

SUB-COMMITTEE I OF COMMITTEE SIX AND JOINT
SUB-COMMITTEE OF COMMITTEES V AND VI

Working Paper Prepared by the Secretariat

A. Sub-Committee I of Committee Six

The terms of reference of the Sub-Committee I of Committee Six, composed of representatives of Australia, Costa Rica, Czechoslovakia, Guatemala, Iraq, India, Pakistan, South Africa, United Kingdom and United States, are to examine all amendments proposed to Article 94. For the functions of Sub-Committee I of Committee Six concerning the proposal to exclude from Chapter VI inter-governmental commodity agreements relating to national security, see Section B. Set out hereunder are the amendments presented to Article 94: "General Exceptions":

1. Amendments relating to parts of Article 94

Paragraph (a) No amendments.

Paragraph (b) (1) No amendments.

Paragraph (b) (ii)

The delegation of Australia makes the following comment:

"It appears to the delegation of Australia that, in view of the importance of paragraph (b) (ii) of Article 94 the intention of the Preparatory Committee in this regard should be made perfectly clear.

"Doubts are felt as to whether the words "for the purpose of supplying a military establishment" are sufficiently explicit without interpretative comment. These words, it is considered, are capable of being interpreted as applying merely to a military establishment maintained or controlled by a Member country imposing a restriction on exports. It may, however, be necessary to consider whether a particular product or products are intended for use by a military establishment maintained or controlled by another country. For example, before the last war Australia found it necessary to prohibit the export of iron ore to a particular foreign country for the reason that it was being used for military purposes and that the Australian product might be used in military action against Australia. Events proved that this action was fully justified. It is therefore suggested that this Conference should approve the interpretation of 94 (b) (ii) that the words "a military establishment" include such establishments maintained by any other
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country as well as those maintained by the member itself and that this interpretation should be included in the records of the Conference.

"Again, in the course of the Geneva Conference the delegation of Australia questioned whether the wording of Article 94 (b) (ii) could be interpreted as applying to any goods and materials and in particular raw materials used for the production of goods for military purposes. It was agreed that this was the intention of the provision and the inclusion of the words "directly or indirectly" was accepted by the Conference. This amendment partly met the Australian delegation's viewpoint, but a reservation was maintained on this sub-paragraph pending further consideration. It is now suggested that this Conference should endorse the interpretation approved at Geneva, that this sub-paragraph covers raw materials such as iron ore (the example mentioned above) or any other goods or materials used directly or indirectly for military purposes and that this endorsement should be included in the records.

"If the suggestions embodied in paragraphs 2 and 3 above are approved and suitably recorded the delegation of Australia will be in a position to withdraw its reservation to Article 94 (b) (ii)."

Paragraph (b) (iii)

The delegation of Egypt has withdrawn the proposed amendments to paragraph (b) sub-division (iii).

Proposed new Paragraph between Paragraphs (b) and (c)

The delegation of India proposed to add a new paragraph (c) between the present paragraphs (b) and (c), reading as follows:

"(c) to require any Member to extend the benefits of the Charter to any other Member with which it is unable, without detriment to its essential interests, to maintain trade relations, or..."

The delegation of India explains that this amendment is intended to cover the special situation existing between India and South Africa.

Paragraph (c): No amendments.

2. Proposed additions of new Paragraph (d) at the end of Article 94

(a) The delegation of Iraq suggests the addition of a new paragraph to Article 94, reading as follows:

"(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."

(b) The delegation of Costa Rica proposes to add the following two paragraphs at the end of Article 94:

"(d) to prevent any Member from readjusting its customs tariffs, where such duties are based on the weight, quantity or measurement
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of articles imported and not on their value, and when such readjustment is made necessary by a legal devaluation of the currency of the importer."

"(e) to oblige any Member to abolish existing monopolies established in favour of the State or of its dependent organs, or legislative provisions granting the State the sole right to purchase, sell, produce or distribute certain articles or to provide certain services."

(c) The delegation of India proposes to add a new paragraph at the end of Article 94 reading as follows:

"2. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent states and recognizing the fact that they have long constituted an economic unit, the Members agree that the provisions of the Charter shall not prevent the two countries from entering into special arrangements with respect to the trade between them."

The delegation of India explains that its proposed amendment has been adapted from the corresponding provision in Article XXIV of the General Agreement on Tariffs and Trade.

(d) The delegation of Czechoslovakia proposes to insert a new paragraph 2 to Article 94 reading as follows:

"2. Nothing in this Charter shall override any of the provisions in the treaties of peace between the Allied and Associated powers and the States which were their enemies during the First and the Second World War or any special regimes established by the United Nations for separate territories."

The delegation of Czechoslovakia explained that it suggests the deletion of the words "which may be established between Italy and the Free Territory of Trieste" which appear in the proposal of the delegation of Italy regarding Article 16 (document E/CONF.2/11/Add.18) because the United Nations may establish a special regime not exclusively between Italy and the Free Territory of Trieste, but between Trieste and several other countries.

B. Joint Sub-Committee of Fifth and Sixth Committees

1. Among the amendments presented to Chapter VI was a United States proposal to exclude from the provisions of Chapter VI inter-governmental commodity agreements relating to national security. Sub-Committee 'A' of the Fifth Committee recommended that the decision on this matter might best be taken in connection with the discussion of the related portion of Article 94.

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2. At the Thirteenth Meeting of the Fifth Committee it was agreed that a Joint Sub-Committee with the Sixth Committee would be the best way of dealing with this matter.

The Fifth Committee noted that the Sixth Committee had already established a Sub-Committee on Article 94 suggesting that members of the Fifth Committee could be added if desired and decided to add Fifth Committee representatives from the delegations of the Netherlands, Chile, New Zealand, Denmark and the Philippines to form the Joint Sub-Committee.

3. It was agreed that the Joint Sub-Committee should, with reference to the exception proposed in the amendment submitted to Article 67:

(a) draft an exception for national security in relation to inter-governmental commodity agreements on the basis of the recommendations contained in paragraphs (ii) (a) and (b) on page 9 of the Report of Sub-Committee 'A' of the Fifth Committee (document E/CONF.2/C.5/9), and

(b) recommend regarding the location in the Charter of such an exception.

Note: The relevant extracts from the Report of Sub-Committee 'A' of the Fifth Committee are attached.

4. Details on the discussion in Fifth Committee on this matter are contained in document E/CONF.2/C.5/SR.13.

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ANNEX

EXTRACT FROM THE REPORT OF SUB-COMMITTEE 'A' OF THE FIFTH COMMITTEE

"Regarding the amendment proposed by the delegation of the United States (C.5/3/Add.5), the Sub-Committee reached agreement on the following points:

- (a) That the Charter should be amended to make clear that it was intended to have an exception for action relating to primary commodities as defined in Article 53, taken in concert as well as taken unilaterally, applying to the requirements of national security - whatever way the reference to national security should appropriately be drafted.
- (b) That it was desirable that the exception be drafted as narrowly as possible consistently with achieving adequately the purpose of the exceptions.

(c) That decision as to

- (i) the drafting of the exception, and
- (ii) its location in the Charter

might best be taken in connection with the discussion of the related portion of Article 94, though not necessarily by the Committee responsible for that Article.

(d) That the Sub-Committee should report that the following two texts (shown in square brackets in the Annex) had been before it for discussion

Proposal 1 - the addition of the following sub-paragraph (to Article 67, paragraph 1):

'(e) to any inter-governmental commodity agreement, or any provision in such an agreement, made to meet the essential requirements of national security.'

Proposal 2

(i) The addition of the following sub-paragraph (to Article 67, paragraph 1):

'(e) to any inter-governmental agreement concluded solely for the purpose of the non-commercial accumulation of reserves of primary commodities for military purposes or of the expansion of facilities for the production of such primary commodities:

Provided that any Member, not being a party to such agreement, may bring a complaint that its commercial interests are seriously prejudiced by the operation of the agreement and the Organization, if it so finds, shall request the participating Members to consult with the complaining Member in order to safeguard the latter's commercial interests.'

(ii) The addition of the following new paragraph 2 (to Article 67):

'Any Member accumulating non-commercial reserves of primary commodities for military purposes under an inter-governmental

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agreement, to which paragraph (1) (a) of this Article applies, shall not make arrangements for the commercial liquidation of such reserve stocks in such a way as to injure the commercial interests of producers of the commodities in question, and shall consult with the Organization as to the best means to that end."

Note: In the Thirteenth Meeting of the Fifth Committee it was recorded that the understanding of the Sub-Committee was that the narrow drafting mentioned in its recommendation (b) might include the provision of safeguards.