

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUMMARY RECORD OF THE EIGHTH MEETING

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

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

CONSIDERATION OF THE REMAINING PART OF THE REPORT OF THE SUB-COMMITTEE

Article 50

Paragraph 1 (continuation of discussion)

Mr. THAGGARD (Norway), referring to the statement made at the previous meeting by the representative of Pakistan, considered that the Norwegian proposal for a new Article 18A should not be discussed by the Fourth Committee. The Norwegian delegation had no objection to the present drafting of Article 50, but considered that where international services such as transportation, banking, insurance, etc. were concerned, the basic principles contained in the proposed Article 18A should also apply. There was a close link between the proposed new Article and Article 50.

Mr. BANERJI (India), referring to the statement made by the representative of Pakistan, said that the shipping industry was also very important to the economy of India.

The delegation of India took a strong stand in London on the question of the inclusion of services in Chapter V. He considered that the provisions of Article 50 did not in any way prevent the reasonable use by a Member of methods designed to develop its industry, and it had been generally agreed by the Fourth Committee that Chapter V did not condemn business practices per se.

He agreed that neither the Government of India nor the Government of Pakistan could afford to subsidize the shipping industry of their respective countries. Shipping and other forms of transport should be governed by agreements, and he felt that a country would be taking a very doubtful step if it tried to decide the issue unilaterally. The advantage of Article 50 lay in the fact that it provided an opportunity for bringing before world opinion any harmful business practices. He hoped that the representative of Pakistan would accept Article 50 as at present drafted.

/Mr. MAHADEVA (Ceylon),

Mr. MAHADEVA (Ceylon), in pointing out that Ceylon felt bound to expand its industries in order to become independent and to raise the standard of living of its people, asked for clarification of the statement appearing in paragraph 10 on page 3 of the Sub-Committee's report: "the Sub-Committeewishes to emphasize that there is nothing in Article 50 etc." Would a country be infringing any provisions of the Charter if it enacted laws laying down that a substantial percentage of goods transported by sea should be carried in its own ships, or levied a fairly heavy tariff on such goods when carried by foreign shipping?

Mr. NASH (New Zealand) said that the procedure proposed in Article 50 would not have any effect unless the shipping companies concerned were willing that it should have effect. Shipping discrimination could nullify many of the benefits which it was hoped the Charter would provide.

He felt that Articles 25, 50 and 89 were not sufficient to enable effect to be given to the provisions of Article 50, and suggested that Article 89 might be strengthened.

Referring to the new Article 18A proposed by the Norwegian delegation, he said it was too limited in scope to do much good as far as ITO principles were concerned.

A Maritime Conference was shortly to be held in Geneva which would deal with world maritime transportation. A resolution might be submitted by the ITO Conference to the United Nations stating that if any inter-governmental organization in connection with shipping were to be set up, it should be something more than a consultative and advisory body, and should have power to eliminate any discriminatory practices harmful to trade in general.

Mr. MONTEIRO DE BARROS (Brazil) agreed with the remarks of the representative of India. The Charter could not embody very detailed regulations as regards services, especially shipping. The Maritime Conference meeting in Geneva on 17 February would have at its disposal data which would enable it to settle such problems.

The delegation of Brazil understood the position of countries such as Norway, a great part of whose income was derived from shipping. It felt that Article 50 did not give rise to any fears or misgivings, but agreed that its provisions might be strengthened. Article 50 should be maintained in the Charter because it served a useful purpose in that it opened the door to negotiations between the parties concerned.

Should any measures be taken by underdeveloped countries to develop their shipping industries, such measures should not give rise to misgivings on the part of highly industrialized countries with large shipping industries, as the shipping industry was not profitable from the capital investment point of view.

/Mr. PAPATSONIS (Greece)

Mr. PAPAIONIS (Greece) supported the remarks of the representative of Norway as Greece had always followed a policy of non-discrimination where shipping was concerned. He was convinced that it would always be possible to find some preventive measures against the practices mentioned by the representative of Pakistan.

Mr. KHAN (Pakistan) said his delegation appreciated the difficulties which might be experienced by large ship-owning countries if steps were taken to prevent goods being carried in their ships. Underdeveloped countries, however, should have a chance to develop their own shipping industries which were vital to their existence. He emphasized the great distance between the two parts of Pakistan, and pointed out that both Pakistan and India were bounded on the north by mountain ranges. Almost eighty per cent of Pakistan's trade was sea-borne, so that any restriction placed on the development of its shipping industry by either Article 18A or Article 50 would have very serious effects.

After hearing the explanations given by various representatives and after private conversations with the representatives of the United Kingdom and the United States of America, the delegation of Pakistan felt that the position of Pakistan was not seriously affected by Article 50.

The CHAIRMAN, in summing up the discussion on paragraph 1 of Article 50, pointed out that the delegations of Greece and Norway had reserved their position on that Article until the Sub-Committee of the Third Committee dealing with Article 18A had completed its deliberations. That Sub-Committee, however, had now deferred consideration of Article 18A until the Fourth Committee had reached a decision regarding Article 50. As the representative of Pakistan was satisfied with the explanations given in the Fourth Committee, he asked the Committee whether they accepted paragraph 1 of Article 50 as at present drafted. He felt that the precise scope of Article 50 should be left to the interpretation of the ITO, as no definite rule could be laid down by the Conference as to whether complaints such as that which the representative of Pakistan had in mind, could under no circumstances be made.

In answer to a question by the representative of Turkey, the CHAIRMAN pointed out that paragraph 1 excluded any possibility of interference in measures undertaken by a country in the matter of coastal trade.

The delegations of Norway, India, Greece and Pakistan maintained their reservations on Article 50.

Mr. TERRILL (United States of America) said that in accepting any paragraphs of Article 50, it would be without prejudicing the position of his delegation as regards Article 18A.

/Mr. BACKHAUS (Denmark),

Mr. BACKHANS (Denmark), agreeing with the representative of Norway that there was a close connection between this Article and Article 18A, 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. STENSTROM (Sweden) maintained his reservation as stated previously.

Mr. LECUYER (France) maintained his reservation as previously stated, but stressed that France wanted freedom of navigation to be emphasized in Article 50.

Mr. GELDERMAN (Netherlands) said his acceptance of any part of Article 50 should not prejudice his position with regard to Article 18A.

Mr. McINTOSH (United Kingdom) said he accepted Article 50 as a workable compromise, and made no formal reservation, but if the discussion on Article 18A took an entirely new trend, it might be necessary to raise the question of Article 50 at the Plenary Session.

Mr. HURTADO (Venezuela) maintained his reservation on Article 50, as stated previously.

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

Paragraph 2

Mr. JIMENEZ (El Salvador) pointed out that the small nations were at the mercy of the navigation companies. Under other articles, such as 17 which dealt with practices that might injure commerce, definite sanctions were permitted, but the present Article allowed only for "sympathetic consideration" to be given. The wording should be stronger; "must" might replace "shall" in the second sentence. Smaller nations must be safeguarded.

The CHAIRMAN said that the point of view of the representative of El Salvador, as well as the contrary opinion, had been taken into account in the framing of paragraph 2, and it would be difficult to alter the underlying principle of the Article at this stage.

Mr. JIMENEZ (El Salvador) reserved his right to consider this important matter further and present the views of his delegation at the Plenary Session to which the Fourth Committee would report. He wished paragraphs 2, 3 and 4 to be included in the reservation.

Mr. ALVAREZ (Colombia) said the wording and scope of the Article were very important, and the first paragraph in particular was vague. Services of maritime transportation were an important element of international trade and the nebulous provisions in paragraph 2 would be inadequate if a controversy were to arise on the activity of a maritime transportation company. It was not clear what were restrictive business practices in maritime affairs. "...substantial elements of international trade" should
/be limited and made

be limited and made more unequivocal. He reserved his right to present a statement when these points had been clarified.

The CHAIRMAN said that the statements by the representatives of El Salvador and Colombia proved that difficulties would arise if the Article were made more specific. Cases would inevitably come up which were not covered by its provisions.

Mr. RAUF (Afghanistan) supported every effort made to strengthen the Article.

Mr. TERRILL (United States of America), in answer to a question by the representative of Turkey regarding certain discrepancies in the wording, said that when a certain practice was about to have harmful effects, it meant that a threat existed, and if so, a member's interests might be seriously prejudiced. It was therefore wholly unnecessary to extend the verb "are" as in the first sentence of paragraph 2: "restrictive business practices... which have or are about to have such harmful effects".

The sense of the meeting was as stated by the representative of the United States of America.

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

Paragraph 3

Taken as read and approved by the Committee.

Paragraph 4

Taken as read and approved by the Committee.

Mr. CAMPS (Argentina) maintained his reservation on this Article as previously stated.

Article 51

Paragraph 1

Mr. FER (Turkey) inquired if Article 89 and 90 could be applied in cases of complaint in the application of Chapter V.

Mr. McINTOSH (United Kingdom) said his interpretation was that any complaint in respect of a restrictive business practice of the type mentioned in Chapter V would have to go through the investigation procedures of that Chapter. Where a particular detailed procedure was laid down, that was obviously the proper one to follow. There would be a special commission of experts in the field of restrictive practices to handle that type of case, and it would be for them to carry out the investigation. The wording of the second paragraph of Article 44 regarding conditions under Articles 45A and 47, gave support to that view, "only" being implicit after the word "investigation".

Mr. THILIGES (Belgium) endorsed the statement by the representative of the United Kingdom. A specific procedure should be resorted to before the general procedures of Article 89, but having recourse to the provisions of the latter article should not be precluded, if a Member were not

satisfied with the former procedure.

Mr. BANERJI (India) agreed on the applicability of the specific procedure provided under Article 45A and other parts of the Chapter before resorting to Articles 89 and 90. Article 51 drew attention to the other provisions of the Chapter, and pointed out that when interpreting Chapter V, due regard must be given to other provisions which did not necessarily come under Chapter V. It would depend on the member to decide whether to approach the problem through Chapter V or other parts of the Chapter, or under Articles 89 and 90.

Mr. DUNAWAY (Liberia) said that the last sentence of Article 50 (1) confirmed the statements of previous speakers.

Mr. MONTEIRO DE BARROS (Brazil) agreed with the representative of Belgium insofar as restrictive business practices in merchandise were concerned, Articles 45A and 47 could be referred to in such cases. But regarding services, the procedures in paragraphs 2, 3 and 4 of Article 50 did not come under Article 89. The last sentence in Article 50 (1) made this impossible.

Mr. ALVAREZ (Colombia) supported the opinion of the representative of Belgium. When the possibilities of Chapter V were exhausted, Article 89 should be applied. That Article would not be a safeguard from a legal point of view if it were not to be applied generally and in every case, and there was an imperious need to increase its scope in order to avoid any conflict which might arise regarding this type of business practice.

Mr. McINTOSH (United Kingdom) stated that the use of the word "only" added nothing new to the condition under the Geneva Draft. Paragraph 3 made specific provision for a situation in which consultation did not produce a satisfactory settlement; the use of Article 89 was thus excluded. He proposed that a recommendation should be made to the Sixth Committee to study the relation of Article 89 to Chapter V. That Committee might see fit to make some clarifying amendment to Chapter VIII which could be considered by the Fourth Committee. A decision from the latter as to the position considered desirable might be of help to the former.

Mr. BANERJI (India) did not think the implications put on the word "only" were correct. An important principle had been raised. Articles 89 and 90 should apply to the question of services.

Mr. TERRILL (United States of America) supported the interpretation of the representative of Brazil. In Article 50 the ITO was entering a field that might be covered by other specialized agencies and this would be dangerous. The matter might also be brought to the attention of the Sixth Committee.

/Mr. GELDERMAN (Netherlands)

Mr. GELDERMAN (Netherlands) supported the representative of the United States.

Mr. ALVAREZ (Colombia) believed that Article 89 should be employed in the second instance in all types of conflicts. Article 89 made no distinction between jurisdiction and scope. Committee VI might bring about the co-ordination of fundamental ideas.

Mr. THILIGES (Belgium) pointed out that the proposal made to the Sixth Committee should bear more on the substance than on the terminology of the Articles.

Mr. MONTEIRO DE BARROS (Brazil) did not think that the draft as it stood would allow Article 89 to be invoked as regards services, but agreed with the representative of Belgium that the problem was one of substance and not of drafting.

The representative of India supported the representatives of Belgium and Brazil, but saw the force of the arguments of the representatives of the United States of America and the United Kingdom. The matter of substance should be considered further, before referring it to the Sixth Committee.

After the representative of New Zealand had questioned the necessity of including the words "specifically permitted" in the text of the fourth line, it was decided to discuss the paragraph at greater length before referring the matter to the Sixth Committee.

The meeting rose at 1.22 p.m.
