SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THIRTY-THIRD MEETING

Held at Capitol, Havana, Cuba, Thursday, 4 March 1948, 10.30 a.m.

Chairman: Mr. Eric Colban (Norway)

1. CONSIDERATION OF THE TEXT CONTAINED IN ANNEX E TO THE REPORT OF THE
JOINT SUB-COMMITTEE OF THE SECOND AND SIXTH COMMITTEES (Document

Annex E of the Report was approved. To a question by the representative
of Brazil, the CHAIRMAN replied that in his opinion the new Article should
follow Article 69, but that the Central Drafting Committee would make the
decision.

2. FURTHER CONSIDERATION OF THE REPORT OF THE SUB-COMMITTEE ON ARTICLE 75
(Composition of the Executive Board) (Documents E/CONF.2/C.6/53 and
Corr.1).

Mr. Machado (Cuba) praised the patience and successful efforts of
Mr. Jabara (Syria) which had resulted in the present text of Article 75. The
Cuban delegation would have preferred Alternative B but accepted the present
formula as the nearest answer to its desire that democratic principles obtain
in international organizations. Article 75 should be considered together
with its Annex; the 18 members of the Executive Board would ensure adequate
representation for all economic criteria, including customs unions, as provided
in paragraph 1. Paragraph 2 realized the need for absolute balance in the
Board; paragraph 3 made provision for elections and paragraph 5 spoke of
the rules, which for the first election appeared in Annex X. Because all
ratification would not have been received and the statistics regarding
different types and degrees of economies would not be available, it was
necessary that the Havana Conference promulgate certain rules to insure an
adequate start for the Organization.

It was to be hoped that the Committee would follow the example of
goodwill and give its unanimous approval to the Report of the Sub-Committee.

Mr. Woulkroun (Luxembourg) hoped that the example set by Cuba would be
followed and moved the adoption of the report.

/Mr. Politis
Mr. POLITIS (Greece) supported the report and requested that paragraph 3 of the Report of the Sub-Committee appear in the Report of the Sixth Committee.

Mr. HOLLOWAY (Union of South Africa) proposed substituting for the phrase in the first line of paragraph 2 of Article 75 "of the major geographical areas..." by the phrase "of broad geographical areas...".

The principle should be stated in Article 75 that the Executive Board was a body looking after the interest of the Organization and all Members; the Members of the Board were trustees of an international organization which was trying to create an international conscience in economic affairs, and therefore they represented not the interests of their particular governments, but of the Organization as a whole.

The CHAIRMAN agreed to the drafting change in paragraph 2. The representative of the Union of South Africa was correct in his belief that the Executive Board was representative of the Conference as a whole.

Mr. EAKIM (Lebanon) supported the representative of Greece in requesting that paragraph 3 of the Report be incorporated in the Report of the Committee.

Mr. FORTHOMME (Belgium) agreed with those representatives who stated the members of the Executive Board should be objective.

Mr. OTANEZ (Venezuela) supported the Report without reservation, but noted that his delegation would have preferred Alternative B or that the rules in the Annex should be permanent.

Mr. ALAYZA (Peru) supported the report and withdrew his reservation. The representatives of Uruguay, Mexico and Ireland supported the Report without reservation, although they would have preferred Alternative B.

Mr. PATVA (Brazil) withdrew his reservation and supported Article 75, although his delegation would have preferred that the rules in the Annex be made permanent.

Mr. AHMED (Pakistan) reluctantly accepted Article 75 as a compromise.

The CHAIRMAN declared the adoption of the Report of the Sub-Committee and the text of Article 75 and the Annex. The point of principle mentioned by the representative of South Africa would be considered at the next meeting.


On the suggestion of Mr. FORTHOMME (Belgium) it was agreed that the English text should be amended by translating it literally from the French text.

The CHAIRMAN suggested that the proposed new Article be inserted immediately after Article 99.

The recommendation was approved.

Mr. MORTON (Australia), in reply to a question of the CHAIRMAN, said that the phrase "subject to confirmation by the Governments concerned" had been inserted in the Report at the request of only one or two members. He did not think it necessary that the phrase be included in the Report of the Committee.

Mr. SPEESENDORFINK (Netherlands) proposed the deletion of the words "both or all" from the suggested interpretative note. The CHAIRMAN said that the Central Drafting Committee would attend to this.

Mr. ROUGHLY (Egypt) said that his delegation, desiring to avoid any misunderstanding which the interpretative note might cause wished to make clear the attitude of the Egyptian government regarding the Sudan. In view of the fact that there were no customs boundaries between Egypt and the Sudan and that Egypt and the Sudan constituted one and the same territory, customs matters concerning the Sudan were the exclusive concern of the Egyptian government.

Mr. MARTIN (United Kingdom) said his delegation might also wish to make a declaration in view of the statement by the representative of Egypt.

Mr. MORTON (Australia) pointed out that condominiums had not been catered for in the Charter and that the only object of the note was to show how they could become members.

The Report of the Working Party was approved.


The Committee approved the revised text of these paragraphs.


The Committee approved the revised text of this Article.


The Committee agreed that this Article should be deleted.


Mr. GOMEZ-ROBLES (Guatemala), Chairman of the Sub-Committee, said that the Sub-Committee was to be congratulated on having reached unanimity on a large number of issues. He particularly wished to thank both Mr. Tinoco (Costa Rica), who presided over the first six meetings, and also the Secretary.

/ Mr. COOMBS
Mr. COOMBS (Australia) said that the Australian Government gave the fullest support to the United Nations as an instrument for dealing with political problems and wanted full recognition of its status. The Charter was, however, a set of rules governing the commercial relationships of countries in normal circumstances and it was difficult to decide how far those general rules should apply in other circumstances. His delegation did not include persons who were familiar with the United Nations on its political side, nor those who would normally advise his Government on matters of a political nature. Consequently, although he did not want a provision which would give still more exceptions, he did not wish to deliver a final judgment.

Before anything was put in the Charter which laid down that economic actions in exceptional circumstances should or should not be the subject matter of the Charter, there should be further consultation and discussion with the United Nations itself. The matters dealt with in paragraph 3 of Article 83 A might find a place in the relationship Agreement between the United Nations and the Organization. The best course would be to direct the Interim Commission to discuss these matters. His delegation had therefore proposed the deletion of paragraph 3 and an amendment to the terms of reference of the Interim Commission.

Mr. HOLLOWAY (South Africa) stated that Article 88 A laid down "the members also undertake without prejudice to any other international agreement that they will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter". Thus the terms of this Article were without prejudice to any other international Agreement, but a second qualification was contained in the words "contrary to the provisions of this Charter". It was therefore necessary to examine the other Articles of the Charter to see whether there were any limitations on the main obligation not to have recourse to unilateral economic measures. If there were no major derogation, Article 88 A would establish, so far as the Organization was concerned, a cardinal principle of international organization: acceptance by Members of the rule of law in their economic relationships.

Yet paragraph 3 of 83 A, far from establishing this principle, was couched in vague and equivocal language. His amendment was designed to rectify these faults. The phrase "directly in connection with" was particularly to be condemned. If it was decided that a measure by a Member to come under this phrase the matter would be referred to the United Nations but would at the same time constitute a permanent exception to the Charter. The explanation given in paragraph 15 of the Report was little more than an attempt to disguise the fact that the principle of the rule of law was being abrogated.
The Committee could in its treatment of this most vital principle do great damage to other worthy effects to establish international peace by means of international co-operation; and it was not possible to proceed on the basis of an obscurantist draft such as the present one. Article 88 A was a confession of faith; the present Article 83 A would lead to a rejection of that Confession of faith if there was a call to act upon it.

Mr. KARKARKAR (India) said that his Government attached great importance to the result of the deliberations on Article 83 A. He would not speak on his amendment to Article 94 but it would be necessary to examine Article 83 A in order of see if that amendment was covered by it. So great was the importance of this matter that his Government might in certain circumstances be forced to come to some regrettable conclusions if this Article turned out to be unsatisfactory.

While the unfettered operation of the rule of law was a desirable ideal, it must be remembered that a country had a sovereign right to act in a certain way in trade matters when the underlying reasons for that action related to matters unconnected with trade. The basic aim of the provisions was to demarcate the jurisdiction of the Organization in respect of problems which belonged essentially to the United Nations and the authority of the latter body should in no way be impaired. The Article did nothing more and nothing less than state the principle and the method of allocating the responsibility of decisions as between the United Nations and the Organization.

The views of his delegation on this matter were not immutable and it might be that its amendment would prove unnecessary. But apart from that amendment, his delegation might wish to accept the draft subject to further consideration after hearing the views of the Sub-Committee.

Mr. MARTEN (United Kingdom) said that the purpose of paragraph 3 of Article 83 A was to ensure that the Organization would not become involved in political issues. It proposed that any economic measure which had been taken in direct connection with a political dispute should be referred to the United Nations. The words "directly in connection with" had been used to describe an economic measure, the motive of which was political. The Interpretative Note was designed to lay down the procedure for deciding whether or not the measure in question was directly in connection with the political dispute.

The major point raised by the representative of South Africa had been that the procedure suggested would be a negation of the rule of law that no unilateral measures should be taken without the prior approval of the relevant international organization. It would be highly desirable if that rule of law could be achieved but at the present time, no check existed on the freedom of action of a country with respect to its essential political interests. Even
the Charter of the United Nations did not contain the principle advocated by the representative of South Africa.

The South African proposal would have partly the same effect as paragraph 3; but it did not make clear whether or not economic measures resulting from political disputes would be subject to Chapter VIII of the Charter. The representative of South Africa had presumed that if the Organization did not concern itself with such economic measures, they would fall under the category of permanent exceptions to the Charter on which no action would be taken; that would not be the case, for they would be dealt with by the competent political bodies.

The major difficulty in respect to the Australian proposal was that its adoption would make it impossible for some nine countries to decide to accept the Charter at Havana. Further, such an important matter could not possibly be decided by a small group of representatives of the Interim Commission and officials of the United Nations.

Mr. MACIADO (Cuba) agreed with the representative of South Africa as to the importance of the principle contained in Article 88 A and also as regards the ambiguity of paragraph 3 of Article 83 A which would permit the violation of the former on the mere pretext of an important political problem.

Mr. BLUSZTEIN (Poland) also agreed that the principle contained in Article 88 A should govern world economic relations. The Organization should remain neutral concerning political issues, but the South African representative had been right in saying that paragraph 3 as it now read could be interpreted in a way which would result in flagrant opposition to the provisions of Article 88 A.

Mr. FROTHOMME (Belgium) felt that the arguments put forward by the representative of the United Kingdom could be used against the establishment of any international law with the exception of the principle that "might is right." There was no point in establishing the Organization unless it could take decisions on all questions which affected international trade. The South African proposal was clear and he supported it.

Mr. AHMED (Pakistan) agreed that it was necessary to include Article 88 A in the Charter but felt that certain exceptions should be permitted to it. It had to be remembered that the rule of law could be broken in other ways than this and that the question under discussion was simply whether the power of decision should rest with the Organization or with the United Nations. He supported the remarks which had been made by the representative of India.

Mr. AUGENTHALER (Czechoslovakia) said that if a country took justice into its own hands, it did not matter from the point of view of international law,
law, whether warships, an army or economic measures were used. In the Sub-Committee it had been agreed that the Organization should not give political judgments and that economic questions which were linked to political disputes should be referred to the United Nations. What had not been decided was whether or not the Organization, as a United Nations specialized agency, should draw its own conclusions from the settlement of the political dispute in the United Nations. The Organization should not risk destroying its own Charter under such circumstances and that, therefore, its provisions should apply.