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FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUMMARY RECORD OF THE SEVENTH MEETING

Held at the Capitol, Havana, Cuba,
Tuesday, 13 January 1948 at 10.30 a.m.

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

THE REPORT OF THE WORKING PARTY IN RESPECT OF ARTICLE 48.

(document E/CONF.2/C.4/9).

Mr. McGREGOR (Canada) pointed out that the heading had been changed to "co-operative Remedial Arrangements" to reflect better the element of co-operation which was the subject of the Article.

The phrase "within their respective jurisdictions" was incorporated to meet the point raised by the representative of BRAZIL. The whole redraft had been discussed with some of the delegates who were non-members of the Working Party, and as he believed it was now satisfactory he moved its adoption.

Mr. LOPEZ ALCAR (Mexico) pointed out that (1) co-operation should be requested voluntarily by the country which initiated the remedial measures; (2) measures taken by co-operating members should be only within their own jurisdictions; (3) it was important that only those countries having a direct interest should co-operate in the remedial arrangements; (4) no interference which might bring about conflict should be tolerated; (5) prior notification was essential. The redraft partly covered these points.

Mr. TERRILL (United States) agreed with the representative of Mexico. He submitted a note, covering the points mentioned, for inclusion in the Report to the Plenary Session.

Mr. ALVAREZ (Colombia) supported the new draft of the Article, and the phraseology of the note proposed by the representative of the United States of America.

Mr. IGONET (France) said that as it was necessary that a third party, directly concerned in the co-operation, should not be left out of any concerted action through which it might suffer injury, suggested that paragraph 2 should be amended to read "... or any action in which they intend to participate".

/In reply to a

In reply to a question by the representative of MEXICO, he explained that under the present draft, members might take preliminary measures before notifying the Organization.

Mr. TERRILL (United States) said there were a number of difficulties in the use of the word "intention" and the obligation to report such intention. The word had therefore been deleted by the Working Party. If the proposal of the representative of France were adopted, it might be possible for one country to notify the Organization that it intended to co-operate, and the second country might be put in an embarrassing position if it refused to accept the offer of co-operation.

Mr. IGONET (France) maintained his reservation. It would be contrary to the spirit of co-operation in the Charter if two countries could take action without a third country having an opportunity to express its views.

The CHAIRMAN believed the intention of the Working Party in which France had participated, had been to remove any doubts on that point.

Mr. McGREGOR (Canada) said it was important to avoid requiring Members to give notice every time they wanted to consult informally, but if the negotiations materialized, the Organization should be informed of the action taken. It should know in a general way everything that was transpiring.

Mr. McINTOSH (United Kingdom) said that, as the representative of the United States of America had pointed out, there was a danger in imposing on members the obligation to announce their intentions. Under Paragraph 2 of the draft, members would be obliged to inform the Organization at the very outset and at every stage of any action. Therefore, in spite of the fact that he had previously held the same views as those of the representative of FRANCE regarding the concept of intention, he supported the draft as it stood.

Mr. NIAZI (Egypt) suggested a modification of the text in order to cover the point raised by the representative of France.

Mr. IGONET (France) preferred the redrafting of the second paragraph which he had previously proposed, which would not prevent any countries from having informal discussions beforehand, but would oblige them to inform the Organization before practical measures were formulated.

Mr. BANERJI (India) agreed with the representative of the United Kingdom that the wording "keep the Organization informed" did imply that the information would be supplied from the outset, but with the representative of the United States of America, he believed that it was difficult in such a document to determine the exact point of "intention". The points raised by the representatives of Egypt and France should be added to the explanatory note proposed by the United States.

/Mr. GELDERMAN

Mr. GELDERMAN (Netherlands) proposed that "co-operative action" should be amended to read "co-operation".

Mr. LOPEZ ALCAR (Mexico) did not agree with the CHAIRMAN that the note proposed by the United States covered his first point. Either the note should be amplified, or his point should be covered in a supplement to the Article.

The CHAIRMAN did not think it permissible to introduce at that stage a principle foreign to the main idea underlying the Article, and pointed out that the present draft was a compromise between the points of view of MEXICO and FRANCE.

Mr. HEIDENSTAM (Sweden) supported the representative of FRANCE.

Mr. IGONET (France) pointed out that the scope of the United States Note would be changed if the word "affected" were changed to "concerned with" or "interested in".

It was agreed that the word should be changed to "interested in".

Mr. TERRILL (United States) pointed out that the question regarding the words "interested in" had arisen in connection with Chapter VI, in which there was provision for the formation of study groups and those to be notified would be those "directly interested". Everyone could say they were "interested". There was no obligation for any member to co-operate with any other member if he did not choose to do so. This had been brought out in Article 48.

The CHAIRMAN said the remarks of the representative of the United States would be embodied in the Report of the Committee for additional clarification. In reply to a statement by the representative of FRANCE, he said that the Article implicitly supported the point of view of the representative of the United States, and any change in principle should have been submitted as an amendment.

It was suggested by the CHAIRMAN that the last sentence of Paragraph 2 of the Article should be amended to read "...action in which they agree to participate" to remove the uncertainty in regard to the principle of "intention" and to eliminate the danger of certain members would be left in ignorance of the actions of other members.

The representative of FRANCE agreed that this amendment would be an improvement. The obligation to inform the Organization should be prior to the action, although following the agreement to undertake this action.

Mr. McINTOSH (United Kingdom) proposed that paragraph 2 should be amended to read: "Members shall keep the Organization informed of any decisions to participate in any such co-operative action and of any measures taken".

/It was agreed that,

It was agreed that, as this amendment covered the points raised by FRANCE, EGYPT, the NETHERLANDS and INDIA, it should be adopted.

It was agreed that the following note, proposed by the UNITED STATES OF AMERICA and amended by FRANCE should be included in the Report of the Fourth Committee to the Plenary Session of the Conference:

"It was the intention of the Fourth Committee that the co-operative action permitted under Article 48, paragraph 1, should be entirely voluntary and that this Article should not be construed as implying any obligation upon members in this respect. The Committee was also of the opinion that the parties to such co-operative action should be those members directly interested in any particular instance of restrictive business practices."

Article 48 was taken as read and approved by the Committee with the note as adopted.

Article 49

Mr. HURTADO (Venezuela) pointed out that the French text read; "to avoid commercial monopoly or restraint and freedom of trade", while the English text included neither the word "commercial" nor "freedom". The Spanish text followed the English in this respect.

The CHAIRMAN said it was a matter of making the texts consistent.

Mr. IGONET (France) did not think the word "commerciaux" should be deleted. It had been used in other parts of the Charter as a complementary term, and prevented ambiguity, although in the case of Chapter V any monopoly mentioned obviously meant a commercial monopoly.

It was agreed that the word "liberté" should be deleted from the French text, but that the Drafting Committee should decide whether "commerciaux" should be deleted, or "commercial" inserted in the English text.

Article 49 was taken as read and approved by the Committee.

Article 50 - Special Procedures with Respect to Services

Paragraph 1

Mr. ROWE (Southern Rhodesia), referring to the words "harmful effects" in the fifth line of paragraph 1, said that the word "effect" only had been used in Articles 44 and 45A, and therefore he questioned why the additional word "harmful" appeared in paragraph 1 of Article 50.

Mr. McGREGOR (Canada) said that where the word "effects" appeared in the first part of Chapter V it did not refer to harmful effects. He felt the word "harmful" might be deleted in paragraph 1 of Article 50 in order to eliminate any possibility of the "effects" mentioned being considered

/as different from

as different from those described in previous Articles.

The CHAIRMAN pointed out that the word "harmful" had been omitted in Article 45A in order to avoid repetition of words when the meaning of the text was perfectly clear.

Mr. BANERJI (India) felt that there was some difference between paragraph 1, Article 50 and other Articles where the word "harmful" had been deleted, and said his delegation would prefer that word to be retained in paragraph 1.

Mr. TERRILL (United States) suggested that the word "indicated" should replace the word "described" in line 6 of paragraph 1. That would avoid any implication that in paragraph 1 of Article 44 a complete list of "harmful effects" would be found, and would only indicate that at that point certain possibilities of "harmful effects" were foreseen.

Mr. GOMEZ (Guatemala) asked whether the services mentioned in paragraph 1 of Article 50 were the only ones to be considered as the important elements of international trade and, if not, what other types of services might be considered as being on an equal footing with those mentioned. Were only those services having a direct and important link with international trade covered?

Mr. MCINTOSH (United Kingdom) said the list of services in paragraph 1 was not intended to be exhaustive. Replying to the second question raised by the representative of Guatemala, he said that only those services having a direct link with international trade were covered.

Mr. GOMEZ (Guatemala), referring to the monopolistic practices carried out by certain foreign hydro-electric firms on the American continent, said those practices were an obstacle to the achievement of the purposes of the Charter, and especially those mentioned in Article 1 of the Charter. His delegation therefore considered that the word "electric power" should be inserted after the word "telecommunications" in the second line of paragraph 1.

Mr. TENOCO (Costa Rica), referring to a discrepancy in the French and English drafting of paragraph 1, said that the insurance business in Costa Rica was nationalized in 1926. According to the English text the National Insurance Bank of Costa Rica could not be classed as engaging in international trade, but according to the French text it could be so classified. He pointed out that the activities of the Bank in question were purely national.

Mr. THILGES (Belgium) said that in Belgium electricity was considered as a product and not as a service. If it were considered that electricity

/should fall

should fall under the procedure outlined in Article 50 then specific mention should be made of that fact.

In connection with the remarks of the representative of Costa Rica, Mr. Thiltges said that if he were referring only to measures connected with the domestic market of Costa Rica such practices as those carried out by the Insurance Bank of Costa Rica did not come under Article 50.

Mr. IGONET (France) felt that the English draft of paragraph 1 should be accepted as the correct one, and the French draft should be brought into conformity with the English one.

Mr. BARROS (Brazil) supported the point of view expressed by the representative of Belgium. In Brazil, also, electric power was considered as a product. He felt that the English text of paragraph 1 should be accepted as the correct drafting.

Mr. GELDERMAN (Netherlands) considered that the point raised by the representative of Guatemala regarding electric power was covered by paragraph 1 of Article 11.

Mr. THILTGES (Belgium) felt that the procedure provided in the Articles of Chapter V other than Article 50 should be followed when dealing with problems connected with electric power.

Mr. JIMENEZ (El Salvador) supported the remarks of the representative of Guatemala and said that the problem raised by him regarding hydro-electric power had not been covered either by the explanations given by the representative of Belgium or by the representative of Brazil.

Mr. TINCO (Costa Rica) said the explanation given by the representative of Belgium covered the point which he had raised.

The CHAIRMAN said that the words "dans le" should replace the word "du" in the third line of the French text of paragraph 1, in order to bring the French draft into harmony with the English draft.

Referring to the point raised by the representatives of Guatemala and El Salvador, he said it seemed quite clear that electricity was a product which, like other products, could fall within the terms of Chapter V as a whole. As there seemed to be general agreement that electricity was a product and not a service, there was no reason for inserting a special mention of it in Article 50. He felt that the procedure outlined in the other Articles of Chapter V was wider than that laid down in Article 50, so that should action against a firm monopolizing electric power become necessary it would be more effective to take such action under Articles other than Article 50.

Referring to the remarks of the representative of the Netherlands, he felt it would not be wise to mention by name any specific product which could be subjected to the procedure outlined in Chapter V.

/Mr. GOMES (Guatemala)

Mr. GOMEZ (Guatemala) asked that the Report of the Committee and the record of the meeting should include a statement that the services of electric energy were covered by Chapter V.

Mr. McINTOSH (United Kingdom) said he would like to ensure that any reference to electrical services in the minutes or the Report of the Committee should be coupled with a reference to international trade.

Mr. HAUSWIRTH (Switzerland) and Mr. HEIDENSTAM (Sweden) said that as the question of electricity was of vital importance to their countries they would like more time to consider the question.

The CHAIRMAN felt that it was not necessary to defer decision regarding electrical services. Chapter V was designed to cover both products and services, and electric power must be one or the other, and would be covered by the provisions of Chapter V as a whole or by Article 50.

Mr. IGONET (France) said his country was also very interested in the question of electric power as France was not only a producer of such power but also had considerable trade with neighbouring countries in that respect. He felt that electricity should be considered as a product, but that the transportation of electricity should be considered as a service. The Report of the Committee should mention that fact.

Mr. McINTOSH (United Kingdom) supported the suggestion made by the representative of Guatemala that the opinion of the Committee should be recorded as being that the provision of electricity in international trade was covered by Chapter V.

The CHAIRMAN said that the point to be clarified was whether electrical services were covered by Article 50 as distinct from the rest of Chapter V, and what difference there might be between electricity as a commodity and the transportation of electricity as a service.

Mr. HEIDENSTAM (Sweden) agreed with the statement made by the representative of France. Electric power originating in Norway passed through Sweden en route to Denmark, and in that case should be considered as a service.

The CHAIRMAN suggested that the following statement should appear in the Report:

"Whereas electricity itself is to be regarded as a product and would come under the general provisions of Article 44, the transportation of electricity is to be regarded as a service and would be included within the provisions of Article 50."

/Mr. McINTOSH

Mr. MCINTOSH (United Kingdom) asked for clarification of the statement that electricity was to be regarded as a product and its transmission was to be regarded as a service. He had suggested the words "provision of electricity etc." because he did not feel competent to make a distinction between products and services in the case before the Committee. He felt it should be left to the Organization itself to come to a conclusion as the Committee itself was not competent to make a distinction at this time.

Mr. IGONET (France) supported the proposal made by the United Kingdom representative, and felt that members of the Committee should reflect as to whether the matter should be considered further at another meeting, or whether a general statement should be made indicating that Chapter V covered the case of electrical energy and that the Organization would further study the matter.

The CHAIRMAN asked whether the representative of Sweden withdrew his earlier proposal as the representative of France had already done so.

Mr. HEIDENSTAM (Sweden) withdrew the proposal he had made earlier in the meeting.

The CHAIRMAN said that the suggestion made by the representative of the United Kingdom would be mentioned in the Report of the Committee.

Mr. KHAN (Pakistan) said he wished to make a statement to clarify the position of his delegation regarding a reservation which it had made in respect of Chapter V and especially of Article 50. The delegation of Pakistan felt that that Article might hamper the development of the shipping industry in Pakistan which had a long coastline with some good ports. In the past, several attempts had been made by local firms to develop the shipping industry without success because of foreign competition. In Pakistan, foreign concerns owned the shipping industry and natives of Pakistan were only employed in very subordinate positions. Unless Pakistan was allowed free scope to develop its shipping industry economic progress in that country would be seriously hampered. He wished to know whether, under the provisions of Article 50 and of the new Article 18A proposed by the Norwegian delegation, Pakistan would be prevented from taking measures to help its shipping industry.

The meeting rose at 1.15 p.m.