

FIFTH COMMITTEE: INTER-GOVERNMENTAL COMMODITY AGREEMENTS

SUMMARY RECORD OF THE SIXTH MEETING

Held at Havana, Tuesday, 9 December 1947 at 4.00 p.m.

Chairman: Mr. George HAKIM (Lebanon)

The CHAIRMAN announced that the final edition of the Annotated Agenda had been circulated as document E/CONF.2/C.5/5 and stated that the first reading would proceed to Sections C and D of Chapter VI leaving new amendments to Sections A and B until a subsequent meeting. The first reading of the entire Chapter should be completed this week.

SECTION C - INTER-GOVERNMENTAL COMMODITY CONTROL AGREEMENTS

Article 59 - Circumstances Governing the Use of Commodity Control Agreements

Mr. COREA (Ceylon) proposed the deletion of Article 59 (C.5/3/Add.6) on the grounds that it constituted a further limitation to the adoption of commodity control agreements. While recognizing that there should be certain restrictions, he thought rules should not be adopted which would unduly hamper the possibility of resorting to such agreements. Articles 55 and 56 provided for study groups and conferences; which should be sufficient to ensure that there was need for agreements, and that the difficulties did in fact exist. Article 59 seemed to impose the necessity of a further determination after a study group and conference had been held; this would only delay the establishment of a commodity control agreement.

Mr. PETER (France) did not share the views of the representative of Ceylon. Article 59 should be considered together with all of Chapter VI, and with the Charter as a whole. Chapter VI provided an exception to the provisions of previous Chapters, particularly Chapter IV; it permitted Members, in exceptional circumstances, to use measures otherwise debarred. There was a distinction between inter-governmental commodity agreements in general and commodity control agreements. The former were for the purpose of expanding production or consumption and need not fulfil very strict conditions since they did not constitute an additional barrier to international trade. But the purpose of control agreements was to limit production or trade or to regulate prices and tended to place obstacles to  
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trade, therefore, such an agreement should take place only under specific circumstances. Article 59 was of great importance as it laid down the necessarily rigid conditions under which a commodity control agreement could be used; and it would not unduly delay such agreements when they were necessary.

Mr. USMANI (Pakistan) did not find in Article 59 provision for the use of control agreements in the case of wide fluctuation in the price of a particular commodity. The Article should be more embracing in its scope.

Mr. CAPLAN (United Kingdom) thought the representative of France had explained the background clearly. Secretariat document C.5/1 explained the balance between Articles 58 and 59. Article 59 stated "burdensome surplus has developed, or is expected to develop...." and similarly with the phrase concerning unemployment. The phrase "or is expected to develop" in Article 59 made for greater flexibility. It was recognized that Article 59 prescribed the criteria under which members might take action under Chapter VI as an exception to the General Commercial provisions of the Charter. He referred to the fact that government representatives had proceeded with the drafting of a wheat agreement although there was not a burdensome surplus of wheat nor wide-spread unemployment in wheat production. However, remembering the experience of the 1930's and earlier, there was reason to believe that without inter-governmental agreement the lack of balance in international trade in wheat would later cause a burdensome surplus of wheat to develop.

Chapter VI recognized that co-operation between governments could control extreme price fluctuations. Article 59 was not a delaying procedure, in fact the calling of a commodity conference by the Organization would indicate that difficulties envisaged under Article 59 were anticipated.

Mr. COREA (Ceylon) stressed the importance of Chapter VI procedures to Ceylon and countries with similar economies dependent upon the production of primary commodities. He wanted to avoid placing unnecessary difficulties in the way of commodity control agreements and in his view Article 59 was still unnecessary. His opinion was that after a study group and conference had reached agreement this should be sufficient and the additional step which Article 59 appeared to provide was not necessary.

Mr. SCHWENGER (United States) thought perhaps the wording of paragraph 2 of Article 59 might be clarified. It had not been intended that the force of the Article should be procedural, and suggested that in paragraph 2 the word "shall" might have the significance of "shall have been made". As to the substance of Article 59, it was designed to limit permission for control agreements which were exempt from requirements in /the Chapter

the Chapter on Commercial Policy, to commodity difficulties of a type which by nature would not ordinarily be adjusted through normal commercial processes.

Mr. de VRIES (Netherlands) pointed out that Article 59, paragraph 2, read in conjunction with the first sentence of Article 58, paragraph 6, stated that a determination to enter into a control agreement was made through the Organization, not by it, by consultation and agreement of members substantially interested. His delegation had found this provision a safeguard in that it prevented countries not substantially interested in a commodity from destroying a decision of those who are.

Mr. DUNAWAY (Liberia) asked for an interpretation of the word "substantial".

Mr. JIMENEZ (El Salvador) referred to the use of the word "under-employment". It could be considered from the viewpoint of the number of employed or of the income of the employees. It was important to deal with both unemployment and under-employment which would include the reduction of hours worked, which might lead to insufficient wages.

Mr. PETER (France) noted the different uses of the term "substantial" in Articles 55, 56 and 59. Article 55, fully respecting the sovereign rights of a nation, admitted the right of any Member to say that it was "substantially interested"; the term was thus subjectively used.

Article 56, on the other hand, used the term objectively: "substantial part of world production...." seemed to mean a Member's percentage of the volume of international trade. However, a substantially interested country might have only a very small percentage of the volume of trade. The Sub-Committee might consider the matter of uniformity in the use of this term.

Mr. CAPIAN (United Kingdom) agreed with the suggestion of the representative of France regarding the need for redrafting in connection with the use of "substantial interest".

Mr. JIMENEZ (El Salvador) referred to the doubt felt by some delegations as to the exact meaning of the words "substantially interested." He also considered that the term should be reviewed since there seemed to be a difference between "substantial interests" and the vital interests of one country in a given product. For example, his country could not agree to any delay in procedure should difficult conditions arise in the coffee market; it was necessary to have a procedure enabling rapid measures to be undertaken. The question of "vital interests" was important.

Mr. GANGULI (India) referred to the difficulties that had been experienced in regard to the meaning of the term "unemployment or under-employment". This phrase was meant to include concealed or disguised

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unemployment, which was a characteristic of countries producing primary commodities. On the question of the deletion of Article 59 requested by the representative of Ceylon, he felt that the context of that Article was quite clear. It laid down the conditions in which inter-governmental control agreements might be used.

Mr. COREA (Ceylon) felt that his difficulty would be resolved if the purpose of his amendment could be referred to the special drafting committee, with instructions to consider the wording of Article 59 in relation to Articles 55 and 56. He still believed that some clarification was called for in order to remove any ambiguity regarding the procedure to be followed.

Mr. LACARRA (Mexico) supported the views expressed by the representative of El Salvador, namely, that a distinction should be drawn between the various degrees of interest which countries might have in any basic product. It was impossible for countries which depended almost entirely on trade in one product to have the same position in international life as those which had many other possibilities for trade.

The CHAIRMAN stated that the words "substantially interested" would require careful examination by the Sub-Committee and that something more than drafting changes might be needed.

Mr. CAPTAN (United Kingdom) stated that the United Kingdom, which was one of the principal consumer countries, fully understood the rights of smaller countries which were entirely dependent on a single product for their position in international trade. He wished however to correct any misapprehension which might appear from the discussion. There was no country which was not both producer and consumer; each country was interested in both aspects, although each might have a bias one way or the other. The United Kingdom was vitally concerned in both aspects.

The CHAIRMAN then referred the Committee to the additional sub-paragraph proposed by the delegation of Venezuela.

Mr. OTANEZ (Venezuela) stated that his delegation felt that an omission had been made in the Chapter. Article 59 was strictly limited to agreements falling into two specific groups, while Article 54 (c) referred to international agreements made with a view to moderating pronounced fluctuations in prices. The present wording of Article 59 might make it impossible for any control agreement to be reached in connection with price fluctuations unless these were caused by a burdensome surplus of a primary commodity or by widespread unemployment. Disequilibrium in supply and demand and fluctuation of prices were not always caused by the conditions mentioned in Article 59. There seemed to be some contradiction between Articles 54 (c) and 59. His delegation was fully aware that the authors

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of the Chapter had intended to limit recourse to control agreements in order to avoid any restriction of world trade. The amendment of Venezuela had only one purpose in view, namely, the attainment of one of the most important objectives mentioned in Article 54.

Mr. SCHWENGER (United States) felt that the point raised was one of interpretation, and had been fully dealt with in other parts of Chapter VI.

Mr. PARGA (Colombia) in supporting the views of the representative of Venezuela considered that as the word "only" was used in paragraph 1 the scope of Article 59 should be widened.

Mr. PETER (France) considered this was unnecessary as Article 59 could not be separated from paragraph 2 of Article 58, which stated that control agreements included price regulation.

Mr. CAFLAN (United Kingdom) thought that the amendment was not necessary. He cited the reference to price fluctuation in Article 52 and pointed out that any sound agreement would moderate both long-term and short-term or speculative movements in prices. He stated that the Chapter has a positive approach to commodity agreements and referred to the fact that the use in Article 59 of the phrase "...which in the absence of specific governmental action..." indicated positive action by governments.

Mr. OTANES (Venezuela) stressed that the purpose of the amendment was to attain one of the main objectives outlined in Article 54, namely, to moderate pronounced priced fluctuations; the specific reference to Article 54 was not important if the purpose could be otherwise achieved.

Mr. USMANI (Pakistan) thought that Article 59 should be more explicit. Discussion had clearly shown that a commodity control agreement should be used:

1. when a burdensome surplus of a primary commodity had developed or was expected to develop;
2. in the event of widespread unemployment or under-employment;
3. when wide fluctuations in prices of a primary commodity occurred, and
4. in case of a shortage of a primary commodity.

Article 59 should be enlarged in the light of the discussion and should embrace these conditions.

Mr. de VRIES (Netherlands) agreed with the representatives of Venezuela and Pakistan that the circumstances governing the use of commodity agreements should cover all conditions mentioned in the discussion, but felt that these were already provided for in the Chapter. Serious price fluctuations would accompany the conditions described in Article 59, and were therefore covered. Also under Article 58 (5) it was provided that expansion agreements /were deemed

were deemed not to be control agreements, while under Article 67, agreements relating solely to the equitable distribution of commodities in short supply were excepted from the provisions of Section C.

Mr. USMANI (Pakistan) wished it to be made clear to the Sub-Committee that the question of shortage of a primary commodity and of price fluctuations should be clearly defined in Article 59 so that control agreements could be used in these cases.

Mr. WARWICK SMITH (Australia) recalled that during the London discussions the Australian delegation had supported the same view as those representatives who had spoken today in favour of widening the provisions of Article 59. As a result of those discussions, however, an explanatory note had been included in the report of the First Session of the London Preparatory Committee, to the effect that the question of shortages was adequately covered.

In the opinion of the Australian delegation, the draft agreement which had resulted from the Wheat Conference was a commodity control agreement in the full sense of the word; the Conference had been called in the expectation of the development of a burdensome surplus of wheat, and the draft agreement thus conformed with Article 59.

The problems of a burdensome surplus of a primary commodity and widespread unemployment or under-employment were set forth in Article 59; the omission from that Article of a reference to shortages had already been explained. The Australian delegation had been satisfied at the end of the London meetings that there was nothing in the Draft Charter to prevent the conclusion of a commodity control agreement in circumstances which would justify it. He thought it might be useful, however, to reconsider the wording of the Article in the Sub-Committee.

It was agreed that Article 59 should be referred to the Sub-Committee.  
Article 60 - Additional Principles Governing Commodity Control Agreements

After a short discussion, it was agreed that the Sub-Committee should consider the desirability of incorporating in the text of this Article the first provision of the footnote (regarding "reasonable prices").

Mr. PETER (France), whose delegation had been instrumental in securing the inclusion of the second provision of the footnote, suggested it be withdrawn, on the grounds that the position of countries which were important producers and consumers of a commodity and yet did not have a large share in the international trade, had been satisfactorily dealt with in Article 60 (b). No objections were raised to the withdrawal of this part of the footnote.

The Article was approved in first reading.

Article 61

Article 61 - Administration of Commodity Control Agreements

This Article was approved in first reading without comment.

Article 62 - Initial Term, Review and Renewal of Commodity Control Agreements

The CHAIRMAN referred the Committee to the proposed amendment by the delegation of Costa Rica to paragraph 1 of this Article.

Mr. CAPLAN (United Kingdom) supported the retention of the reference to a period of not more than five years. Mr. NIAZI (Egypt) had spoken in favour of a period of four years, but the United Kingdom delegation believed that five years was as long a period as governments could accept heavy obligations.

This Article was approved in first reading.

Article 63 - Settlement of Disputes

This Article was approved in first reading.

SECTION D - MISCELLANEOUS PROVISIONS

Article 64 - Relations with Inter-Governmental Organizations

Mr. GANGULI (India) explained that the purpose of the amendment of the Indian delegation to this Article, and of its related amendments, was the achievement of a proper co-ordination between the work of the ITO and the FAO. The lack of definition concerning the jurisdiction of each, and their relationship, had made for obscurity.

The following principles should be taken into consideration in any definition of the competence of each Organization:

1. ITO should make full use of the FAO agricultural experts;
2. in all studies concerning recommendations for commodity agreements on agricultural commodities, FAO representatives should play a leading part;
3. As far as possible overlapping and duplication of work should be avoided.

If those principles were accepted, FAO would be given a more substantial position and would be able to carry a commodity study to its logical conclusion. This was the purpose of the amendment proposed by his delegation.

Differences would arise concerning the respective functions of the two organizations in regard to primary agricultural commodities and therefore in his opinion a Co-Ordinating Committee should be provided to settle such differences and facilitate smooth working arrangements.

Regarding the Co-Ordinating Committee mentioned by the Indian representative, Mr. PETER (France) drew attention to the fact that the Economic and Social Council had created such a Committee in March 1947. During the FAO Conference in August and September 1947, representatives of FAO and the ITO Preparatory Committee had worked together on the

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Interim Co-ordinating Committee. Furthermore, it was unnecessary to speak of a divergence of attitude, because the same governments would be represented on both the FAO and the ITO and the delegations to each would be subject to similar instructions. What it was necessary to avoid was a struggle between the two Secretariats and this might be accomplished by something along the lines of the Indian amendment to Article 64.

Mr. Peter was not in favour of the Indian amendment to Article 58 (6), since that Article referred to inter-governmental commodity control agreements. If the amendments were to be accepted, it might be interpreted that FAO could sponsor a commodity control agreement subject to the provisions of Chapter VI. If the Indian representative had intended only to state that FAO should have a part in certain agreements, he could accept the suggestion, but the wording of the amendment would have to be changed.

He hoped that the Indian representative would not press his amendment to Article 58 (6) and pointed out that the Indian delegation to the ITO would be able to request a conference on any commodity in which they were particularly interested and could ask, in that respect, that the relevant FAO documents should be taken into consideration. Authority as regards commodity control agreements, however, must rest with the ITO.

Mr. RICHARDS (Canada) felt that divided jurisdiction would lead only to difficulties and not to the harmony to which the Indian representative had referred. The question under discussion was closely linked to other provisions of the Charter and in particular to the subject of the subsidization of exports. The authority to initiate commodity control agreements could not be allowed to rest outside ITO. For that reason, he was unable to accept the Indian amendment.

Mr. YATES (FAO) emphasized that the FAO and the ITO had much in common concerning their objectives and the means by which those objectives could be achieved. He was not apprehensive that there would be conflict as regards their aims of their work nor did he think that in practice there would be overlapping or duplication.

There was both a trade aspect and a production and consumption aspect to the question of agricultural primary commodities. The first was the concern of the ITO, while the second was the responsibility of the FAO. Although detailed assignments of responsibility would have to be worked out in a relationship agreement, some were specified in Article 64. If the Article were to be enlarged as the Indian delegation suggested two main principles would have to be safeguarded:

1. The principles of Chapter VI and of the Charter would have to

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be observed regardless of which agency had initiated an inter-governmental commodity agreement;

2. in connection with inter-governmental commodity agreements, the particular responsibility of ITO would have to be maintained.

It was not a question of stating which organization had a particular right but rather of attempting to draft a provision which would incorporate the substance of the Indian proposal while maintaining the two principles mentioned.

Mr. ZAFRA (Philippines) supported the Indian amendment on the ground that FAO was specifically equipped to initiate inter-governmental commodity agreements concerning agricultural products. FAO already had responsibilities regarding the equitable distribution of commodities in short supplies. There should be full co-operation between FAO and ITO concerning commodity conferences.

Mr. ALAMILIA (Cuba) said that for the same reasons which had been put forward by the representative of France, he was unable to accept the Indian amendment to Article 58 (6) nor was he able to accept the amendment to Article 64. The two Organizations had been formed by the same governments and it would make for duplication of work if the FAO were to be given the right to initiate inter-governmental commodity control agreements.

Mr. CAPLAN (United Kingdom) agreed with the representative of Cuba and felt that there was no need for detailed provisions concerning co-operation between the two Organizations when there already existed the provisions of Articles 84 and 64. To go beyond that would be the equivalent of attempting to include in the Charter an agreement between the two Organizations. The United Kingdom delegation was in favour of such an agreement but it should be negotiated at a later date. The Indian amendment would be prejudicial to such an agreement for it would have the effect of laying down the specific relationship to be established.

Mr. SCHWENGER (United States) felt that it was unfortunate that the discussion should have developed into an argument as to which Organization should have the responsibility for a series of additional organizations; for the administration of the agreements which would be concluded would involve further organizations of mutually interested governments. There had to be some central authority over the structure of the control agencies and it was logical that that authority should rest in ITO. The United States delegation had always favoured the inclusion of an FAO representative in a Commodity Commission within the ITO, and no opposition to that idea had been expressed during the Preparatory Committee discussions. As mentioned earlier, there was in effect already FAO - ITO co-operation in

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the Interim Co-ordinating Committee.

FAO obviously would hold many meetings or conferences in the general sense, and it was only in connection with the preparation and negotiation of an inter-governmental commodity agreement, as defined in Chapter VI, that to make for the greatest amount of co-ordination and administrative efficiency, the primary responsibility would have to remain with the ITO.

The CHAIRMAN suggested that there was apparently nothing in the Charter to prevent the FAO from calling a conference to conclude an agreement other than a commodity control agreement.

Mr. CAPLAN (United Kingdom) doubted whether the FAO had appropriate powers under its Constitution to do this effectively.

Article 64 was then referred to the Sub-Committee.

Article 65 - Obligations of Members regarding Existing and Proposed Commodity Agreements

Mr. REICHAERT (Argentina) explained the amendments of his delegation to both paragraphs 1 and 2 of Article 65 which dealt with the same fundamental concept of the powers of the Organization and the obligations and duties of Members. The definition of the word "decision" in the English text needed to be clarified. The Organization should be able to carry out useful studies and make recommendations. Its statements must be declarative - any other interpretation would be incompatible with the sovereignty of member states. The duties of member states could not be other than those clearly stated in Article 1 of the Charter. An obligation on Members to carry out decisions of the Organization would place the Organization in a special position, again contrary to the sovereign rights of all countries. Some amendment to clarify these points was necessary.

Mr. CAPLAN (United Kingdom) thought this a matter of principle that might better be settled under Article 74, which dealt with the powers of the Organization. The United Kingdom would be more greatly affected than any country by the application of Article 65 but had no hesitation in accepting the obligation involved. It was entirely right that the Organization should examine existing agreements and that States entering the Organization should abide by its recommendations. If "decisions" were changed to "recommendations", the Argentine objection might be overcome.

Mr. REICHAERT (Argentinian) stated that the amendment was primarily concerned with the wording of this Article.

Mr. de GAIFFIER (Belgium) agreed with the representative of the United Kingdom and stated he could not accept the amendment as it would weaken Article 65.

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The CHAIRMAN stated that the Argentina proposal would be referred to the Sub-Committee.

Article 66 - Territorial Application

As there were no amendments to this Article it was passed in first reading.

The meeting rose at 7.40 p.m.

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