SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held at the Capitol, Havana, Cuba, Thursday, 4 March 1948, 4.00 p.m.

Chairman: Mr. E. COLEBAN (Norway)

ARTICLE 75

It was agreed to insert in the Report of the Committee in connection with Article 75 the following: "The text of Article 75 implies that each member of the Executive Board shall act for the Organization as a whole having in view the interests of all its Members."

There was no support for the suggestion of the representative of South Africa that the word "representative" be replaced by "nominee" in paragraph 1 of Article 75.

ARTICLE 83A

Mr. FER (Turkey) said that it was only realistic to recognize that a situation might arise wherein a country would feel obliged to take economic measures directly connected with political matters. Such action should follow a special course and the Charter should make particular provision for it. The Organization was of a non-political character; other international organizations were more qualified to deal with such issues. Therefore, he strongly supported the representatives of the United Kingdom and India to the effect that the Organization should deal only with purely economic and commercial matters, leaving economic matters directly connected with politics in the hands of the United Nations.

Mr. STUKKI (Switzerland) agreed that the United Nations should deal with political matters. There were two aspects which were not clear to him. First, what would be the situation in the following case: country B, a Member of the United Nations, applied extreme economic measures against country A, a non-United Nations Member; country A, complained to the Organization, country B claimed that the measure was related directly to politics, and the Executive Board, although agreeing that the matter was exaggerated, referred it to the United Nations because of its political nature. But country A, did not wish it to go before the United Nations
since country B had influence there and country A had none; and country B refused to arbitrate. Would country A remain without protection under the Charter?

Secondly, if there were no political motives in formulating the Charter, in accordance with the policy adopted by the Conference, it was difficult to understand why paragraph 3 of Article 83A failed to take a definite stand against the important factor of unilateral coercive measures, which was contrary to the purpose of the Charter.

Mr. KARMARKAR (India) wondered whether in the light of previous discussions injustice was not being done to the rule of international law. No Charter could destroy the sovereign right of states to interpret international law universally accepted. The purpose of the Charter was international collaboration on a non-discriminatory basis and the Organization could not interfere in a decision of the United Nations.

The whole issue was whether a matter came within the scope of the United Nations. If it did, the Organization became unseized of that matter and the United Nations alone could judge it. Moreover, the Organization should neither permit, condemn nor pass judgment regarding such matters. It would have been understandable had paragraph 2 of Article 88A stated that no country should take unilateral action insofar as the jurisdiction of the Charter was concerned; but the present text was beyond the terms of reference of the Conference and outside the jurisdiction which the Organization could ever possess.

Mr. ROWE (Southern Rhodesia) said that under Article 88A Members undertook to rely on the procedures of the Charter as regards complaints and not to resort to unilateral economic measures; but paragraph 3 of Article 83A would in fact allow such measures if some political justification could be found for them. The way to ensure that the Organization would not entangle itself in political matters was to exclude from the Charter all references to such matters. He supported the Australian proposal.

Mr. MARTEN (United Kingdom) said that it was essential that the Organization should not become involved in political questions. In answer to Mr. Stucki (Switzerland) he pointed out that country A, if economic sanctions were imposed against it by country B, could have resort to the Organization under Chapter VIII. The provisions of paragraph 3 of Article 83A would not apply. If country B said that it was acting for security reasons it could only do so under the provisions of Article 94. The only case in which country B could apply economic sanctions under Article 83A would be one in which such sanctions were connected with a dispute before the United Nations under Chapters IV and VI of the
United Nations Charter. Both the case of disputes with non-Members of the United Nations and the suggestion that a country might deliberately trump up a political dispute were hardly more than theoretical possibilities.

Mr. SPEKENBRINK (Netherlands) was emphatic that political matters should be kept out of range of the Organization, but the complexity of the subject made it impossible to come to a final conclusion, the more so because some delegations, including his own, would find it necessary to consult their governments. He supported the Australian proposal.

Mr. ALAYZA (Peru) stated that Members undertook to refrain from unilateral action in normal cases but it could not be rigidly laid down that if a Member felt his case was a political one the Organization should automatically refer it to the United Nations. The correct procedure would be for the Organization to decide whether the economic measures emerged from or were related to a political situation. Three principles must be borne in mind in regard to Article 83A:

(i) that the Organization should not be concerned with political matters;

(ii) that it was within the purview of the Organization to decide whether an economic measure was related to a political question and

(iii) that the decisions of United Nations would be the solution of any matters referred to them.

The Sub-Committee Report did not state these principles and indicated in paragraph 15 that a Member would be judge in its own cause. Decision on this question should be postponed; the question of reference to the International Court of Justice had already been given over to the Interim Commission and it would be appropriate to follow this procedure here.

Mr. KOZIEJE (France) was uncertain of the intrinsic validity of the proposed new Article. Since it was essential to get general agreement on this matter it would be best to discuss it but to follow the Australian suggestion if no generally accepted solution could be found.

Mr. AGUILAR (Mexico) supported the Report of the Sub-Committee because the dangerous nature of political matters might undermine the authority of the Organization which should be guided by the decisions of the United Nations on political questions.

Mr. ROUCHDY (Egypt) also supported the Report of the Sub-Committee.

The representative of Burma also supported the Report of the Sub-Committee.

Mr. MACCARTHY (Ireland) was in sympathy with the remarks of the
representative of the Netherlands. The draft seemed to put a small country at the mercy of a big country and there was the further complication that Ireland was not a Member of the United Nations. He supported the Australian proposal.

Mr. STUCKI (Switzerland) emphasized the importance of this matter for his country which was small and whose political creed must therefore be one of respect for right and refusal to act unilaterally. The remote character of his example must not be allowed to detract from the possibility of a similar specific occasion arising in the future. The idea that if two countries were in conflict they had the right to take unilateral action was extremely dangerous. If it was impossible to reach a solution which excluded unilateral coercive measures, then the Australian proposal should be adopted.

Mr. NASH (New Zealand) said that the Committee should make rules to cover general situations and not to meet particular cases. The Report gave a Member the power to drop the rules of the Charter. If the United Nations took a decision on a matter referred to it and if then that decision was not obeyed by one Member, it was doubtful whether the affected Member should use the Organization to achieve an end it could not otherwise achieve. There was no provision which would give a cessation of the action being taken by the affected Member. There was the further question of whether it was justifiable to use economic means to attain a political end. The implications of these points were so wide that the Committee should not come to an immediate decision. He supported the Australian proposal.

Mr. HOLLOWAY (South Africa) referred to the example quoted by Mr. Stucki of a country which was not a Member of the United Nations. If the Organization judged that a complaint was outside its scope, it could suggest to the non-Member that the good offices of the United Nations be used or it could suggest arbitration. But even the possibility of deadlock was not a valid objection to the establishment of the rule of law.

The representatives of Burma, Mexico, Peru and Turkey had after supporting the Sub-Committee Report in effect argued in favour of the South African amendment by calling for a clear statement that politics should not be introduced into the Organization. The representative of Czechoslovakia had also given a certain support to the South African amendment by arguing that the Charter should apply after the United Nations had given its findings on the political aspect of a matter referred to it. The representatives of India and Pakistan had seemed to suggest that the /rule of law
rule of law was a very desirable principle to apply to other countries but not to their own. The representative of the United Kingdom had not explained why it was necessary to abandon the Charter after an economic issue with political aspects had been referred to the United Nations; further, in suggesting that a country could under the pressure of public opinion resort to unilateral economic measures with impunity, he had admitted his disagreement with the provisions of Article 88A. In fact the representative of the United Kingdom had on a previous occasion gone so far as to admit that the Charter would neither permit nor condemn such unilateral measures.

Owing to the inherent difficulties of the case he would withdraw the South African amendment if the Australian proposal were accepted.

Mr. MARTEN (United Kingdom) said that the Charter was not abandoned in the case quoted by the representative of South Africa. The Charter would continue to apply to the technical matters properly belonging to the Organization but it would not apply to economic measures emerging from a political situation. If it were to apply in the latter case, the Organization would have to deal with those very political questions which everybody agreed should be excluded from it.

Mr. HAIDER (Iraq) said that the problem facing the Sub-Committee related to economic measures connected with political matters. The Sub-Committee had decided to limit the Article by taking into account only those matters which were brought before the United Nations in accordance with Chapter IV or VI of the United Nations Charter. All other disputes were excluded. Secondly, the only economic measures that were relevant were those which were "directly in connection with" the political matter; the Organization would decide if this were so or not. If it were found to be so, then clearly the Organization was not the competent authority to deal with the measure because the measure was only a part of the general political complex.

He did not agree with the thesis of the South African representative. Once the Organization had decided that an economic measure was directly in connection with a political matter, the matter was automatically referred to the United Nations. That body was free to debate the matter and the measure either together or separately. If the Sub-Committee Report was not accepted, the measure and the matter would be separated and the former made illegal under the Charter. This would be tantamount to a political decision. Acceptance of the Report on the other hand would not diminish the right of any United Nations organization to take decisions on matters falling within its proper scope.
Nor could he accept the Australian proposal. If no provision at all were included in the Charter there would be no distinction between purely economic measures and economic measures with political aspects, so that this omission would again involve a definite judgment. Members must be clear on the nature of their obligations and therefore all economic measures which were bona fide part of a political situation must be distinguished and set aside.

Mr. COOMBS (Australia) could not accept the view of the representative of Iraq that the adoption of the Australian proposal would prejudge the issue. The problem to be decided was how far the rules of the Charter, which clearly envisaged ordinary political relationships between Members, should apply in the case of a political dispute. A decision on this question would be a political one and, therefore, it should not be taken until the United Nations had considered the matter.

It would not be unreasonable to state in the report that the Conference had encountered this difficult question and, influenced by the fact of its political character, had decided that it should be considered by the United Nations before any decision was taken. At a later date, it would be possible to include in the Charter or in the relationship agreement, the decision of the Organization concerning this question so that Members would be able to know the extent of their obligations.

Mr. HAKIM (Lebanon) asked the representative of Australia how it would be possible for representatives to sign the Charter at Havana if a further important provision were to be added to it at a later date.

The CHAIRMAN drew the attention of the representative of Lebanon to the fact that the matter could be treated in the same manner as had been decided upon in connection with the reference to the International Court of Justice.

Mr. MONDELLO (Italy) said that his delegation would continue to maintain its reservation on Article 94 (2) (a), pending further instructions from the Italian government.


Mr. FORTHOMME (Belgium), Chairman of the Sub-Committee said that the Sub-Committee had discussed the difficult question of relations with non-Members at some length and had come to the conclusion that a succinct text would provide the best solution. He explained the various paragraphs of the text.

Mr. MULLER (Chile) pointed out that Article 15 (4) as it had emerged from the Co-ordinating Committee made provision for preferential agreements for economic development "between Members". Article 93 (2), as it now /read
read would make it impossible for a preferential agreement to be concluded with a non-Member.

Mr. EVANS (United States) said that Article 15 only limited preferential agreements to Members in connection with the application of the automatic criteria. By a two-thirds majority vote, the Conference could permit the establishment of an agreement with a non-Member and such a decision, in his opinion, would override the provisions of Article 93.

Mr. LAMBOGLIA (Argentina) said that he had been authorized to withdraw his general reservation on Article 93 on the understanding that the underlying principle of the present text was the same as that of the compromise proposal put forward by the representative of Czechoslovakia in the Sub-Committee.

Mr. BLIBZTEUT (Poland) would have preferred Alternative A of the Geneva Draft to the present text of Article 93. The division of the world into Members and non-Members would not serve to achieve the aims of the Organization. Countries rather should be judged by their ability to contribute to the expansion of world trade and to the raising of living standards. The present text was vague and ambiguous and, therefore, he reserved his position on it.

Mr. MULLER (Chile) could not accept the explanation put forward by the representative of the United States. The Article dealing with the special difficulties concerning relations with non-Members should not contain a provision which would prevent the conclusion of preferential agreements with non-Members, if the non-Members were able to satisfy the terms of the automatic criteria.

The CHAIRMAN adjourned the discussion of Article 93 and requested the representatives of Chile, Belgium and the United States to find a form of words which would satisfy the position of the representative of Chile.

Mr. AGUILAR (Mexico) said that he would withdraw his amendments to Article 1 if the words "on a reciprocal and mutually advantageous basis" were inserted after the word "trade" in paragraph 4.

Mr. MARTEN (United Kingdom) could not accept this proposal because it would imply that the elimination of preferences should not be on a reciprocal and mutually advantageous basis.

To meet the views of the United Kingdom representative, Mr. AGUILAR (Mexico) suggested that the words which he proposed should be inserted after the word "promote".

Mr. MARTEN (United Kingdom) agreed.
Mr. KEILLOG (United States) reserved his position on the Mexican proposal pending consideration of it by his delegation.

Mr. GUERRERO (Ecuador) said that as he had received no instructions to the contrary, he had to press for the inclusion of his proposal regarding Article 1. It was based on a General Assembly resolution of 29 January 1946 which had been accepted by the representatives of thirty-six countries. In an attempt to meet the views of the Working Party, he had put forward an alternative form of words which originally had been accepted at the Chapultepec Conference on 7 March 1945. It contained an important principle for the raw materials producing countries and he urged that it be accepted by the Committee.

The CHAIRMAN explained that this proposal had been opposed in the Sub-Committee on the grounds that the principle which it contained was already covered by the terms of Article 69.

The representatives of Peru, Bolivia, Argentina and Chile warmly supported the proposal of the representative of Ecuador.

Mr. FORTHOMME (Belgium) could not accept the proposal because it was impossible to compare the original price which the farmer received for the raw material with that received by the manufacturer for his manufactured product.