rigid and involved a scrutiny on a purely theoretical basis, requiring the termination of existing agreements with non-Members even if in practice no injury to any Member was involved and international trade would only have benefited. It would discourage a number of countries from joining the Organization and possibly provoke unnecessary conflicts, as the Czechoslovak representative had said. Alternative A, on the other hand, seemed to be too loosely conceived. It would permit Members to suspend all provisions of the Charter subject only to their possible withdrawal from the Organization at its request. There would be no inducement for anybody to join up under such a rule, and in fact it would put a premium upon non-Membership, ensuring all the benefits of the Charter to countries escaping all its obligations.

/His delegation

His delegation favoured, for the reasons stated, Alternative B which would leave sufficient discretion to the Organization to decide disputes in the light of the interests of the affected Members and the implications to the Charter's objectives. The Belgian text, based on Alternative B, was a further improvement over the Geneva text in that it took account of de facto as well as de jure situations, but his delegation had felt that certain other clarifications should be made and would submit a new draft for Article 93 based on Alternative B, the Belgian text and the Australian proposal.

The first paragraph of Alternative C would be better than the corresponding text of the Belgian version, being more precise in the definition of "exclusive and preferential advantages". Another modification would ensure the settlement of such questions as much as possible on the basis of practical and specific rather than of theoretical considerations.

The Australian proposal had met with his delegation's general approval except that its second paragraph was again based on a theoretical comparison of agreements between Members and non-Members with the provisions of the Charter rather than on the practical aspects of whether any injury to a Member or the Charter's objectives was involved.

The new draft text would also incorporate sufficient inducements for countries outside the Organization to join it. In the first place, the discretionary judgment reserved to the Organization would tend to make a non-Member feel less secure in the enjoyment of the advantages of an agreement with a Member; and in the second place, a Member would have a continuing guarantee of most-favoured-nation treatment at the hands of all other Members. Bilateral arrangements, which could be terminated at the Members's own discretion, could not safely be enjoyed by non-Members. Alternative C had been considered holding out the most definite inducements in that respect, but it would accomplish that only at the risk of creating a split between Members and non-Members.

Alternative B, as proposed to be amended by his delegation, would provide for definite inducements for adherence to the Organization such as were absent from Alternative A while at the same time avoiding the risks of conflict inherent in Alternative C.

Mr. KUMLIN (Sweden) stated that no alternative, such as B or C, would be acceptable to his delegation which might imply an obligation to discriminate against non-Members. He hoped the Organization would become universal, and his country had always favoured and supported universalism in the fields of international co-operation and trade. It was necessary, however, to consider the situation as it obtained today, and that meant facing the fact that a number of countries were not prepared to enter into the Organization, regardless of any decisions taken at the Conference. The question then was

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how international economic co-operation could best be advanced, particularly in Europe where some kind of economic modus vivendi was being sought. It would serve no useful purpose to introduce a set of rules leading ultimately to the exercise of discriminatory practices by one group of countries against another.

Mr. SEIDENFADEN (Denmark) stated that since his country had always based her economic policy on the most-favoured-nations principle, it would be very difficult for her to change in that respect to non-Members of the Organization. There would be no problem if an almost complete adherence to the Organization could be counted upon, but the Soviet Union had not accepted the invitation to Havana and could not be expected to become a Member in the near future. That fact was bound to create difficult problems for Europe where a co-operation between East and West was not only desirable but had become in many respects a necessity; no such co-operation could, however, be expected if Members were bound to a commercial policy of discrimination against non-Members.

He believed that Members would insist on obtaining compensations for their concessions to non-Members equal to those obtained from Members, and thus non-Members were unlikely to gain advantages over Members. On the other hand, if non-Members were precluded from obtaining concessions at all, serious difficulties were bound to arise. His delegation considered the first paragraph of Alternative A as a reasonable basis for the solution of the problem, which would also ensure that non-Members did not gain advantages which Members did not enjoy; but his delegation would be unable to accept anything else, such as Alternatives B or C, in the event that it was considered necessary to retain Article 93 at all.

Mr. MONDELLO (Italy) considered the provisions of Article 93 the keystone to the whole Charter, inasmuch as it involved not only economic problems but also psychological and political considerations. The matter was of great importance for his country. Italy was surrounded by certain countries not represented at the Conference with whose economies her own was closely linked by traditional channels of foreign trade. If the Charter placed those countries in a state of permanent inferiority as compared with Member countries, a most serious political situation would ensue, prejudicial to the economies of all parties concerned. The resulting economic pressure furthermore would certainly not be an inducement to their adhering to the Organization, but on the contrary cause their prolonged abstention. While that situation was true for Italy, it would also be valid for other countries, and the great powers would have to bear the responsibility for the consequences of instability and economic upset resulting from such provisions.

/In the event

In the event of countries withdrawing from the Organization, everything should be done to make it possible and desirable for them to shorten the period of their abstention and to facilitate their re-entering the Organization. In his view, the positive advantages of adhering to the Organization should be the decisive factor, not the disadvantages of staying outside of it.

His delegation had found that all texts embodied general juridical criteria for the settlement of difficulties in the relation between Members and non-Members, for example: Alternative A, paragraphs 2 and 3, referred to "legitimate interests". There was no self-evident method of satisfying these criteria. Accordingly, he felt it would be better to rewrite Article 93 so that it would not be subject to doubtful interpretations. Only two points should be covered. There should not be any unjustified incompatibility with the provisions of the Charter, and there should not be in any case unjust damage to other Members.

Mr. RICHARD (France) recalled that no final text had been arrived at in Geneva, because not only economic but political questions were involved, and because it was not known which countries would eventually join the Organization. That situation had not changed, and nobody could foresee the list of Member countries before the last reading of the Charter until which time decisions should be deferred. At first, the United States Government had been inspired by the idea not to grant any tariff concessions to any country refusing to become a Member or withdrawing from the Organization. The avowed objective had been to induce all countries to adhere to the Charter, if they did not want to be relegated to an inferior place in world trade. That plan would have had the great difficulty of making all Members revise their commercial relations with non-Members and would have completely upset international trade if important countries had elected to remain outside the Organization.

Alternative A would permit the continuance of trade relations between Members and non-Members if such trade could be proven to be indispensable for the Member's interests, but would thereby create a separate and privileged class within the Organization. Alternative C provided for the supervision of the Organization over agreements between Members and non-Members and it would be left to the Members to define the provisions of the Charter as they applied to a given case. Alternative B took a position in the middle, allowed existing treaties to continue, and provided for the submission to the Organization of questionable cases.

The Belgian proposal was a definite improvement over the alternatives inasmuch as it did not provide for the automatic presentation for the Organization's approval of all agreements, but only of those in which a Member complained that he was injured. While his delegation shared the wish of others

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in seeing all countries becoming Members, the Belgian text nevertheless contained probably the maximum to which Members would be willing to subscribe. There was no point in forcing Members to denounce agreements with non-Members embodying the most-favoured-nations clause when maintaining those agreements would not mean trouble for anybody.

His delegation favoured the Belgian text as a compromise solution of practical value, but more study of the subject was needed, particularly in view of the grave implications of certain representatives' speeches that it might be necessary to eliminate Article 93 altogether.

Mr. FEDRANO (Argentina) suggested that no punitive measures should be provided against the non-Members. Unity was the aim, and no provisions should be adopted which would tend to foster division in the world. As to the Argentinian point of view in the matter, he would reserve his delegation's position until a later stage of the debate when other provisions would become known.

Mr. COOMBS (Australia) said that it was still impossible to foresee which countries would be Members. No state could, therefore, make any commitments or decisions about important trade relations with countries which might, for various reasons, elect to remain outside the Organization. At the present time, certain Members had close trade relations with countries not represented at the Conference, and Members should not be faced with the alternative of either withdrawing from the Organization or denouncing their obligations.

He then quoted from his delegation's proposal and hoped that by the time the second session of the Conference of the Organization was held the situation would have been clarified and a study of the relations between Members and non-Members would have given concrete results by which to judge and to formulate decisions in the full light of the real facts.

Mr. DJEBBARA (Syria) noted that, of the seven Arab countries, two were not represented at the Conference. While he could not foresee whether Saudi Arabia and Yemen would later join the Organization or not, in the latter case a most difficult situation would arise if restrictions or sanctions had to be imposed against non-Members. Despite the "not unlimited" economic resources of those two countries, major moral and ideological problems were involved which would prevent the Arab states from taking any such measures against them.

The objective, as he saw it, was to prevent non-Members being treated more favourably than Members. Advantages under the Charter should not be made automatically applicable to non-Members, but the only limitation to granting them should be that they should not be greater than those granted to Members, and that nothing be contained in them which would be injurious to Members.

/Mr. AUGENTHALER

Mr. AUGENTHALER (Czechoslovakia) observed that the Committee would be misunderstanding his delegation's position if it was considered opposing Article 93 because of Czechoslovak trade relations with the Soviet Union. No special privileges had been granted to the Soviet Union by his country, and the same multilateral and most-favoured-nation agreements had been signed as with other nations. His delegation was concerned with the principle only and would not undertake obligations of any kind which might lead to economic conflicts.

He felt that the text of paragraph 4 of the Belgian proposal made Members responsible for situations resulting from the actions of non-Members although the Organization obviously had no rights over non-Members.

Referring to the Australian proposal, that only the future Organization would decide if and what kind of obligations should be included in the Charter, he said that according to a provision in paragraph 1 of Article 97, a Member could withdraw after the expiration of three years from the entry into force of the Charter. The matter should be decided here and now, as the decision might be of vital importance to many countries.

Mr. POLITIS (Greece) emphasized that three considerations should guide the wording of Article 93. (1) The problem of relations between Members and non-Members was both of an economic and political nature, and political situations could change. For that reason it was necessary to distinguish between those non-Members who could not become Members, those who did not wish to do so, and those who had not yet made up their minds. (2) A different treatment had to be accorded Members and non-Members because onerous obligations would have to be shouldered particularly by smaller countries, thus justifying their being placed on another footing. (3) In the practical consideration of relations between Members and non-Members, there were two possibilities: (a) Existing trade relations should be respected unless grave violations of the Charter were involved, and (b) new trade agreements should be left to the discretion of the contracting parties if they were simple and easy, but if they implied violations of the Charter, then the previous approval of the Organization should be mandatory. If a Member felt himself aggrieved, he should have recourse to the Organization.

Mr. COOMBS (Australia) replied to the Czechoslovak representative that in the case referred to by him, paragraph 3 of the Australian amendment provided for the adoption of the final rules of Article 93 in accordance with the provisions of Article 95, for the adoption of Amendments to the Charter. Paragraph 2 of Article 95 provided for the withdrawal within six months of any Member not accepting an Amendment, even if it had been adopted by a two-thirds majority. Thus, it was not a question of three years, but of
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practically immediate withdrawal, inasmuch as the Member disagreeing with the Amendment would not enforce it at all, and be bound for the ensuing six months only in regard to the other obligations of the Charter.

Mr. de GAIFFIER (Belgium) approved the principle of consultation with the Organization on questions of relations of Members with non-Members, where the interests of a Member were unduly injured by such relations.

Mr. PACHACHI (Iraq) said that in order to attain the Charter aims of expansion of trade and economic development a "club" had been formed for the mutual benefit of the Members; some countries, however, for reasons of their own - not necessarily in conflict with the interests of the Organization might not join the Organization. Relations between Members and non-Members might possibly benefit all the members of that "club". In case that relationship injured the interests of a third Member, it would be necessary to weigh the injury against the benefits accrued by the other Member from its economic relationship with the non-Member.

The temporary injury to a Member might be found to be offset by the long-term benefits in the attainment of the Organization's purposes. A Member forced, upon complaint to the Organization, to withdraw privileges from a non-Member, might weigh the advantages of membership against the benefits of its relationship with a non-Member, and in case the latter outweighed the former, would withdraw from the Organization.

The aim of Article 93, however, was not only to further the aims of the Organization, but to induce non-Members to join. Freedom of relationship of Members with non-Members might not always be to the advantage of non-Members since it permitted Members to apply sanctions against the latter as well as to derive benefits from their relationship with them.

The political "whirlwind" should not be permitted to upset the Organization's work. In the light of those considerations it would be better for the Charter to give Members greater freedom in their relationships with non-Members. There was consequently no need for provisions that prior arrangements should be cancelled or revised - unless they were extremely injurious to other Members - nor should Members having such arrangements with non-Members be forced to extend similar privileges to other Members.

Mr. MACHADO (Cuba) could not express his views on such a difficult matter without prior consultation with his government. His country was ready to join the Organization because the benefits derived from membership of it outweighed the necessary limitations of sovereignty. The price of membership should not be too high, however, forcing Members to break old and important trade relationships with certain countries. The provisions of Article 93 should not be too far-reaching in view of the early stage of the Organization's development.

development. The Australian proposal had its advantages; he therefore favoured a simple text for Article 93 setting down the general difference in benefits to be derived from the Charter by Members and non-Members. The question of application of sanctions to countries which failed without good reason to join the Organization could be postponed until a later Conference. Thus a transition period would be obtained between the signing of the Charter and the application of sanctions, during which Members would be able to review their own trade relations.

Mr. STINEBOWER (United States) considered that provisions was needed in the Charter to determine the relationship between Members and non-Members.

With regard to the assertion that it was largely a political problem he agreed with the representative of Czechoslovakia, that the matter should be judged on its own merit. He wished to make three points: (1) It was necessary to assure that Members would and could carry out the obligations of Chapter IX. Some speakers had already agreed that it was necessary to have a provision to include Members to affording to some non-Members better treatment than to other Members. (2) The question of discrimination by non-members in favour of one Member to the detriment of another Member arose at times as a purely economic problem. He mentioned a case where one country had granted the Most Favoured Nation Rate to the United States; yet in seeking trade preferences relationship in third markets, it prevented the latter from entering into a Most Favoured Nation Treaty with the United States. (3) As regards the "high price of membership", mentioned by the representative of Cuba, he pointed out that on the other hand there should be no premium on staying outside of the Organization.

The Australian proposal provided no settlement of the difficult, but not insuperable problem. An attempt should be made to reach an agreement acceptable to all.

Mr. NARAGHI (Iran), in view of the special position of his country, found Alternative A less objectionable to its legitimate economic interests and supported the Pakistan amendment.

The CHAIRMAN suggested the appointment of a sub-committee composed of the representatives of Argentina, Australia, Belgium, Cuba, China, Czechoslovakia, France, Greece, Italy, Lebanon, Iran, Sweden, United Kingdom and United States. This suggestion was accepted.

ARTICLE 94

The CHAIRMAN, referring to pages 24 and 25 of the annotated draft agenda, explained that the representative of Australia had made certain reservations in Geneva regarding the interpretation of the text of Article 94,
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paragraph (b) (ii). The Australian representative wished the Committee to confirm his interpretation of the text which had been accepted in Geneva.

Mr. SOOMBS (Australia) explained that in view of its experience prior to the second World War, his country considered that the words "military establishment" in Article 94, paragraph (b) sub-paragraph (ii) should imply military establishments of the Member as well as those of other countries. The Preparatory Committee had accepted his interpretation and had agreed that the same sub-paragraph included raw materials.

Mr. DJEBARRA (Syria) felt that such an important provision should be put into very explicit terms in view of the political and security questions involved.

The CHAIRMAN, considering the text satisfactory, suggested that after the words "directly or indirectly" the phrase "regulating the supply of the national or foreign military establishments" might be substituted for the rest of the sentence.

Mr. PACHACHI (Iraq) proposed the addition of the following paragraph (d): "to prevent any Member from taking any action in respect of trade which serves a political purpose contrary to the essential interests of that Member". The amendment not only covered the points brought up by the representative of Australia but also concerned other materials which might be used for political purposes, outside or within a Member country, against the latter's interests. He would give a fuller explanation of his amendment at the following meeting.

The CHAIRMAN stated that the discussion would be continued at the next meeting.

Mr. STINEBOWER (United States) pointed out that the Fifth Committee had decided that the United States amendment to Article 67 should later be reconsidered in the light of the discussion of Article 94 by the Sixth Committee.

Mr. AUGENTHALER (Czechoslovakia) pointed out that the sub-committee on Article 16 had received an amendment from the delegation of Czechoslovakia providing that nothing in the Charter would be interpreted as over-riding the economic provisions in the peace treaties and special regimes of the United Nations - having in mind the special territory of Trieste.