

United Nations
CONFERENCE
ON
TRADE AND EMPLOYMENT

Nations Unies
CONFERENCE
DU
COMMERCE ET DE L'EMPLOI

UNRESTRICTED

E/CONF.2/C.3/SR.43
11 March 1948

ORIGINAL: ENGLISH

E/CONF.2/C.3/SR.43

THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE FORTY-THIRD MEETING

Held at the Capitol, Havana, Cuba, Wednesday, 10 March 1948, at 10.30 a.m.

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

1. ARTICLE 18A - REPORT OF SUB-COMMITTEE B (E/CONF.2/C.3/76)

Mr. HOLLOWAY (South Africa), as Chairman of Sub-Committee B, stated that the Sub-Committee recommended that Article 18A not be incorporated in the Charter provided that the Conference acted consistently with the underlying idea that the ITO should not concern itself with shipping. Therefore, it was ~~also~~ recommended that Committee III should suggest the addition of a clause to Chapter V that the provisions of that Chapter should not apply to shipping. The two recommendations were one whole and should not be considered separately.

Mr. MADJID (Afghanistan) said that he had agreed with great reluctance to the deletion of Article 18A, but Article 1 of the International Maritime Consultative Organization seemed to cover the problem. He strongly opposed the deletion of any reference to shipping from Article 50. It was proper that some provision should be made for smaller countries, non-members of IMCO, to lodge complaints with the ITO, which under Article 50 would transfer them to the appropriate Specialized Agency.

Mr. CORIAT (Venezuela) felt that restrictive practices affecting international commerce should be dealt with in the Charter. The argument that shipping should be eliminated from paragraph 3 could not be upheld since paragraph 3 referred to the Organization transferring to the appropriate Specialized Agencies the technical matters within their field which affected international commerce.

It was true that a Member of the ITO could become a Member of IMCO but there were many countries with a small or no merchant fleet which would not wish to enter IMCO. If shipping was eliminated from Article 50 a country could not lodge complaints with the ITO against, for example, the restrictive practices of a large company controlling a primary product which damaged independent growers by its shipping practices. The deletion would obviously harm the interests of underdeveloped countries and the Recommendation should therefore be rejected.

/Mr. GUERRA (Cuba)

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Mr. GUERRA (Cuba) supported the representatives of Afghanistan and Venezuela. Article 50 only provided the procedure for lodging complaints; of all the services described in that Article, shipping was the most important. There was two aspects to be considered: the interests of countries possessing a merchant navy or wanting to develop one, and the interests of countries using the services of shipping. The first was too technical for the ITO and therefore Article 18A should not be included in the Charter but the latter should be provided for as in the present text of Article 50.

Mr. MELANDER (Norway) said that according to Article 50 Members might make complaints against restrictive business practices in shipping; this right was admitted, but it could not be admitted that a country which was entitled to make complaints could at the same time use governmental measures to discriminate in the field of shipping. Shipping should be considered as a whole: as there was a right to lodge complaints there should be an obligation not to take discriminatory action. For those reasons his delegation had proposed Article 18A.

For Maritime Conference had drawn up a Charter; membership to IMCO was open to all, subject only to limitations similar to membership in ITO. The Convention provided for equal representation: The Council would include six members with the largest economic interest and six with the largest seaborne trade. Section 2 of Article 1 encouraged the removal of discriminatory action and unnecessary governmental restrictions; development of national shipping did not of itself constitute discrimination. Section 3 of Article 1 was concerned with unfair shipping practices and set forth procedures for eliminating them. Therefore both aspects had been considered.

The Scandinavian countries did not think the measures against governmental interference were strict enough but had accepted the compromise. Consequently regarding the ITO Charter the Norwegian delegation was faced with the situation either of proposing Article 18A in exactly the same form as in the IMCO Charter or of withdrawing Article 18A and excluding shipping from Chapter V. The latter was the better solution because it obviated the possibility of two international bodies making contrary recommendations on the same subject.

Mr. FORTHOMME (Belgium) noted that the French text of document E/CONF.2/C.3/76 incorrectly used the word "transportation" in place of the correct English word "shipping".

Mr. JIMENEZ (El Salvador) supported the representatives of Venezuela and Cuba. If the necessary guarantees were included in the functions of the Specialized Agency there was no reason for deleting the procedure for recourse to them through the ITO. The ITO would make observations; the IMCO would make the final recommendation.

/Mr. GUERRA (Cuba)

Mr. GUERRA (Cuba) said he was aware that shipping services were included in the IMCO Charter but as a matter of actual practice a government was more interested in the development of shipping. Shipping problems arising from development should be left to the IMCO but the effects on trade of shipping practices were the concern of ITO.

Mr. ADARKAR (India) said that his agreement to the recommendations of the Sub-Committee were based on the same reasons as given by the representative of Norway. The shipping problem was complex and all its aspects should be dealt with by the IMCO. Membership was open to all and its purposes were directed to safeguarding the users of services as well as to Maritime development. Article 50 did not confer any right on an ITO Member which it would not have if it were an IMCO Member. Deleting reference to shipping from Article 50 simply meant that the complaint would be lodged directly with IMCO. Under Article 50, and even under Article 48A, the action had to be initiated by a Member, i.e. by a government on its own or on behalf of an enterprise within its jurisdiction. He supported the Report of the Sub-Committee.

The representatives of Greece and France also supported the Report of the Sub-Committee, the latter noting that the deletion of reference to shipping in Article 50 would not detract from the rights given under Articles 89 or 90.

Mr. HOLLOWAY (South Africa) said his delegation did not favour the intrusion of the ITO into shipping problems. There still seemed to be the same equally divided opinions; in order to avoid an inconclusive debate the Report of the Sub-Committee should be adopted as a whole.

Mr. MELANDER (Norway) said that since the IMCO could overrule such observations as the ITO might care to make under paragraph 3 of Article 50 there could be conflict between the two Organizations. He favoured the Sub-Committee Report; the alternative could be accepted if necessary but dividing the Report was unacceptable.

Mr. GUERRA (Cuba) asked whether the Maritime Charter contained the same procedure to be found in Article 45A. If so, he would not press his point further. If not, the deletion of shipping from Article 50 would deprive enterprises from lodging complaints through their governmental channels.

Mr. MELANDER (Norway) said that the IMCO Charter did not include a sentence similar to that in Article 45A, but neither did Article 50.

Mr. ADARKAR (India) said there was nothing in the IMCO Charter to prevent a Member from acting upon the request of enterprises in their jurisdiction.

Mr. MADJID (Afghanistan) said that the Conference had been trying to write a Charter to regulate world trade, to remove obstacles which deprived Members from benefits they might enjoy under normal circumstances, to encourage private undertaking, and to stimulate competition. It must be agreed that services

/were as important

were as important as trade; the Articles dealing with services should be maintained. There was no objection to deleting Article 18A since its purpose was covered in paragraph 2 of Article 1 of the IMCO Charter, but it was not proper to deprive users of shipping services from their rights under Article 50. Meager as they were, they gave a country opportunity to place before the Organization, and, through its good offices, before the IMCO, any difficulties it might encounter. Moreover, Chapter V allowed the Organization to take action if the results were not satisfactory.

Mr. JOHNSON (New Zealand) also opposed the deletion of the reference to shipping from Article 50. As to any possibility of conflict between the two Organizations, Article 50 referred only to observations and paragraph 4 of Article 1 of the IMCO Charter contemplated receipt of observations in matters of shipping from any organs of the United Nations including Specialized Agencies. The powers of the IMCO were so limited to consultative and advisory functions, that New Zealand had reserved its position at the recent Maritime Conference in Geneva. There were no provisions regarding consultation in the IMCO comparable to Chapter V of the ITO Charter. In view of the limited scope of IMCO it was very important that the scope of Chapter V should not be limited.

Mr. HOLMES (United Kingdom) agreed that all aspects of shipping should be left to the Maritime Organization and supported the Sub-Committee Report.

Mr. TERRILL (United States) thought that the even division of opinion arose from confusion regarding two points. On the one hand, the Venezuelan statement that the deletion would aggravate the problems of Members of ITO who were not Members of IMCO had little merit. If the ITO were a "post-office", it would create another special situation regarding non-Members.

The real issue was beyond the competence of the Third Committee particularly regarding the construction of Chapter V. The technique of monopolistic trading services was irrelevant, but the ITO should have the right to take cognizance of the situation created. Paragraph 8 of the Sub-Committee Report prejudiced that right and might be modified as follows: "8 (b) To recommend to Committee IV that a satisfactory solution be found to the relation of shipping services to Chapter V in order to avoid conflict with the International Maritime Consultative Organization."

Mr. JIMENEZ (El Salvador) felt the ITO Charter should allow for the lodging of complaints against restrictive business practices; the burden of belonging to all Specialized Agencies should not be underestimated. He felt the United States proposal might be a proper solution.

Mr. GUERRA (Cuba) said there was no intention of precluding the lodging of complaints such as the representative of Venezuela had mentioned. If some wording could be found to make it clear that the ITO was interested in shipping /practices only

practices only as they affected international trade, the problem would be solved. He welcomed the United States proposal. Protecting the interests of trade against shipping practices should be in the ITO Charter; protecting shipping interests from trade practices should be taken care of by IMCO.

Mr. KUMLIN (Sweden) supported the Report of the Sub-Committee for the same reasons given by the representative of Norway.

Mr. MA (China) supported the United States proposal.

Mr. WOULBROUN (Luxembourg) agreed with those who wished to maintain the mention of shipping in Article 50.

The representatives of France, Norway, Greece and the United Kingdom stated that they could not concede the omission of Article 18A without knowing what action might be taken by Committee IV if the United States proposal were accepted.

After a discussion of procedure, it was agreed to adopt the United States proposal insofar as it related to Committee IV. The Report of the Sub-Committee would be considered after Committee IV had reported its decision.

2. (a) REPORT OF THE JOINT SUB-COMMITTEE OF COMMITTEES II AND III
(E/CONF.2/C.3/78 and Corr.1)

The CHAIRMAN stated that paragraph 1 of Article 16 had already been adopted by Committee III on the recommendation of Sub-Committee A.

Mr. ROYER (France) said that the object of the Chilean amendment was to avoid conflict between the General Agreement and the Charter, but it was not necessary to amend Article 16 to accomplish that. A text was being drafted by the Contracting Parties to GATT pointing out that nothing in the General Agreement should prevent the application of the Charter. This would cover the point made by the delegations of Chile and Syria.

The representatives of Chile and Syria agreed with the statement of the representative of France, and maintained their reservations pending the decision of the Contracting Parties to GATT.

Mr. HAIDER (Iraq) stated that countries with which Iraq had commercial treaties wherein existing preferences were acknowledged had recognized unconditionally Iraq's right to establish preferential arrangements between territories which formed an integral part of the Ottoman Empire. This right was established in international documents which preceded the Charter, in the Mandate documents, in the commercial protocol to the Treaty of Lausanne, and by the League of Nations. He quoted paragraph 2 of document E/CONF.2/C.2 and 3/A/15 which contained this exception to the most-favoured-nation clause. Article 16 required acceptance of most-favoured-nation treatment to all Members as well as acceptance of the existing preference, some of which had not previously been recognized. It was true that the margin of existing

/preferences

preferences must be bound and was subject to negotiation but nevertheless Members were asked to accept them in principle as an exception to the most-favoured-nation clause. There was no objection to this, provided the right to establish new preferences was recognized in accordance with previous commitments and the document quoted above. An attempt had been made to meet the case in paragraph 6 (d) of Article 15 but the provisions therein seemed to contain certain limitations of those rights which had been unconditionally recognized. It was therefore necessary for the Iraq delegation to reserve its position to Article 16 pending final determination of the text of Article 15 and further instructions from its Government.

Mr. GUTIERREZ (Bolivia) reserved the position of his delegation to Article 16 because it was felt that the exceptions asked for by his delegation were not covered in the Article or in the Report of the Sub-Committee.

Mr. EVANS (United States) said it was the understanding of his delegation that the amendments to Article 16 were among those included in the overall agreement of Heads of Delegations. There was no wish to challenge the right to take a new position, but so far as any delegation which had not reserved its position was concerned, it would have to be regarded as a rejection of the entire agreement concerning Articles 15, 42 and the Tariff Committee.

The meeting rose at 1.05 p.m.
