

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUMMARY RECORD OF FIFTH MEETING

Held at the Capitol, Havana, Cuba,  
Saturday, 10 January 1948 at 3.00 p.m.

Chairman: Mr. A. J. van VELDEN (South Africa)

DISCUSSION OF THE REPORT OF SUB-COMMITTEE A of the FOURTH COMMITTEE  
(document E/CONF.2/C.4/5)

The CHAIRMAN called upon the Chairman of the Sub-Committee to introduce the Report.

Mr. LOPEZ ALCAR (Mexico) said that the atmosphere of the Sub-Committee had been one of mutual understanding. A considerable number of delegates who were not members had been present at the meetings, and their points of view and reservations had been mentioned in the Report. The Secretariat had already taken note of various typographical errors appearing particularly in Article 45, paragraphs 5 and 7.

It was agreed that the first eight paragraphs should be adopted without further discussion.

1. GENERAL COMMENTS

The CHAIRMAN stated that the points of divergence regarding the three principles listed in paragraph 9, were dealt with in paragraphs 10, 11 and 12.  
Paragraph 10

Mr. MAHADEVA (Ceylon) said that the amendment presented by his delegation came under this paragraph, but it overlapped the amendment by the Norwegian delegation. He therefore reserved his position on Chapter V and particularly on Article 50, pending the final disposal of the new Article 18A proposed in another Chapter.

Mr. KUMLIN (Sweden) reserved his position in regard to Article 50, pending final decision on the Norwegian delegation's proposal to insert a new Article 18A in the Charter.

Mr. CAMPS (Argentina) said his delegation had proposed the deletion of Article 50, taking into account the situation of state agencies which in each country directed monetary and credit services. Based on the fact that  
/essential services

essential services were national, the same freedom of action as that given to official organs such as the Central Bank, would have to be extended to all state organs with analogous powers, and action by a Bank might be considered a restrictive practice because it went against the principle of autodetermination. Insisting on this point of view, he said his delegation would formulate a special reservation.

Mr. LECUYER (France) maintained his reservation in regard to Article 50, pending final decision on the Norwegian delegation's proposal to insert a new Article 18A in the Charter.

Mr. KHAN (Pakistan) reserved his position on Chapter V and particularly on Article 50 pending the final disposal of the new Article 18A proposed in another Chapter.

Mr. HURTADO (Venezuela) maintained his reservation on Chapter V and particularly on Article 50 pending the final disposal of the new Article 18A proposed in another Chapter.

The CHAIRMAN said that the reservations emphasized by Members would be included in the Committee's Report to the Plenary Session of the Conference.

Paragraph 11

Mr. CAMPS (Argentina) said that it was harmful to the self-determination and sovereignty of a state for its organs to be judged by an international body.

2. SPECIFIC COMMENTS

Article 44 - Paragraph 1

It was proposed by Mr. BANERJI (India), and agreed, that the comma after "measures" should be deleted.

Mr. de VRIES (Netherlands) asked what was the difference between the word "co-operate" in this paragraph, and "assist" as used in paragraph 1 of Article 47.

Mr. TERRILL (United States of America) believed there was no substantive difference in the wording, but it would be inappropriate to use the word "assistance" in Article 44 (1) considering its wide scope and the full co-operation it envisaged.

The representative of the NETHERLANDS wondered, in view of the explanation by the representative of the UNITED STATES, if the last sentence of Article 47 (1) was necessary.

Mr. MCGREGOR (Canada) said that it was desirable that Members should oblige themselves to assist the Organization in preventing the practices envisaged in Article 47 (1).

Mr. HAUSWIRTH (Switzerland) asked for an explanation of the exact scope and extent of the words "harmful effects". This would determine his position regarding paragraph 1 as a whole.

/Mr. MCGREGOR (Canada)

Mr. MCGREGOR (Canada) said that when the Chapter was first introduced, "harmful effects" were not mentioned, but any restrictive practices listed in 44 (3) were to be regarded as per se offences. Violent opposition had been met in London, as it was considered that some of these could be carried out to the detriment of the public. It was difficult to list offences in advance, and the ITO could decide on each case as it arose. A desirable flexibility was attained by the use of the term "harmful effects".

Mr. TERRILL (United States) called the question of the representative of Switzerland a "loaded question". He believed the definition of the term "harmful effects" lay in the text of Article 44, paragraphs 1, 2 and 3. It would be impossible a priori to formulate a definition of what was a harmful practice. When actual cases occurred, a consensus would very soon develop on precise issues.

Mr. THILIGES (Belgium) said certain practices should not be condemned in themselves. It was necessary to look at paragraph 1 as a whole. He agreed with the United States representative that the application of the terms of the Chapter would define the "harmful practices" more clearly. If the term could be read in conjunction with the definition of "decisions", the Belgian delegation would have no difficulty in adopting the text as it stood.

The representative of SWITZERLAND said he would mention to his delegation the useful explanations given by the representatives of CANADA, UNITED STATES OF AMERICA AND BELGIUM.

Paragraph 1 was taken as read, and approved by the Committee.

Paragraph 2

Mr. TERRILL (United States) corrected the Secretariat draft of his previous amendment under "specific Comments", paragraph 14, beginning "This interpretation...", to read: "It is clear that if a Member's exports or imports of a product are a negligibly small proportion of international trade, business practices of firms under that member's jurisdiction in respect of this product could not be subject to complaint."

Mr. MA (China) suggested that the first words of paragraph 2 should be amended to read: "For the implementation of paragraph 1 of this Article...", but receiving no support, he withdrew his amendment.

Paragraph 2 was taken as read, and approved by the Committee.

Paragraph 3

In answer to a question by the representative of the NETHERLANDS regarding sub-paragraph (g), Mr. TERRILL (United States) said that the word "organization" throughout the Chapter referred to the General Conference. The Conference could not delegate power to the Executive Board to take a /decision when it

decision when it was specific that a two-third majority of the Members present and voting were required. Article 74 was relevant to the subject. Mr. CAMPS (Argentina) drew attention to the amendment by Belgium and Argentina to the French text, where "determine" should be substituted for "particulaires" as the last word could be interpreted as meaning "private". This should be recorded in the minutes.

Mr. RAUF (Afghanistan) drew attention to a typographical error in Item 17 under 2, Specific Comments. "...a Member's economic recovery" should read: "...a Member's economy".

This would be corrected in the Report.

Mr. ABELLO (Philippines) referred to an amendment by Greece to paragraph 3 (a). In the Philippines there were at least two enterprises owned and controlled by the government which in practice fixed price terms or conditions to be observed in dealing with two important export products. The purpose was not to raise money for the government but to stabilize prices so that producers would be fairly treated. This arrangement was no doubt within the meaning of "public, governmental or commercial interests", but he asked if Chapter V would make it possible for a government to guarantee fair prices, or if this was a restrictive business practice within the meaning of Article 44.

Mr. MUNOZ (Chile), replying to the representative of the Philippines, said he would find clarification of the points raised by him in Article 54 (c) of Chapter VI.

The CHAIRMAN pointed out that certain other aspects of the problem were extensively discussed in Sub-Committee, and it was decided to incorporate paragraph 14 in the specific comments of the Sub-Committee's Report in order to clarify matters.

Mr. PAPATSONIS (Greece), referring to the amendment submitted by his delegation, considered that the points raised by that amendment had been fully met by the various changes which had been made throughout the text and by the explanations regarding the Report of the Sub-Committee furnished by the representative of the United States of America.

Paragraph 3 was approved.

The CHAIRMAN said that paragraph 4 had been transferred to a new Article 51, and would therefore be dealt with later.

Article 45

Approved without comment.

Article 45A - Paragraph 1

Mr. MONTEIRO DE BARROS (Brazil) requested clarification of the word "affected" in the opening sentence of that paragraph in the interest of any future interpretation which might be given to that word. The text of paragraph 1 as at present drafted might lead members to think that proof

/had to be

had to be submitted to the Organization that a certain practice was harmful before a complaint submitted by such a member could be dealt with by the Organization. He did not believe that that was the intention of the drafters of the text.

Mr. THILTGES (Belgium) said the point raised by the representative of Brazil was closely linked to a problem which had already been discussed at some length. Article 45A, paragraph 5, provided that a member who submitted a complaint regarding certain practices must also submit some concrete proof as to the nature and harmful effect of those practices. It would not be sufficient for such an affected member to say that in a certain case harmful practices were being carried out.

Referring to the procedure to be followed regarding enquiries to be made after a complaint had been lodged, Mr. Thiltges said that provision had been made not only for cases in which such practices existed but also for those cases in which such practices were about to be carried out.

The Sub-Committee was opposed in principle to enquiries being made when the possibility alone of harmful business practices was in question. General agreement had been reached on that point, although certain delegations felt that prevention was better than cure.

The question as to which practices might necessarily have harmful effects was a very difficult one. Emphasis had been laid on the meaning of the word "affected", and in that connection Article 45A should be read as a whole. It was clearly laid down in that Article that prior proof of a business practice being harmful was necessary before any action was taken by the ITO.

Mr. TERRILL (United States), referring to the Geneva draft of Article 45, said the words "affected member" and "affected business enterprise" were specified in order to prevent third party complaints.

Paragraph 1 was approved.

Paragraphs 2, 3 and 4

Approved without comment.

Paragraph 5

The CHAIRMAN pointed out that the word "the" should be inserted after the word "whether" in the second line of paragraph 5 and that the word "are" should be inserted between the words "or" and "about" in the third line.

Paragraph 5 was approved

Paragraph 6

The CHAIRMAN, replying to a point raised by the representative of the NETHERLANDS, regarding the word "decision", said that, in the opinion of the  
/chair, that word

chair, that word had been intentionally omitted from the wording of Article 51, paragraph 2 (d).

Mr. McINTOSH (United Kingdom) said the Sub-Committee had spent a great deal of time discussing the implications of the word "decided". It had become clear in the discussions that that word had two meanings in English and Spanish, and the Sub-Committee definitely made a distinction between the word "decision" as used in Articles 44, 45 and 47, and its usage in paragraphs 3 and 4 of Article 45A.

Mr. McGREGOR (Canada) pointed out that the word "reasons" should be substituted for the word "reason" on the second line of paragraph 6.

Mr. LECUYER (France) suggested that the French text should be redrafted to read:

"L'Organisation fera connaitre a tous les Etats membres ses constatations et les éléments de constatation qui les notivent."

Paragraph 6 was approved.

Paragraph 7

The CHAIRMAN said that at the top of page 13 the words "in question" should be substituted for the words "complained of", and the word "the" should be inserted before the word "practices". He drew attention to the note which appeared in paragraph 19 on page 6 elucidating certain points which arose in connection with paragraph 7.

Mr. THILIGES (Belgium) called attention to a typographical error in the penultimate line of the French text.

Mr. de VRIES (Netherlands) asked for information regarding the proviso in paragraph 7. Any Government which accepted responsibility under the provisions of that paragraph would wish to follow the procedure laid down in Chapter VIII.

Mr. McINTOSH (United Kingdom) said that the proviso in paragraph 7 had been drafted much earlier than the remainder of the Chapter. It had been drafted at a time when the scope of the chapter in regard to governmental action was the subject of a great deal of discussion and certain differences of opinion. The Sub-Committee reached near unanimity on the subject of the scope of Chapter V in relation to governmental action and a number of amendments were drafted, in particular those contained in the articles on interpretation. He felt that the proviso in paragraph 7 required further study, and reserved the right to speak to the amendment embodied in that paragraph at the next meeting of the Fourth Committee.

After a brief discussion in which the representatives of the

/NETHERLANDS

NETHERLANDS and BELGIUM took part, the CHAIRMAN said that there was not necessarily any contradiction between the texts of Article 45A and Article 51. Paragraph 1 of Article 45A provided that a complaint might be presented by a member and did not specify any further procedure to be followed under that Article. The discussion on Article 45A would be resumed at the following meeting.

The meeting rose at 5.30 p.m.

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