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President: Sir Douglas COPLAND (Australia).

Present:

The representatives of the following countries: Argentina, Australia, China, Czechoslovakia, Dominican Republic, Ecuador, Egypt, France, India, Netherlands, Norway, Pakistan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

Observers from the following countries: Chile, Colombia, Costa Rica, Haiti, Iran, Israel, Mexico.

The representatives of the following specialized agencies: International Labour Organisation, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, International Civil Aviation Organization, International Bank for Reconstruction and Development.

AGENDA ITEM 12

Restrictive business practices (E/2380, E/2612 and Add.1 to 3, E/2671, E/2675, E/2716, E/L.667) (*continued*)

1. Mr. KAMAT (India) said that his delegation was concerned at the delay in dealing with international action against restrictive business practices, although it had been generally agreed that they were harmful to consumers, particularly in the under-developed countries. The subject had been discussed for seven years, ever since the ill-fated Havana Charter. His Government was substantially in agreement with the subsequent recommendations made by the *Ad Hoc* Committee on Restrictive Business Practices (E/2380) that inter-governmental machinery should be set up to deal with the matter. When the Council had discussed the subject in 1953, it had anticipated that the contracting parties to the General Agreement on Tariffs and Trade (GATT) would take some action, but the Secretary-General had informed it (E/2716) that the terms of Council resolution 487 (XVI) precluded him from referring the matter to GATT, since a sufficient number of Governments had not commented on the Committee's report. The GATT Working Party had concluded that to discuss the Committee's recommendations would be premature since they were still before the Council. There seemed to be a procedural vicious circle. Governments should be urged to submit their comments so that GATT could take action within the general framework of the Agreement. GATT was the most important body concerned with international trade, and there were enough Contracting Parties to ensure the execution of the Committee's recommendations.

2. The Norwegian draft resolution (E/L.667) was good as far as it went, but it did not go far enough. It was not clear how long the proposed studies would continue. The matter should be referred to GATT at its next session and operative paragraph 3 (c) should be amended accordingly.

3. Mr. ANIS (Egypt) observed that restrictive business practices harmed economic development because they affected mainly commodities for which the demand was inelastic and because monopolies could accordingly fix their prices at a level ensuring the maximum profit. That price usually suited the least efficient producer and thus adversely influenced productivity and the volume of trade. Restrictive business practices were therefore to be condemned, but tariff barriers and the regulation of investment, production, trade and prices were equally harmful. The definition of a cartel should cover restrictive agreements between Governments. The *Ad Hoc* Committee's definition, in article 1, paragraph 3 of the draft articles of agreement (E/2380, annex II) was broad but vague and would make it more difficult to tackle the problem effectively.

4. Agreements on the distribution of foodstuffs were another form of restrictive business practice; they were more harmful to consumer countries than were industrial agreements. Large consumer countries could afford to buy non-perishable foodstuffs when prices were low owing to their better knowledge of and easier access to the world market.

5. International commodity agreements, too, might be used to keep prices higher than they should be. Equal representation of producer and consumer countries on the controlling body in such agreements would not be sufficient to prevent unfair price bidding. A study by the Food Research Institute of Stanford University had concluded that international commodity agreements bore a strong resemblance to cartels and had expressed the doubt whether special rules could be devised to prevent their domination by producer countries, which would use the agreements to maintain higher prices. The matter merited further consideration by the Council and by the Commission on International Commodity Trade. The Secretariat should keep the Council informed of current developments in international commodity agreements and of their effects on price valuation.

6. The Council might well pay heed to a statement made by the representative of the International Law Association to the Council Committee on Non-Governmental Organizations (E/C.2/SR.153), particularly his remarks to the effect that while the purposes set forth in Council resolution 375 (XIII) were commendable, there were obvious limitations to the terms of reference laid down by it for the *Ad Hoc* Committee on Restrictive Business Practices; the Committee had not been authorized to consider Government-directed cartels, nationalized industry arrangements or the relationship between cartel policy and commodity agreement policy.

7. Mr. GINEBRA HENRIQUEZ (Dominican Republic) observed that import quotas and similar restrictive practices were as harmful as cartels, since they impaired economic development in countries which exported raw materials to industrialized countries by limiting their supply of foreign exchange. The problem of restrictive business practices existed in all countries, and it was to be hoped that a more thorough study of it would be made. He could support the Norwegian draft resolution (E/L.667) in principle, but its details required further consideration.

8. Mr. HOTCHKIS (United States of America) said that any actions which impeded progress towards increased international production and trade were of concern to his Government. The *Ad Hoc* Committee's recommendations had therefore been given the most serious consideration, in the light of the United States' policy and practice, and more particularly of its long experience with its anti-trust laws. The concepts on which those laws were based had the support of the entire nation; they were devotion to the principles of free individual enterprise and the belief that free and vigorous competition was essential to progress. The people of the United States were strongly opposed to monopolies and cartels.

9. A national committee to study the anti-trust laws, composed of lawyers, economists and experts, had recently reported its belief that the anti-trust laws remained one of the most important forces promoting competition in open markets. Those laws were vigorously enforced. The knowledge that they would be effectively enforced was a strong deterrent to practices calculated to restrict competition.

10. The *Ad Hoc* Committee's proposal for the establishment of international machinery to eliminate restrictive business practices would lead to success only if all countries were guided by a common economic philosophy, put into effect by comparable legislation and enforcement. In recent years commendable progress had been made by some countries in developing such programmes, but the necessary degree of comparability had not yet been achieved. Any attempt, therefore, to formulate and carry out a plan of international co-operation such as that suggested by the *Ad Hoc* Committee might well defeat its purpose.

11. Article I of the draft articles of agreement (E/2380, annex II) defined that instrument's purpose as the prevention of restrictive business practices affecting international trade which restrained competition, limited access to markets, or fostered monopolistic control, whenever such practices had harmful effects on the expansion of production or trade. Hence the test would be not whether a practice restricted business, but whether the restriction of competition was harmful. The draft provided no adequate criteria for determining whether such practices were harmful or not. There was at present no consensus as to the interpretation of the term "harmful"; it might range from the United States' view to an acceptance of restraints on competition as beneficial to trade. There would be uncertainty and misunderstanding. In time, there might be a greater measure of agreement. Recognition of the scope of restrictive business practices was comparatively recent and few countries had as yet much experience with curbing them. The United States, although it did not support the proposal for an international organization to deal with restrictive

business practices, would continue to co-operate with other Governments in doing so. Much could be done through the normal diplomatic channel and through technical assistance. Each country should seek to establish effective national policies in the field; and there should be a continuing exchange of views.

12. The PRESIDENT invited the representative of the International Confederation of Free Trade Unions to address the Council.

13. Miss SENDER (International Confederation of Free Trade Unions) said that there was still a need to curb such measures as discrimination against persons who were not members of an association, unreasonable limitations imposed through wholesale channels giving virtual monopolies to a few firms in the supply of certain goods, the virtual exclusion of new entrants to a trade, price discrimination against certain traders, and other restrictive business practices.

14. Any measures taken to terminate such undesirable practices must be of an international character if they were to embrace restrictive practices having an indirect as well as a direct effect on international trade.

15. She referred to her organization's suggestions (E/2612, section II D) aimed at achieving more effective measures of international control and to the proposals it made for the registration of business agreements.

16. Not all countries had national legislation for the control of restrictive business practices and such legislation as did exist might vary so much from one country to another as to preclude the wide application of international measures. Nevertheless, a great improvement would result if the countries where control was lax modelled their legislation on that of the countries which had established a more effective control of restrictive business practices. The United Kingdom legislation, in particular, was worthy of study.

17. The problem was pressing, because the restrictive power of monopolies was preventing the realization of full employment in an expanding economy.

18. The PRESIDENT invited the representative of the International Co-operative Alliance to address the Council.

19. Mr. WOODCOCK (International Co-operative Alliance) said that the consumers' and producers' co-operatives represented by his organization had long been endeavouring to maintain and raise standards of living by such means as the reduction of the cost of consumer goods, which could be achieved by rationalizing distribution or by the joint purchase and use of productive equipment. All the organizations which were in any way connected with import or export trade had found their activities hampered by division of markets, price maintenance and other restrictive practices.

20. The International Co-operative Alliance had been aware for many years of the gravity of the problem; it had consistently advocated the maximum freedom of trade consistent with stability, the removal of unnecessary tariffs and the control of restrictive practices engaged in by private enterprise.

21. The Council's decision to appoint an *Ad Hoc* Committee on Restrictive Business Practices had been most welcome; the Committee's report had confirmed

his organization's view that although the number of national laws against restrictive business practices was increasing, little had been done to deal with the international aspects of the problem. Governments would ultimately be obliged to recognize that international action was the only practicable solution and that a serious attempt must be made to implement the *Ad Hoc* Committee's report. The views expressed during the discussion in the Council had included proposals for treating the whole matter in the context of the General Agreement on Tariffs and Trade; that might indeed prove an acceptable solution, but in any case his organization believed that the question should remain on the Council's agenda until some effective means of control had been established.

22. The PRESIDENT invited the representative of the World Federation of Trade Unions to address the Council.

23. Miss KAHN (World Federation of Trade Unions) said that the question of restrictive business practices should, in her organization's view, continue to engage the Council's attention and be the subject of further study and recommendations by the Secretariat.

24. The Council had recently demonstrated its desire to examine and act upon problems of international trade by establishing the Commission on International Commodity Trade. The Council's work on restrictive business practices should cover those practices in their broadest sense. It could not be limited to the operations of formally established cartels which reflected only one aspect of restrictive practices, but should include monopolistic practices in general which, in turn, required examination of the role of the monopolies themselves as well as the broad range of their economic, financial, political and social influence and domination.

25. Extreme concern about the practical effects of restrictive business practices was shown in the final *communiqué* adopted by the twenty-nine Asian-African nations meeting at Bandung, Indonesia, in April 1955. The effect of such practices on developed countries had recently been shown by the study entitled "The Price of Oil in Western Europe" (E/ECE/205) published by the Economic Commission for Europe.

26. The recent period had been marked by two divergent trends—on the one hand, the monopolies had made a desperate effort to strengthen their hold on the economy of the capitalist and colonial countries, and on the other, the under-developed countries and colonial areas had carried on a vigorous political campaign to realize economic as well as political independence. In that struggle the monopolies had so far succeeded in protecting and strengthening their position. The degree to which that ran counter to the interests of the United Nations and of world peace and stability warranted the continued scrutiny and action of the Council.

27. Recent studies of corporation assets and profits in the United States and the United Kingdom, for example, had demonstrated that concentration of holdings and of monopoly control was more marked than in years past.

28. The problem of restrictive business practices was not something that could be debated briefly and then ignored. It would persist unless the United Nations remained vigilant, and initiated action. Such action was indispensable if the objectives of economic develop-

ment, broader trade between nations, and maintenance of peace were to be achieved. Together with the objective of national independence and sovereignty, those were precisely the objectives which the unbridled rule of the monopolies continued to imperil.

29. The World Federation of Trade Unions therefore considered the role of the United Nations in the matter of monopolies to be extremely important. Monopolies tended to keep their affairs secret. They did not, as the *Ad Hoc* Committee had pointed out, voluntarily furnish data concerning their restrictive business practices.

30. While the documentation already available was impressive and provided conclusive evidence of the vast scale and dire effects of the activities of monopolies, it was certain that deeper and more thorough studies by the United Nations would show that so far only a corner of the veil of secrecy had been lifted. Preparation and publication of such studies would be a powerful factor in combating restrictive practices. At the same time, it must be recognized that the power of the monopolies themselves and the whole complex of their activities had now reached formidable proportions. No limited approach was possible. The effect of the monopolies upon society and the economy as a whole should be examined in concrete terms and not in the inadequate concepts of restriction of competition found in much existing anti-trust legislation.

31. It was thus impossible for the United Nations to consider problems of trade and economic development without continuing to give serious attention to the problem of restrictive business practices. Difficulties should not deter the Council and the Secretariat from pursuing their activities in that important field. The problem was of extreme gravity and should be faced seriously and constructively. The WFTU would welcome an expansion of United Nations activities in this direction.

32. The PRESIDENT invited the representative of the International Chamber of Commerce to address the Council.

33. Mr. BEETHAM (International Chamber of Commerce) said that the International Chamber of Commerce had considered the problem of international business agreements since 1947. In 1948 it had taken the view that chapter V of the Havana Charter dealing with restrictive business practices was the best possible compromise between several approaches to the question. At the sixteenth session of the Council the ICC had submitted a statement (E/C.2/352) in which it was recommended that business agreements should not be considered *a priori* good or bad but that each should be treated on its merits.

34. In accordance with Council resolution 487 (XVI), the ICC had studied the draft international convention prepared by the *Ad Hoc* Committee established by the United Nations. Its views were set out in document E/2612/Add.2.

35. Detailed consideration of the draft agreement had increased the doubt previously expressed by the ICC regarding the practicability of introducing at the present time a fair and legally effective system for the international control of restrictive business practices.

36. The ICC felt that the international supervisory body proposed by the *Ad Hoc* Committee would find

difficulty in exercising its functions in an equitable manner, owing to the fact that opinions varied from country to country, both regarding the actual definition of restrictive business practices and the criteria to be applied in determining whether such practices were harmful or not. Sufficient allowances had not been made by the *Ad Hoc* Committee for the fact that government enforcement policies and powers varied considerably from country to country, with the result that the general application of measures recommended by the international supervisory body would be made difficult if not impossible. It was also feared that the draft agreement failed to provide adequate protection against the lodging of vexatious complaints. Finally, the ICC considered that the draft agreement discriminated between government and private enterprises and between restrictive practices affecting goods and those affecting services.

37. The ICC felt that the formation of an international control organization could not be recommended

at present, but that the question could be revived later on if a realistic approach were made.

38. The PRESIDENT declared the general debate closed. He commended the Council on the high level of debate which had been maintained throughout, and invited comment on the draft resolution proposed by Norway (E/L.667).

39. Mr. STANOVNIK (Yugoslavia) said that several delegations were in the process of preparing amendments to the Norwegian draft resolution. The Council would be well advised to await the distribution of the amendments before embarking upon a discussion of the draft resolution. He therefore moved the adjournment of the meeting.

It was so decided.

The meeting rose at 4.15 p.m.