

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON ARTICLE 93 (RELATIONS WITH NON-MEMBERS)

SUMMARY RECORD OF THIRD MEETING

Held 15 January 1948 at 3.00 p.m.

Chairman: Mr. FORTHOMME (Belgium)

The Sub-Committee discussed the following draft text suggested informally at the last meeting by the representative of the United States:

"No Member shall seek exclusive or preferential advantages from a non-Member which could not be granted to such Member by another Member under the terms of the Charter."

Mr. KUMLIN (Sweden) said that his delegation could accept the United States text if it were confined to concessions falling under most-favoured-nation treatment. However, as it extended to concessions covered by the rules on non-discrimination, such as quotas, practical difficulties might arise. In particular, two types of difficulties might occur. In the first place, it would be difficult for the Member which was endeavouring to conform to the obligations of this text to know exactly whether it was doing so or not. For example, if a company within the territory of a Member bought considerable quantities of a scarce product from a company within the territory of a non-Member and these quantities were in excess of what the non-Member would be allowed to export had it been a Member, would the importing Member be required under this text to limit import licenses to the amount corresponding to the due proportion allowed under the Charter?

Secondly, complications would arise if a complaint were made that a Member had not fulfilled its obligations under this text. The curious situation would then occur that a Member had to defend itself because of action taken by a non-Member which could not be brought into the proceedings. The essence of the complaint would be that the Member had obtained an advantage by certain action to the detriment of another Member. How could a Member against whom the complaint was brought prove that it was unjustified?

For the reasons he had mentioned the Swedish delegation proposed that the scope of the United States text be narrowed down so as to cover only

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tariff and like advantages and not quotas.

Mr. MARTEN (United Kingdom) stated that the substance of the United States text was almost identical with the substance of the first paragraph of the United Kingdom proposal (document E/CONF.2/C.6/35). However, the United Kingdom delegation was now tending to consider that the approach of both of these texts was unnecessarily doctrinaire. Two basic principles had been considered in relation to Article 93 - firstly, that the provisions of the Charter should be such that it would not be more advantageous for a government to remain outside of the Organization than to be a Member of it, and secondly, that there should be a definite inducement to persuade a government to join the Organization. The United Kingdom delegation had now decided that this latter principle was unworkable and that the former principle was the one which should be the basis of any text. His delegation therefore agreed that Members should not be able to give to non-Members treatment more favourable than they gave to other Members. The United States text dealt with the amount of the advantages a Member might receive from a non-Member. He foresaw certain practical difficulties in this text. The achievement of the purpose and objectives of the Charter would be aided by the maximum amount of trade being carried on with non-Member countries. However, any Member which concluded a bilateral agreement with a state-trading non-Member would receive exclusive advantages not available to other Members unless they also concluded bilateral agreements. It therefore seemed to the United Kingdom delegation that the basic criterion to be applied as regards this question of receiving advantages from non-Members should be that the receipt of advantages should not be restricted unless injury were thereby caused to the interests of other Members.

Mr. SHAMMA (Lebanon) said he was not clear as to the interpretation of the word "seek" given by the representative of the United States at previous meetings. Consequently he asked what would be the effect of the United States draft if a Member received preferential treatment from a non-Member when that Member had no control over the preferential system of the non-Member, and had not made a request for such treatment.

The CHAIRMAN pointed out to the representative of Lebanon that there was an error in one of the reports of the previous meetings and that the representative of the United States had clearly stated at previous meetings that the word "seek" had been used instead of the word "receive" to exclude the case of a non-Member, by unilateral action, extending to a Member exclusive or preferential advantages.

Mr. AUGENTHALER (Czechoslovakia), referring to the remarks of the representative of Sweden, pointed out that quotas were not privileges granted to some country, but were restrictions

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imposed on it. He also said that the Charter should not attempt to govern the relations of Members with non-Members as this would be contrary to international law. Not even in the Charter of the United Nations was there an abrogation of the previous obligations of states; there was merely a provision that in the case of a conflict between obligations under the Charter and obligations outside the Charter, the former obligations should prevail. He was in favour of deleting Article 93 from the Charter. If this suggestion were not adopted, he considered that Article 93 should be confined to three provisions:

1. that Members should not accord preferential export or import duties or taxes to non-Members;
2. if there was a conflict between the obligations of the Charter and obligations arising under other agreements, the obligations of the Charter should prevail; and
3. should a substantial part of a Member's economic relations be with non-Members, the Organization would waive the obligations of that Member under the Charter.

Mr. EVANS (United States) agreed with the representative of Sweden that the application of the principle embodied in the United States draft would be difficult. However, he thought that this principle was still worthy of incorporation in the Charter even if it was enforceable only by the good will of the Members. He thought it might be possible for the Organization to come to proper decisions on each case presented. Many of these would be clear-cut, and most borderline cases would be possible to solve. Moreover he thought that in difficult borderline cases the Organization would tend to rule in favour of the Member whose conduct had been the subject of a complaint. It might also be possible to establish some criteria by which the action of the Organization might be regulated.

He could not agree with the representative of the United Kingdom that the text produced by that delegation was unnecessarily doctrinaire. He agreed with that representative that the Charter should not be so drafted as to make it more profitable for governments to be non-Members rather than Members. However, he still considered that the Charter should contain provisions which would make it profitable to become a Member. In any case this was not the point at issue at this stage. The United States draft dealt with the question of the protection of the interests of Members, not of the benefits a non-Member might obtain. He thought it reasonable that a Member should be able to look to other Members not to take action which would prejudice the advantages of Members under the Charter. In other parts of the Charter endeavours had been made to prevent the interests of Members being  
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injured rather than to provide a remedy after such interests had been injured. He did not see why this process should be reversed under Article 93.

In reply to the remarks of the representative of Czechoslovakia, he stated that the word "seek" had been employed to show that the text was concerned only with future obligations, not obligations already in existence.

Mr. de GAFFIER (Belgium), said that it had been agreed that the Charter limited the treatment of a non-Member by a Member. He pointed out that the Sub-Committee seemed to him to be discussing not so much the United States text but the implications of it. He thought that this task should be left to the Organization which would no doubt establish a substantial jurisprudence on the subject. He suggested that the Sub-Committee should adopt the text of paragraph 1 of Alternative B, agreeing at the same time that the advantages under the Charter should be regarded as the maximum a Member could extend to a non-Member and also accepting the criterion of prevention of damage to the interests of other Members.

Mr. AUGENWALDER (Czechoslovakia) said that international economic relations formed a part of the foreign politics of any country. He therefore could not accept anything in the Charter which was not crystal clear. Either the Conference was endeavouring to establish an Organization the membership of which offered positive advantages, or it was endeavouring to establish an Organization into which states would be forced. He thought that the latter approach was undesirable.

Mr. MARTEN (United Kingdom) said that he was impressed by the argument of the representative of the United States and that he thought that Members should accept advantages from a non-Member only if such advantages did not harm the interests of other Members. To relate the United States text to this practicable and workable criterion, he suggested the following redraft:

"No Member shall accept exclusive or preferential advantages from a non-Member which would prejudice economic benefits which another Member either enjoys or could expect to enjoy in the absence of the exclusive or preferential treatment accorded by that non-Member."

Mr. MACHADO (Cuba) thought that there was some advantage in retaining Article 93 in the Charter. The Charter was a political document and would be published. By retaining Article 93 in it non-Members would be shown that it was not intended that relations with them should be entirely cut off. He thought that the Sub-Committee had agreed the benefits of the Charter were the maximum a Member could give to a non-Member. If this was the case, he could not accept the proposal of the representative of Czechoslovakia which was more narrow. Assuming that the agreement of the Sub-Committee on this point would be retained, he thought that a decision should be taken upon the  
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extent to which Members could receive advantages from non-Members. In this connection he considered that Members should certainly be able to receive benefits to the same extent as specified in the Charter. However, the next question to be answered was the extent to which the receipt of greater benefits than those of the Charter from non-Members should be allowed.

Mr. NARAGHI (Iran) suggested the following redraft of the United States text:

"No Member shall seek exclusive or preferential advantages from a non-Member exceeding those that could be granted to such Member by another Member with or without the consent of the Organization under the terms of the Charter."

He also contended that relations with non-Members should be on a flexible basis, in order to take into account the different situations of the various Members.

The CHAIRMAN summed up the discussion by saying that it seemed to him that the Sub-Committee was coming very close to an agreement on the following lines:

1. relations between Members and non-Members should not prejudice the achievement of the purpose and objectives of the Charter;
2. relations between Members and non-Members should not nullify advantages received by other Members under the Charter;
3. advantages under the Charter were the maximum a Member could extend to a non-Member;
4. there was no intention of deliberate discrimination against non-Members.

If the Charter contained only the general benefits such as the most-favoured-nation clause, non-discrimination and reduction of trade barriers, it would be very easy to apply the above principles. The difficulties arose from the fact that the Charter contained other benefits which certain Members would make use of. These were the exceptions to its general provisions aimed at enabling Members to implement their national policies. He thought that the members of the Sub-Committee might before the next meeting give some consideration to the bearing of these provisions of the Charter upon the question of relations between Members and non-Members.

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