

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE I (ARTICLE 94)

NOTES OF THE FOURTH MEETING

Held Saturday 17 January 1948, at 6.00 p.m.

Chairman: Mr. Luis TINOCO (Costa Rica)

The Sub-Committee took as a basis for discussion the text given in E/CONF.2/C.6/W.48. The numbering of paragraphs referred to below, unless otherwise indicated, relates to the numbering used in that document.

1. Paragraphs 1 (a) and (b)

The Sub-Committee provisionally agreed to the following text, subject to a statement by the representative of Czechoslovakia that his delegation reserved the right to raise in the full Committee the question of changing "a Member" to "a Member state" in the preamble of paragraph (b):

"1. Nothing in this Charter shall be construed

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking, either singly or with other states, any action which it considers necessary for the protection of its essential security interests; whether such action

(i) relates to fissionable materials or the materials from which they are derived;

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment of the Member or of any other country;

(iii) is taken in time of war or other emergency in international relations; or"

2. Paragraph 1 (c)

The Sub-Committee noted the text for this paragraph which had been recommended by the Joint Sub-Committee of Committees V and VI (E/CONF.2/C.5/14). There was no discussion of the text. The Sub-Committee deferred consideration /of the question

of the question of including the word "solely" before "for the purpose of...."  
(see paragraph 7 of E/CONF.2/C.5/14).

3. Paragraph 1 (c) of the Geneva Draft

The representative of the United Kingdom expressed the view that this paragraph was not necessary since its purpose was already covered by Articles 25 and 103 of the United Nations Charter and by paragraph 2 of Article 84 of the Draft ITO Charter. No conclusion was reached by the Sub-Committee on the retention or deletion of this paragraph pending consideration of the subsequent paragraphs as amended by the United Kingdom proposal.

4. Paragraphs 1 (d) and 2

The representative of Iraq suggested that the text proposed by the United Kingdom as sub-paragraph (d) should be considered as sub-paragraph (e) and that the following new sub-paragraph (d) should be added in substitution for the amendments on this subject previously proposed by the Delegation of Iraq:

"(d) to prevent a Member from maintaining any measure instituted prior to its acceptance of this Charter for the purpose of meeting the essential requirements of its national security."

The representative of India indicated that he would be prepared to consider such an amendment. The representatives of several delegations felt that the effect of adopting the amendment now proposed by the representative of Iraq would be to cancel sub-paragraphs (i), (ii) and (iii) of (b). The representative of Australia suggested that the representative of Iraq might consider further whether the exception might not be narrowed and still cover the specific problem with which it was intended to deal. The representative of Iraq asked for deferment of the discussion of his proposal pending consideration by his Delegation of the views expressed in the Sub-Committee, and particularly of the suggestion made by the representative of Australia.

With reference to the proposals of Iraq and the United Kingdom concerning a sub-paragraph (d), the representative of Czechoslovakia felt that, if these matters were to be discussed further, the question of including provisions on these lines should be referred to the Security Council.

Concerning the version of sub-paragraph (d) proposed by the United Kingdom, the representative of India felt that the word "action" should be qualified by some such words as "relating to the subject matter covered by the present Charter", in order to make it clear that the "action" referred to was economic rather than political or military. With reference to the earlier remarks of the representative of Czechoslovakia, he doubted that the taking of economic action could be regarded as necessarily infringing Article 2 of the United Nations Charter. He suggested also that the end of the sub-paragraph,  
/beginning with

beginning with the words "provided that...", should be replaced by "provided that the matter relates to the subject matter of Articles 10, 11 or 14 of the Charter of the United Nations".

On an inquiry from the representative of the Union of South Africa, the representative of the United Kingdom indicated that the words "in connection with" were intended to qualify "action" and to limit it to action directly related to the matter brought before the United Nations and that accordingly he would be prepared to substitute the words "which is directly related to" for "in connection with".

The representative of the United States, in commenting in a preliminary manner on the proposal by the United Kingdom, felt that it was unnecessary to have the first five lines of paragraph 2 in the actual text of the present article, since they in effect were a repetition of paragraph (b) of Article 89. He doubted also the practicability of the proviso in the proposed paragraph 2. He observed that it might be difficult to determine when the United Nations has "otherwise disposed of" a matter. He indicated that he would wish some time to consider the United Kingdom proposal before commenting formally.

The representative of the United Kingdom indicated that he would be agreeable to having the applicability of Articles 89 and 90 written into the record rather than incorporated in the actual text of Article 94. He observed that the proviso suggested in paragraph 2 was not intended to exclude the ITO from participation in the ultimate solution of a matter after the United Nations had acted. He agreed that the language of the proviso might be improved to make more clear at what stage the procedure of Chapter VIII would come into operation.

The representative of India expressed some doubt whether under the proposed new paragraph 2 the bona fides of an action allegedly coming within Article 94 could be questioned and also whether such an action could be countered collectively by Members of the Organization or only by affected Members individually. He thought that the intention was to confine such counteraction to compensatory action and not to include punitive action. He indicated that his delegation would be prepared to consider the proposed new paragraph.

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