SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE THIRTIETH MEETING

Held at the Capitol, Havana, Cuba,
27 February 1948, at 11.45 a.m.

Chairman: Mr. Erik COLBAN (Norway)

I. AMENDMENT TO SUB-PARAGRAPH (d) OF ARTICLE 69 AND PARAGRAPH 5 OF
   ARTICLE 74 PROPOSED BY THE DELEGATION OF THE UNITED STATES
   (DOCUMENT E/CONF.2/C.6/12/Add.12)

   The amendment to sub-paragraph (d) of Article 69 and paragraph 5 of
   Article 74 proposed by the delegation of the United States was adopted.

   Mr. GOMEZ (Colombia) said that the explanatory statement regarding the
   meaning of the expression "the Members" suggested by the United States
   delegation, was of importance in the French and Spanish texts also.

   The CHAIRMAN proposed that the matter be referred to the Central
   Drafting Committee.

II. REPORT OF THE SUB-COMMITTEE ON CHAPTER VIII (E/CONF.2/C.6/83)

   Mr. COULIARD (Canada) Chairman of the Sub-Committee, introducing the
   report, said that two corrections were required. One had been issued,
   E/CONF.2/C.6/83/Corr.1. The other required the deletion of "(a)" in line 3
   in paragraph 3 on page 6.

   Referring to the reservations listed in the report, he pointed out that
   most of them were formal and that there had been a satisfying degree of
   unanimity.

   ARTICTE 88A

   Mr. MARTEN (United Kingdom) drew attention to his delegation's amendment
   regarding the insertion of the word "appropriate" before the word
   "procedure" in line 2 of paragraph 1. The amendment had not been pressed
   because the matter was being dealt with elsewhere but he reserved the right
   to raise the matter later if he found it necessary.

   Mr. GOMEZ (Colombia) drew attention to the Colombian amendment designed
   to safeguard the undertakings of Members in respect of the International Court
   of Justice, and to the Colombian reservation regarding the first proviso
   to the annex to Article 95.
Paragraph 1 was adopted.

Mr. GAIFFIER (Belgium) wished to make an observation regarding the title of the Article, and the use of the word "unilateral" in paragraph 2. Did the use of the word "unilateral" mean that bilateral measures could be used? Article 88A, paragraph 2 was, he believed, based on the old Article 92, paragraph 3, and he considered that the idea contained in the expression "in advance of a complaint to the Organization," in Article 92, should not be omitted from Article 88A.

Mr. COUILLARD (Canada) said that the title of the Article had been debated at length. Since the Article dealt with the obligations of Members to follow the procedure set forth in Chapter VIII, the Sub-Committee felt that the title was adequate. The word "unilateral" was to be construed as meaning that no Member should on his own initiative take economic measures contrary to the provisions of the Charter. Paragraph 3 of Article 92 had been incorporated in Article 88A but the time element and the idea of sanctions had been omitted.

Mr. KARWAHEK (India) said that his country's acceptance of Article 88A was conditional on the acceptance of India's proposed amendment to Article 94.

Article 88A, paragraph 2, was adopted.

ARTICLE 89

Mr. ALAYZA (Peru) asked for an explanation of the words "implicitly or explicitly" used in Article 89, paragraph 1.

Mr. COOMBS (Australia) said that these words had been inserted to meet the opinion of the Sub-Committee that a Member might properly have recourse to Article 89 if the measures adopted by another Member under the provisions of Article 3 did not produce the effects which they were designed to achieve and thus did not result in such benefits as might reasonably be anticipated.

Mr. OTANEZ (Venezuela) referred to the use of the word "may" in paragraph 1 of Article 89 and asked whether the procedure for consultation was obligatory.

In Article 90, a distinction was made between matters arising under Article 89 (1) (a) and (b) and matters arising under Article 89 (1) (c).

Mr. COUILLARD (Canada) said that Article 89 (1) (c) was intended to cover situations brought about by a group of Members who could not be distinguished. In such cases, consultations were impossible. As regards the mandatory character of Article 89, he pointed out that the word "may" in paragraph 1 was followed by the word "shall". He agreed with the delegate of Venezuela that Article 89 was obligatory whenever possible.

/Mr. GAIFFIER (Belgium)/
Mr. GAIFFIER (Belgium) reserved the position of his delegation provisionally pending receipt of his government's opinion on Article 89 (1).

Paragraph 1 was adopted.
Paragraph 2 was adopted.

Paragraph 3

Mr. RUSHIN (United States) proposed the insertion of the word "discussions" before the word "consultation" in paragraph 3.

Paragraph 3 was adopted as amended.

ARTICLE 90

Paragraph 1 was adopted.
Paragraph 2 was adopted.

Paragraph 3

Mr. COUILLARD (Canada) replying to the representative of Peru, said that while under paragraph 3 of Article 90 the Executive Board could release Members from obligations, the Board's power was not unrestricted. Under Article 90 a Member could request that the Board's action be referred to the Conference for review. All three cases referred to in Article 89 (1) were covered by the paragraph but Article 90A provided a safeguard for Members.

Mr. OSANEZ (Venezuela) pointed out that the French and English texts of Article 90 (3) differed. The French text implied that action must have been taken before being considered ineffective while the English text did not.

Mr. FORTHOMME (Belgium) thought that the difference was important and that the power granted to the Executive Board by the English text was excessive.

Mr. COUILLARD (Canada) said that the English text was authentic. The Executive Board's power was not excessive and was subject to the proviso regarding requests for review.

Mr. FORTHOMME (Belgium) found the provision a strange one. Under Article 89 (1) (b) a Member might have applied a measure not conflicting with the provisions of the Charter and yet be subjected by the Executive Board to a penalty.

Mr. RUSHIN (United States) preferred the present text. He believed the procedure proposed had the advantage of flexibility. Any release of obligations granted was intended to be compensatory, not as a punitive measure.

Mr. FORTHOMME (Belgium) said any release from obligations was partly punitive and Members must be given time to comply with the Executive Board's recommendations before suffering punitive action. He proposed that the words "action under Article 90 (2) (iv) and (v)", in line 1 of paragraph 3 be replaced by the words "action taken pursuant to a recommendation under Article 90 (2) (iv) and (v)".

/Mr. BLUZTEIN (Poland)
Mr. BLUETTEIN (Poland) recalled the distinction made between Article 89 (1) (a) (b) and (c). He felt that paragraph 3 was ambiguous and likely to give rise to differing interpretations as had been made clear by the preceding discussion. He supported the Belgian delegate's proposal.

The CHAIRMAN read out the Belgian proposal: "...action taken pursuant to a request or a recommendation under..."

Mr. COOMBS (Australia) said the proposed amendment would require a period of waiting for an action which might not be taken. The Board should be allowed some flexibility and there was adequate protection against unwise or extravagant actions of the Executive Board.

Mr. KOJIVE (France) agreed with those who felt there was little difference between compensation and sanction. However, the Executive Board should have authority to act in urgent economic situations and the English text submitted by the Sub-Committee was acceptable.

Mr. HAIDER (Iraq) said that the interpretation of paragraph 3 given by the representative of the United States was correct, but because of the statements of the representatives of Belgium and France, it was necessary to enlarge on that interpretation in order that there should be no doubt as to the meaning of that paragraph.

Alteration of the Geneva text had eliminated all possibility of imposing sanctions under Chapter VIII: The Executive Board or the Conference would not release from its obligations any Member who had not followed the procedure and whose benefits were not so seriously damaged as to justify such action. Paragraph 7 of the Report of the Sub-Committee made this clear.

The Charter provided a balance between obligations and benefits; a Member might have made certain concessions in order to receive benefits, and if such a balance were upset and benefits accruing to a Member were materially reduced, that Member could be allowed to reduce its obligations; but such an action should not go beyond measures of compensation.

Paragraph 5 (c) of the Report of the Sub-Committee defined the use of the word "matter" in Chapter VIII. It might be advisable at times to allow immediate compensatory action without investigating whether there was conflict with the Charter. The last sentence of paragraph 3 of Article 90A did not use the word "affected".

Sub-paragraph (v) of paragraph 2 provided for a satisfactory adjustment of an action not in conflict with the Charter; paragraph 9 of the Report stated that sub-paragraph (v) "does not empower the Executive Board or the Conference to propose the suspension or withdrawal of a measure not in conflict with the Charter".

/Mr. KARMAKAR (India)
Mr. KARMARKAR (India) agreed with the statement of the representative of Iraq and suggested that paragraph 7 of the Report should be included as an Interpretative Note.

Mr. RUBIN (United States) agreed with the representative of Iraq, and thought that considering the limitations put upon the Executive Board, the fears of the representative of Belgium that the Board might destroy the Charter were exaggerated.

Mr. FORTOMME (Belgium) replied that his only fear was that the restoration of equilibrium between obligations and benefits might be accomplished by withdrawal of benefits to such an extent nothing would remain on either side; his idea of maintaining balance would be to restore the benefit rather than to withdraw an equivalent benefit.

Mr. AMADOR (Mexico) favoured the Sub-Committee text of paragraph 3. The Executive Board should have some power of action; in all cases the method suggested by the representative of Belgium might not be applicable. If paragraph 7 of the Report were taken into account, there could be no doubt that paragraph 3 of Article 90 referred to compensatory measures and not to punitive ones.

The CHAIRMAN stated that, inasmuch as the General Committee had asked for a diminution of Interpretative Notes, the interpretation contained in paragraph 7 of the Report of the Sub-Committee would be included in the Report of Committee VI.

Paragraph 3 as submitted by the Sub-Committee was approved.

Paragraphs 4 and 5 were approved without comment.

ARTICLE 90A

Paragraph 1 was approved, after the Chairman of the Sub-Committee suggested a minor drafting change in the French text, in response to a question of the representative of Venezuela, in order to clarify the phrase "if requested to do so within thirty days...."

Paragraph 2 was approved without comment.

Paragraph 3

Mr. KARMARKAR (India) asked whether, in view of the discussion of paragraph 3 of Article 90, it could be assumed that despite the difference in wording, no punitive action was contemplated.

Mr. COUILLARD (Canada) replied affirmatively and added that the omission of "the" and "affected" was deliberate and part of the balance of the Article.

Paragraph 3 was approved.

/Paragraph 4
Mr. WU SZ-KING (China) wished it to be recorded that the substance of the amendment to former Article 90 proposed by his delegation, to the effect that decisions and determinations of the Tariff Committee might be reviewed by the Conference, was being considered elsewhere and would probably depend upon the agreement reached by the Co-ordinating Committee.

Paragraph 5 was approved.

ARTICLE 91

Paragraph 1 was approved without comment.

Paragraph 2

Mr. MAC LIAM (Ireland) suggested amending the phrase "upon the instance of any Member whose interests are thereby prejudiced" to read "at the instance of any Member which considers that its interests are thereby prejudiced."

Mr. RUBIN (United States) preferred the wording submitted by the Sub-Committee as it preserved to the Organization a small measure of control. The representatives of India and the United Kingdom supported the representative of the United States.

Mr. COUILLARD (Canada) called attention to paragraph 10 of the Report of the Sub-Committee: the intention was to exclude a remote, theoretical or unsubstantial request.

Mr. MacLIAM (Ireland) asked whether the Conference would decide the degree of interest. It was his understanding that a country could appeal to the International Court of Justice if it considered that its interest were being over-ridden by the Conference.

Mr. AMADOR (Mexico) said that his delegation was able to accept the text proposed by the Sub-Committee precisely because of the grave difficulties which might otherwise be caused. Nevertheless, in the final analysis it was up to the International Court of Justice and not to the Organization to establish whether a country's interests were affected. It was difficult at the present time to reach an exact text, but the inalienable right of a State to resort to the International Court of Justice must be conserved.

Paragraph 2 was approved.