THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

Held at the Capitol, Havana, Cuba,
Monday, 15 March 1948 at 3.00 p.m.

Chairman: Mr. L. Dana WILGRESS (Canada)


The CHAIRMAN recalled that at the forty-third meeting a recommendation was agreed upon, in connection with the study of Article 18A, to the effect that Committee IV should seek a satisfactory solution for the relation of shipping services to Chapter V in order to avoid conflict with the Inter-governmental Maritime Consultative Organization.

Committee IV at its fifteenth meeting agreed to the following interpretative note to Article 50: "The provisions of this Article shall not apply to matters relating to shipping services which are subject to the Charter of the Inter-governmental Maritime Consultative Organization."

The recommendation of Sub-Committee B that the proposed new Article 18A should not be adopted was approved.

2. ARTICLES 18 AND 19: REPORT OF CENTRAL DRAFTING COMMITTEE (C.8/14).

Article 18

The delegations of Argentina, Switzerland and United Kingdom maintained their reservations to Article 18.

Mr. ROYER (France) called attention to four typographical errors in the French text:

The Central Drafting Committee text of Article 18 was approved.


Mr. ENCINAS (Peru) stated that in conformity with the agreement reached by the Heads of Delegations, the delegation of Peru withdrew its reservation to Article 20.
The additional changes proposed by the Central Drafting Committee in the text of Articles 20 and 22 were approved.

4. **ARTICLE 21: REPORT OF CENTRAL DRAFTING COMMITTEE (C.8/12 & Cor.)**

Mr. MÜLLER (Chile) stated his delegation would be able to withdraw its reservations to Article 20 provided the sentence at the end of sub-paragraph (b), preceding sub-paragraph (i), of Article 21 could be re-worded as set forth in document E/CONF.2/C.3/82. He asked that the representative of the United Kingdom state how some of the problems under Article 20 could be met by Article 21.

The statement by Mr. SHACKLE (United Kingdom) will be found herein as Annex 1.

Mr. MÜLLER (Chile) withdrew his amendment to Article 20.

The re-wording of paragraph 4 (b) as proposed by the delegation of Chile was approved.

The note by the Central Drafting Committee regarding changes in paragraph 5 (a) necessary to bring the wording into conformity with similar provisions (Articles 40 and 90) was approved.

Article 21 as amended was approved.

5. **ARTICLES 25 TO 28: REPORT OF CENTRAL DRAFTING COMMITTEE (C.8/3/Add.1 and Corr.2).**

Mr. TORRES (Brazil) withdrew the reservation of Brazil to Section C.

The additional changes proposed by the Central Drafting Committee in the texts of Articles 25, 26, 27 and 28 were approved.

5. **(a) ARTICLES 30 TO 31A: REPORT OF CENTRAL DRAFTING COMMITTEE (C.8/6/Corr.2).**

The changes proposed by the Central Drafting Committee in the text of paragraph 1 (b) of Article 30 was approved.

6. **ARTICLES 32 TO 38: REPORT OF CENTRAL DRAFTING COMMITTEE (C.8/4/Rev.1).**

Article 32

The delegation of Argentina maintained its reservation to paragraph 1.

Mr. ROYER (France) called attention to the note by the Central Drafting Committee that in the French text of paragraph 2, the Statute of Barcelona on Freedom of Transit had been reverted to insofar as the English text corresponded to the English text of that Statute. Approved.

Mr. MÜLLER (Chile) asked whether there was any substantive reason for deleting "for special facilities carried out" in the Interpretative Note to paragraph 6.

Mr. ROYER (France) replied that it was a drafting change; negotiations were provided for in paragraph 6 in a definite manner. /Mr. MORTON
Mr. MORTON (Australia) stated that the substance of special facilities of interest to land-locked countries had not been changed in any manner.

Mr. MOLLER (Chile) accepted the deletion subject to instructions from his government.

Replying to a question by Mr. JADDOU (Iraq) as to why "products" had been substituted by the word "goods", Mr. ROYER (France) said "goods" was used in conformity with other Articles.

The Central Drafting Committee text of Article 32 and Interpretative Notes was approved.

The Central Drafting Committee text of Article 33 and Interpretative Notes was approved. The delegation of Argentina maintained its reservation.

Article 34

The delegation of Argentina maintained its reservation.

The delegation of the United States withdrew its reservation to the Interpretative Note 2 to paragraph 3 but the delegation of Chile maintained its reservation.

At the suggestion of Mr. MOLLER (Chile) with the concurrence of the representatives of the United States, Australia, and France, the French text of Note 2 (paragraph 2, page 25, line 4) was changed from "puisse etre faite" to "soit faite" to conform to the English text "is made".

The note by the Central Drafting Committee (page 18) regarding the deletion of the phrase "and exportation" from paragraph 2 was approved.

The Central Drafting Committee text of Article 34 and Interpretative Notes, as amended was approved.

Article 35

The delegations of Switzerland and France withdrew their reservation to paragraph 6.

The delegations of Bolivia and Haiti maintained their reservations to Article 35 - The delegation of Chile maintained its reservation to paragraph 1.

The Central Drafting Committee text of Article 35 and Interpretative Notes was approved.

Article 36

At the suggestion of Mr. ROYER (France) it was agreed to delete the phrase "d'origine" from paragraph 6 (page 30, 4th line from bottom) and paragraph 7 (page 34, 11th line from bottom).

The Central Drafting Committee text of Article 36, as amended was approved.

The Central Drafting Committee text of Articles 37 and 38 were approved.

The delegation of Argentina maintained its reservation to paragraph 3 (c) of Article 37.

/7. ARTICLES 40,
7. ARTICLES 40, 41 AND 43: REPORT OF CENTRAL DRAFTING COMMITTEE
(C.8/5/Rev.1 & Corr.).

Article 40

The delegation of Peru maintained its reservation to Article 40; the
delegation of Argentina maintained its reservation to paragraph 3 (a) and
the Interpretative Note.

At the suggestion of Mr. LEDDY (United States) that paragraph 3 (b)
should be amended, Mr. ROYER (France) stated the French text was clear and
the English text, in order to conform, should read "...where action is taken with
prior consultation under paragraph 2....." (page 5, lines 3 and 4). Agreed.

The Central Drafting Committee text of Article 40, as amended, was
approved.

Article 41

The note from the Central Drafting Committee relating to the Interpretative
Note was approved. (The last two lines of page 8 and the first line on page 9
should read "The provisions for consultation require Members, subject to the
exceptions specifically set forth in this Charter, to supply....."

The Central Drafting Committee text of Article 41 and the Interpretative
Note was approved.

Article 43

The delegation of Australia withdrew its reservation to paragraph 1 (a)
(viii).

The delegation of Argentina maintained its reservation to paragraphs 1 (a)
(xi), 1 (b) and 2.

At the suggestion of Mr. LEDDY (United States), the word "relating"
(page 12, line 7) was changed to "which relates" and the commas after the
words "agreement" and "animals" were deleted.

The suggestion of the Central Drafting Committee to reverse the order
of sub-paragraphs (xi) and (x) (page 12) was approved.

The suggestion of the Central Drafting Committee to use the term
"Second World War" (as used in Article 107 of the United Nations Charter) was
approved.

The Central Drafting Committee text of Article 43 as amended was
approved.

The meeting rose at 4.50 p.m.

Attachment:
Annex 1
Mr. Chairman, it was, I understand, suggested in Sub-Committee E that some of the problems which have been raised in connection with Article 20 might be met by procedures already available under Article 21. Reference was also made to this matter when the Report of the appropriate Sub-Committee on Article 21 was debated in this Committee on 17 February. My own delegation has had some hand in the shaping and drafting of Article 21 together with a considerable experience of exchange and import control, and it has occurred to some of those with whom we have been in discussion that it might be of interest to the Committee to hear our views on some aspects of that subject.

The case with which I propose to deal is that of a country in which foreign exchange is not fully and freely available for purchase with domestic currency, and of which the foreign exchange resources are apportioned by the government authorities in such a way as to give priority to the import of those goods which are considered to be more essential to the country's needs in the light of its domestic policies. It makes no difference to my assumptions whether the country concerned is using exchange licences or import licences to administer the control which it is exercising, or whether it has a full system of foreign exchange budgeting or some more empirical procedure which does not employ a detailed budget. The essential point is that the country is in a position where, in the absence of some form of import or exchange control on current transactions, the total demands for foreign exchange on account of imports and other current payments would be exceeding the total foreign exchange resources currently available to it, including, of course, such amounts (if any) as the Government could make available from its monetary resources without the loss being serious. I assume also that the government of such a country does not pursue austerity for its own sake but would be ready and willing if more exchange were available to it to increase the amount released, either for the purpose of importing essential products in greater quantities than at present, or for the purpose of admitting some less essential products which are not at present imported. I assume also that the government which we are considering would wish to retain to itself the right to decide what products should receive priority in foreign exchange allotments for as long as the total amount of exchange resources which are available to it was less than the total demand. Finally I assume that the country concerned does not possess exceptionally large monetary reserves of gold and convertible foreign exchange.

/ The question
The question which I attempt to answer is how such a country would stand as a Member of the Organization under Article 21 substantially in its present form.

My reference in what follows will be to the paragraphs in the Geneva text.

There is no doubt that the country which we are picturing would be free to continue restrictions and an allocation system which it was already applying when the Charter came into force - provided, of course, that it was only applying them, as we have already assumed, to the extent rendered necessary by its external financial position. The fact that the government was restricting access to the country's foreign exchange resources and allocating them according to a scale of essentiality, would normally indicate that the government believed that without such restrictions there would follow a greater demand for foreign exchange than the country could face. This is to say that in the opinion of such a government there would, if it were to remove the restrictions, be an "imminent threat of a serious decline in its monetary reserves" (such as is required under paragraph 2 of Article 21). And please note particularly that under Article 21 it is the Member itself which, in the first place, decides (in the light of paragraph 2) whether the state of its reserves in relation to its needs and prospects justifies the use of quantitative restrictions. In the case of a Member not applying restrictions when the Charter becomes applicable to it, paragraph 4 (a) of Article 21 calls for consultation with the Organization before restrictions are imposed, or, if that is not practicable, immediately after they are imposed; while, under 4 (b) the Organization might invite a Member which was already applying import restrictions when the Charter came into force to enter into consultation with it. But there is no question in either case of the Member having to seek the approval of the Organization either before or after introducing the restrictions. If consultation under either subparagraph were to show clearly that the Organization doubted the necessity for the restrictions, that would be a matter to which the Member should give serious consideration. But if, after such serious consideration, the Member were to decide that its balance of payments situation required the institution or maintenance (as the case might be) of quantitative restrictions on its imports, Article 21 leaves the Member free to act on its own decision and to institute or maintain the restrictions. Time and the actual development of the Member's balance of payments would show whether the Member or the Organization was right in its view; and presumably the arbitrament of facts would then be accepted by both parties. In the meantime, however, the Member would be free to proceed with the restrictions unless and until they had been
had been successfully challenged by another affected Member under paragraph 4 (d) (I do not refer in this connection to the possibility of challenge under Article 89 which might entail some technical differences but would, in effect, be much the same as challenge under paragraph 4 (d) of Article 21).

Under Article 21 the challenge (which can only be advanced by a Member that can show its own trade is damaged) might be either on the grounds that the restrictions were being applied in a manner which gave the challenging Member justifiable cause for complaint at the treatment accorded to its own trade or interests (sub-paragraph 3 (c)); or on the grounds that the restrictions as a whole were unnecessary because the Member's monetary reserves could not be called "very low" or would not thereupon be subject to a "serious decline" if the restrictions were removed (paragraph 2). The Member, however, could not be required to remove the restrictions on the grounds that its domestic policies were responsible for its foreign exchange difficulties and should therefore be changed (sub-paragraph 3 (b) (i)). Nor would the Organization itself be entitled to advance any challenge against the Member's restrictions. Challenge of a Member's individual restrictions or its right to impose restrictions can only be made by another affected Member. There is no other procedure provided for (other than the similar general procedure of Article 89) by which a Member's own decision to impose quantitative restrictions for balance of payments reasons lies open to challenge.

We have already assumed that the Member's monetary reserves are not so large that it could afford a substantial drain before any decline in those reserves could be called "serious" within the meaning of sub-paragraph 2 (a) (l). And we will also assume that the Committee is not interested in this connection in challenges which are concerned merely with complaints of unnecessary damage to some individual interest of another Member. What we are considering is the possibility of challenge on the grounds that the restrictions as a whole should be removed or at least be relaxed in line with an improvement in the Member's external financial position or monetary reserves.

The Committee will recall our assumption that the country which we are considering was prepared to relax its restrictions to the extent that any increase in its foreign exchange resources might permit, and import either larger quantities of essential goods, or certain less essential goods which had previously been excluded. Clearly therefore there would be little prospect of such a challenge as we are considering being advanced successfully.
against a government which held to such a policy. For such a government would be using every improvement in its foreign exchange resources (or prospects) either to relax the degree of restriction imposed on its importers or (if engaged in State trading) to increase its own orders placed abroad. If its foreign exchange position continued to improve until the process of relaxation left no restrictions in force, then the Member concerned would have removed the restrictions in pursuit of its own policy and would at the same time be complying fully with paragraph 2 of Article 21. But, until the last restriction had been removed in pursuit of this policy the Member would continue to have the right to impose such restrictions as it maintained so as to give priority to more essential over less essential imports, the essentiality being decided in the light of the Member's own policies (sub-paragraph 3 (b) (i)).

It is possible, however, that after a certain point, the Member might decide that it was more important to build up its monetary reserves against future needs or contingencies than to allocate the whole of its current foreign exchange income to immediate foreign expenditures. Assuming that the Member's existing reserves could be regarded as "very low" - and few governments would wish to withhold foreign exchange from their importers merely for the purpose of adding to reserves which were already adequate - the Member's right to retain restrictions for the purpose of building up its monetary reserves is covered by sub-paragraph 2 (a) (ii). Here again the Member's own decision could only be called in question by the process of challenge by another Member which I have already attempted to describe. Accordingly, a Member which, looking ahead over a period of time, considered that this present rate of foreign exchange earnings was unlikely to be maintained, and that it would be wise to use some part of those earnings to fortify a "very low" reserve against future needs would have a case for maintaining its present import restrictions without relaxation until a sufficient reserve had been accumulated; and, once again, its own decision could only be challenged by another Member.

I have, of course, given credit throughout to the Member which we have been discussing for sincerity and goodwill in applying the tests of Article 21 to its own case when reaching the decisions of which we have been speaking. According to my reading of the Article such a Member would be free to do all the things of which we have spoken without serious risk of successful challenge at any time. But even governments are subject to the human failing of judging their own actions more leniently than they judge the actions of others. There is, therefore room under Article 21 for difference of opinion on an individual Member's right to impose or maintain import restrictions.
During the early years of the Organization sub-paragraph 3 (a) will apply with its instruction to the Organization to take full account of the difficulties of the post-war adjustment and of the need which a Member may have to use import restrictions as a means of restoring a sound and lasting equilibrium in its balance of payments. During those early years, therefore, Members can claim leniency in the interpretation of the Article if there is a sincere difference of opinion as to their rights.

To sum up, a Member, whose domestic policy causes it to import heavily whether for purposes of economic development or for reasons of social policies which maintain demand for consumption goods, is likely to be in a position which would justify recourse to Article 21. All countries, however, cannot be in deficit at once, and it is possible that even when a country is following an expansionist domestic policy it might find that its balance of payments was in surplus owing to events in other parts of the world, or because it could not, for the moment, spend all the foreign exchange it was receiving - for example it might find that its plans for economic development were held up by political or economic or financial conditions at home. I have attempted to show that so long as such a surplus seemed to be derived from temporary influences and could not be relied upon to continue, the country concerned might be able to show good reasons for using the surplus to build up its reserves in order to maintain imports after the temporary prosperity had disappeared. But I must not give the impression that this argument would necessarily be valid merely because it could plausibly be advanced. I assume - to repeat it once again - that Members will be acting with sincerity and goodwill throughout.

I would ask that if the Committee sees no objection, the text of my statement should be annexed to the Summary Record of this meeting.