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SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held at the Capitol, Havana, Cuba, 13 February 1948, 10.30 a.m.

Chairman: Mr. D. L. WILGROSS (Canada)

1. ARTICLE 40: REPORT OF WORKING PARTY NO. 3 ON THE WORD "CHAPTER" IN PARAGRAPH 1 (a) (E/CONF.2/C.3/52)

The CHAIRMAN stated that during the second reading of Article 40 and consideration of Report of Sub-Committee D, the delegate for Venezuela had suggested that the word "Chapter" in paragraph 1 (a) might be changed to "Charter", on the ground that injury, such as that envisaged in Article 40, might result from obligations incurred under other Chapters, particularly under Articles 3 and 9.

The Committee agreed to endorse the view of the Working Party that situations deriving from the fulfilment by a Member of its obligations under Articles 3 or 9 might constitute an "unforeseen development" for the purpose of paragraph 1 (a) of Article 40.

2. ARTICLE 31A: DISCUSSION OF THE NEW ARTICLE ON "LIQUIDATION OF STOCKS" (TEXT PROPOSED BY SUB-COMMITTEE J, (E/CONF.2/C.3/43), AND OF THE REVISED ARTICLE PROPOSED BY THE DELEGATION OF CUBA (E/CONF.2/C.3/9/Add.2)

Mr. GUERRA (Cuba) stated that the revised text of Article 31A was proposed by the delegation of Cuba because, in their opinion, the text submitted by Sub-Committee J did not deal completely with the very important matter of liquidation of stocks and might in practice have an effect contrary to the purposes sought in creating the Article, i.e., to prevent the injurious effect the liquidation of stocks might otherwise have on the economies of other countries. However, the only protective provision was that public notice should be given; unless an orderly procedure was established for liquidation, public notice might cause the effect it was sought to avoid. The Cuban proposal was justified on the grounds that an accumulation of stocks of a product or their liquidation was not a problem of great concern to the country holding them but might be to the countries producing or trading in that product. Because of its impact on international trade, the Charter should provide for orderly liquidation by mutual agreement.

/Furthermore, if

Furthermore, if a satisfactory agreement was not reached, the Organization should be able to ensure orderly liquidation, taking into account the interests of affected countries. Article 43 did not provide for international concerted action and was limited to stocks accumulated in World War II. The accumulation of stock piles was a phenomenon of permanent character in international trade, and provision for the future as to agreement and intervention by the Organization was indispensable.

Mr. MUNOZ (Chile) supported the Cuban proposal.

Mr. EVANS (United States) doubted that the United States authorities responsible for stock piles could accept the Cuban proposal. It was a normal, frequent procedure for governments supplying and buying stocks to arrange in their contracts for their liquidation. The United States had not sought the new Article 31A, proposed by the Sub-Committee, and in accepting it, it had gone farther than any previous international agreement. Article 31A was a reasonable obligation for the United States to accept, but to demand more would be unreasonable. Despite the willingness of the United States to have Article 31A in the Charter, if it was considered injurious, the United States delegation would be willing to see it omitted. Without committing the United States delegation, the Cuban proposal might be considered reasonable if the phrase "non-commercial stocks" were removed, so that all stocks held by Members or their agencies were included and the obligations thus more evenly distributed. Mr. Evans suggested that the new Article 31A be accepted as submitted by the Sub-Committee, or that it be omitted entirely, or that it be amended by the deletion of the phrase "non-commercial stocks".

Mr. FORTHOMME (Belgium) felt that the Cuban proposal omitted the interests of the consumers which were dealt with in the Charter equally with those of producers. Moreover, it was unrealistic to expect a Government which had paid for stocks bought, to have its right of ownership excessively curtailed. The draft of the Sub-Committee already represented a sacrifice on the part of a purchasing country; it would be quite unreasonable to expect such a country still further to renounce its right of ownership and to have the method of disposal dictated to it.

Mr. LLORENTE (Philippines) said that his delegation was not opposed to Article 31A, which was a matter of international, not unilateral concern. As experienced in the case of the gold speculation during the '30's, the procedure for public notice was to be feared, although there would be no objection to prior notice being given to the Organization. Public notice should be required only for the routine disposal of stocks, that is, where the volume was not substantial. Prior notice and consultation concerning substantial quantities, either with the Organization or through it with

/Members, should

Members, should be made in complete secrecy in order to prevent speculation. The position of the representative of the United States was creditable, but without doubt he would be receptive to suggestions for the improvement of liquidation procedure.

Mr. NASH (New Zealand) agreed that public notice might have an adverse effect on prices of commodities, but it could be counter-acted by the requirement for consultation with all governments substantially interested. The obligations under Article 31A were greater than any asked of a Member in any other part of the Charter. Rights of ownership also implied responsibility and obligation. The effect of a disorderly disposal of a commodity upon a country which produced very few commodities must be considered. The experience of disposing of large stocks of wool after World War I need not be repeated if Members co-operated as was proposed in Article 31A. The text submitted by the Sub-Committee represented a great advance.

Mr. MORTON (Australia) said that the acquisition of stocks for whatever purpose gave a country certain rights of disposal. The Cuban amendment did not specify the length of time over which consultations might take place and which could delay disposal of stocks. He agreed with the representative of the Philippines regarding the dangers of public notice and suggested the deletion of sub-paragraph 1 (a) of the Sub-Committee text. The obligation of the holding country for consultation should be through the Organization or directly and confidentially to Members, always preserving their autonomy, to discuss the best method of disposal with a view to as little financial loss as possible to both parties.

Mr. GUTIERREZ (Bolivia) said that there were procedures for various purposes throughout the Charter which restricted the liberty and freedom of operation on the part of all Members, and it appeared strange that there was objection to limiting freedom of action concerning liquidation of stocks. The Charter condemned dumping and it was logical to think that any rapid liquidation of stocks occurring without consultation was a kind of dumping. The Cuban text proposed a procedure similar to other Articles in the Charter: consultation where international trade was affected. Countries which insisted upon measures which made the modification of the Constitutions of Governments necessary should themselves be ready to accept certain limitations required to control fluctuations that might be caused by the liquidation of large stocks. The period of consultation might be defined. Subject to certain changes of form the Cuban proposal was acceptable.

/Mr. CAPLAN (United Kingdom)

Mr. CAPLAN (United Kingdom) pointed out that the matter under discussion had been put forward originally by the United Kingdom, and that his delegation had always considered it to be of great importance. The attitude of the United Kingdom was not that of a country holding stocks, as she could not afford the luxury of retaining any which were not needed for current consumption.

The ideal solution to the problem might lie along the lines of the Cuban amendment, but that proposal had no real balance. The governments which legally held stocks were asked to limit their form of action in disposing of those stocks.

The intention certainly should not be to ask governments to limit their national sovereignty without an equal return of advantages under the Charter. In Article 31A, the only advantage accruing to governments assuming the obligation was a moral one. The correct approach was that they would take an intelligent and reasonable view of the repercussions that their own action might have on others. The representative of Belgium had rightly stressed the importance of the obligation to consult in order to avoid substantial injury to consumer and producer alike. Four months was a substantial period of time during which the situation would be dealt with on the basis of the repercussions that might result from the public notification of the intention to liquidate stocks. It was important to be realistic, and that there would be no guarantee of secrecy was not simply because of the form of words used in the Article. Some countries were already bound by their own legislation to make public announcement of their governments' intentions.

The representative of New Zealand had referred to Dominion Wool Disposals, Limited; the action had been taken by the governments concerned without any stimulus from Article 31A. The Cuban proposal suggested that, in the absence of that Article, governments would proceed without responsibility.

The matter was not one which imposed an equal obligation on all countries, as few were in a position to store large stocks of primary commodities. There was a possibility of considerable damage being done to Members of the ITO if some period of notice and consultation were not given to avoid injury, and this point and others should be included in the draft charter. The Cuban text could not be defended as placing a reasonable obligation upon governments, nor would they under it receive mutual advantages.

There was also a tendency to overlook the fact referred to by Belgium, that stocks were built up on a hard cash basis, and often countries arranged contracts between themselves. All countries would see to it that their interests were protected.

/The United Kingdom

The United Kingdom delegation could not support the Cuban text.

Mr. BAGAART (Netherlands) supported the statement by the representative of the United Kingdom.

Mr. FORTHOMME (Belgium) said that the fears of the representative of the Philippines were justified as regards the possibility of speculation. The best way to ensure harmful speculation was to restrict information; it could be defeated through prior notice and consultation.

Mr. MUNOZ (Chile) said that Article 31A was necessary after the exception of security measures which had been inserted in Article 94. "Non-commercial purposes" could not be deleted, as, if a government had accumulated a stock pile it would have to be for non-commercial purposes.

As the representatives of Australia and the Philippines had stated, the four-months notice would be bound to stimulate speculation.

He would support the Sub-Committee text if sub-paragraph (a) were deleted, but otherwise he would agree to the Cuban proposal.

Mr. GUERRA (Cuba) believed that any provision for agreement in the Charter would inevitably mean limitation of the right of ownership. If this principle were not accepted many articles of the Charter would have to be re-written.

It was not the intention of Cuba that terms should be dictated on the disposal of stock piles, nor was it the intention to impose on any country unilateral obligations. Orderly disposal of the stocks would compensate governments through improving international trade. Any drafting change would be accepted which might make it clearer that consultation was provided for with a view to reaching agreement.

The operation of Article 31A had been confined to non-commercial or national defense purposes because it was thought that in all practical cases when the stores had been accumulated, by the simple fact that there was no market for the product, the country which accumulated them would be the one mainly interested in reaching agreement, and the procedure provided for in Chapter VI would be invoked. Article 31A covered a different case; the initial purchases were not related in a direct way to market situations, and the liquidation of stocks would affect other countries.

The country holding the stock would have an interest in seeing that prices did not drop, and for this reason the obligation placed upon the country concerned was more imposing in appearance than in practical application.

It was not the intention to create difficulties at the Conference, and the Cuban delegation would welcome any changes in its amendment which would meet the objections that had been raised.

/Mr. EVANS (United States)

Mr. EVANS (United States) suggested that if it was desired to give the word "consultation" the definition given in the Cuban text, it might be explained in another part of the Charter in order to cover all the cases in which it was mentioned. If the Article applied to all stocks the Cuban amendment might be more acceptable to the United States of America.

Mr. GUERRA (Cuba) agreed that drafting changes could be made to meet the objections of the representative of the United States, but the main difference between the Cuban and Sub-Committee drafts was that the latter provided for nothing more than consultation, while the former followed up any failure in consultation with intervention by the Organization.

Mr. NASH (New Zealand) pointed out that the law in one of the major countries required public notice of liquidation of stock, and therefore if the Cuban amendment were accepted they would virtually be asking that country to amend its legislation.

It was agreed by a vote of 22 to 21 that a working party should be set up to consider and make recommendations upon the Sub-Committee and Cuban drafts of the new Article 31A, in the light of discussion in Committee. Upon the proposal of the Chairman it was agreed that the working party should consist of the representatives of Belgium, Bolivia, Chile, Cuba, New Zealand, the Philippines, the United Kingdom and the United States of America, and that the representative of New Zealand should be Chairman of the Working Party

3. ARTICLE 41 - Addition of Interpretative Note (Proposal of Delegations of Argentina, Ecuador, Guatemala and Uruguay, E/CONF.2/C.3/46, Corr.1 and Rev.1)

It was agreed that the interpretative Note as proposed in document E/CONF.2/C.3/46/Rev.1 should be attached to Article 41, and that the following passage, related to sub-paragraph 1 (a) (iii) of Article 43, should be included in the Summary Record of Committee III:

"The Committee agreed that quarantine and other sanitary regulations as well as other types of regulations must be published under Article 37 and that the provisions for consultation in Article 41 required Members to supply full information as to the reasons for and operation of such regulations.

"The Committee agreed that quarantine and other sanitary regulations are a subject to which the Organization should give careful attention with a view to preventing measures 'necessary to protect human, animal or plant life or health' from being applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade and to advising Members how they can maintain such measures without causing such prejudice.

/"In view of this,

"In view of this, the Committee assumes that the Organization will establish a regular procedure with a view to investigating (in consultation when it considers this advisable, with other inter-governmental Specialized Agencies of recognized scientific and technical competence, such as the FAO) any complaints that might be brought by a Member as to the use of the exception in sub-paragraph 1 (a) (iii) of Article 43 in a manner inconsistent with the provisions of the preamble to that paragraph."

The meeting rose at 1.00 p.m.
