

# Non-Governmental Organizations and the Original International Trade Regime

Steve CHARNOVITZ\* and John WICKHAM\*\*

With the recent creation of the World Trade Organization (WTO) by GATT negotiators during the Uruguay Round, many associations world-wide have become interested in what role non-governmental organizations (NGOs) will play in the new international trade body. As the WTO has a well-known institutional primogenitor—the International Trade Organization (ITO)—it is perhaps useful to look at what role NGOs expected to play in the ITO. Although the ITO never officially came into being, its similarities in function to the WTO make it a useful model for study. The ITO is also relevant because its authors were the authors of the GATT.

An examination of the drafting history of the Charter of the International Trade Organization, as well as a look at how the NGO provision in the ITO Charter was expected to be implemented, reveals that a significant role was planned for NGOs in the work of the ITO.<sup>1</sup> Thus, the current view among some WTO diplomats that the trading system cannot accommodate NGOs in the same way as other international agencies do, is directly contradictory to the views of the diplomats who designed the post-war international trading system.

## I. BACKGROUND AND CONTEXT

Long before the United States prepared the *Suggested Charter for an International Trade Organization* (hereinafter Suggested Charter)<sup>2</sup> for consideration at the United Nations Conference on Trade and Employment (1946–1948), the United States itself had a long-standing policy of consulting private business and NGOs prior to concluding trade agreements. Under the Reciprocal Trade Agreements Act of 1934, the Executive Branch negotiated mutual tariff reductions with a number of countries. When doing so,

---

\* Director, Global Environment and Trade Study (GETS), Falls Church, Virginia, U.S.A.

\*\* Research Fellow, GETS.

Research for this study was made possible by grants from The Pew Charitable Trusts and the Rockefeller Brothers Fund.

<sup>1</sup> Although there are several Articles in the Charter that would have provided for private or non-governmental input to the work of the ITO (namely: Article 74 regarding the appointment of advisers to Members of the Organization; Articles 82 and 83 regarding the establishment of commissions to carry out studies; and Article 87, which covers relations with inter-governmental and non-governmental organizations), this study will focus only on Article 87, Relations with other Organizations.

<sup>2</sup> *Suggested Charter for an International Trade Organization of the United Nations*, Department of State Publication 2598, Commercial Policy Series 93 (1946).

the President received recommendations from the Committee for Reciprocity Information, which held hearings and accepted written briefs from interested parties prior to each proposed negotiation.<sup>3</sup>

The United States also sought to involve NGOs in the operation of newly created international institutions as a way to strengthen these institutions. For example, Article 71 of the UN Charter provided that:

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.”

In its Suggested Charter for the ITO, the United States took a step beyond the UN Charter by proposing that “The Organization may make suitable arrangements for consultation *and co-operation* with non-governmental organizations concerned with matters within its competence...”<sup>4</sup> (emphasis added). In 1946, President Truman underlined this policy by stating: “I am anxious that our relationships with *all* international organizations have a firm foundation in wide public understanding and *participation*.” (emphasis added).<sup>5</sup>

The U.S. experience involving NGOs within the context of international trade negotiations, and the generally favourable American attitude toward private input to international organizations, is noteworthy because the Article within the ITO Charter entitled “Relations with Other Organizations” was first proposed by the United States (within its Suggested Charter). Moreover, since this Article received little comment and was only minimally changed during the UN Conference on Trade and Employment, it is reasonable to look to the American experience for how NGO involvement in the ITO might have been envisioned by the delegates at the ITO Conference.

## II. THE UN CONFERENCE ON TRADE AND EMPLOYMENT (1946–1948)

At the first meeting of the Economic and Social Council of the United Nations (ECOSOC) in early 1946, the United States offered a Resolution calling for an International Conference on Trade and Employment and for a Preparatory Committee that would establish its agenda. The Resolution was adopted, and the First Session of the Preparatory Committee elected to use the Suggested Charter of the United States as the basis for its deliberations.<sup>6</sup>

The First Session of the Preparatory Committee met in London in October 1946. At the very outset, the United States sponsored an initiative to amend the rules of

---

<sup>3</sup> The Committee was created pursuant to Section 4 of the Trade Agreements Act, under which it was required that, prior to the conclusion of any foreign trade agreement, public notice should be given so that interested persons could present their views.

<sup>4</sup> *Op. cit.*, *supra*, footnote 2, at 44.

<sup>5</sup> Letter to Secretary Anderson Concerning the Food and Agriculture Organization of the United Nations, 1 April 1946, in *Public Papers of the Presidents of the United States: Harry S. Truman, 1946*, Government Printing Office, Washington, 1962, p. 175.

<sup>6</sup> Clair Wilcox, *A Charter for World Trade*, Arno Press, New York, 1972, at 40–41.

procedure to ensure that NGOs would be provided access to the work of the London meeting. The U.S. proposal to modify the rules of procedure was accepted with the proviso that NGOs seeking consultative status be identified in the new rules.<sup>7</sup> Thus, several NGOs seeking to consult with the working committees at London were listed in the final rules of procedure for the Preparatory Committee. The listed NGOs were the World Federation of Trade Unions, the International Co-operative Alliance (ICA),<sup>8</sup> the American Federation of Labor, and the International Chamber of Commerce (ICC).<sup>9</sup>

The starting-point for consideration of the role NGOs would play in the ITO was Article 71 of the Suggested Charter, Relations with Other Organizations. Paragraph 3 of that Article read:

“The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within its competence, and may invite them to undertake specific tasks.”<sup>10</sup>

According to a later U.S. working paper, one difference between the ITO provision on NGOs and the UN Charter provision is that the UN Charter provision also contemplates relationships with national NGOs.<sup>11</sup> The drafters of the Suggested Charter seemingly thought that national NGOs would influence the ITO through their respective national delegations, whereas international NGOs would have direct involvement with the ITO. Consistent with this view, a State Department internal memorandum in 1950 stated that under the ITO Charter “there was a basis for the inclusion in U.S. Delegations to the ITO Conferences of representatives of labor, business and agriculture.”<sup>12</sup> In other words, domestic NGOs would interact with the ITO through their respective government representatives.

When Article 71, paragraph 3 of the Suggested Charter was taken up by the Preparatory Committee in London, it was done so by the Committee on Administration and Organization (Committee V). At the second meeting of Committee V, the delegate from China asked the U.S. delegate what was meant by the language in the Suggested Charter that NGOs might undertake “specific tasks” for the ITO. Mr Kellogg<sup>13</sup> of the United States replied that, while no formal delegation of

<sup>7</sup> UN Doc. E/PC/T/EC.2 (1946).

<sup>8</sup> Founded in 1895, the ICA represented in 1946 some 85 million families from thirty-seven countries that either acted as organized consumers or participated in organized, or co-operative, production. The Alliance was “committed to economic democracy and freedom of all people”, and stood “opposed to monopolies, combines and cartels and all other barriers to abundant production and distribution.” See ICITO/EC.2/11 (1948), at 8.

<sup>9</sup> *Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, London, October, 1946* (hereinafter *Report of the First Session*), UN Doc. E/PC/T/33 (1946), Rule 46 of Rules of Procedure (Annexure 4).

<sup>10</sup> *Op. cit.*, *supra*, footnote 2.

<sup>11</sup> *Relations of the ITO with Non-Governmental Organizations*, ECEFP D-97/48 (17 August 1948), position paper of the U.S. Delegation to the Interim Commission for the International Trade Organization as approved by the Executive Committee on Economic Foreign Policy, at 6, in *IC—Position Papers*, file folder, Box 152, Lot File 57D-284 of U.S. National Archives.

<sup>12</sup> Memorandum from the UN Economic Subcommittee of the Executive Committee on Economic Foreign Policy to the Office of International Trade Policy, 25 January 1950, at 2, in *Relations with Non-Government Organizations*, file folder, Box 91, Lot File 57D-284 of U.S. National Archives.

power was intended, it was recognized that NGOs had “research staffs” and “facilities” that might be of use to the ITO, and that it might therefore be “of value to the Organization” to ask NGOs to carry out “certain studies”.<sup>14</sup> No further discussion was held regarding Article 71, paragraph 3, and, after an *ad hoc* subcommittee recommended that the paragraph be approved without change,<sup>15</sup> Committee V agreed to do so.<sup>16</sup> The London Draft thus read:

“The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within its competence and may invite them to undertake specific tasks.”<sup>17</sup>

As the report of the First Session of the Preparatory Committee notes, it was generally recognized that inter-governmental and other international organizations might play a helpful role.<sup>18</sup>

Although a Drafting Committee met in Lake Success, New York, in January/February 1947, to revise the Suggested Charter to reflect the changes recommended at London, no changes were made to Article 71, paragraph 3. However, due to the addition of new Articles to the Charter, the Article became Article 81.

The Second Session of the Preparatory Committee of the UN Conference on Trade and Employment was held in Geneva from April to October 1947. Once again, the rules of procedure were amended to allow NGOs to consult with subgroups of the Preparatory Committee. Since the United States had already revised the rules of procedure at London, the Preparatory Committee<sup>19</sup> simply deleted reference to the four organizations named during the First Session. So the rule at Geneva provides that NGOs in Category A of the Report of the Committee of the Economic and Social Council on Arrangements for Consultation with Non-Governmental Organizations<sup>20</sup> should be permitted “either directly or through committees established for the purpose”, to consult with committees of the Preparatory Committee.<sup>21</sup> This appears to have broadened the field of NGOs that might consult with the Preparatory Committee. It also made the practice of the Preparatory Committee consistent with that of the ECOSOC.

A small number of NGOs participated in the Geneva meeting. At one point, the Executive Secretary circulated a note stating that consultation with NGOs had become

<sup>13</sup> Edmund H. Kellogg, Special Adviser on International Organization Affairs at the State Department and Adviser to the U.S. Delegation at the First Session of the Preparatory Committee.

<sup>14</sup> UN Doc. E/PC/T/C.V/PV/2 (1946), at 30–31.

<sup>15</sup> UN Doc. E/PC/T/C.V/8 (1946), at 3.

<sup>16</sup> UN Doc. E/PC/T/C.V/PV/4 (1946), at 17.

<sup>17</sup> *Report of the First Session, op. cit., supra*, footnote 9, reprinted as *Preliminary Draft Charter for the International Trade Organization of the United Nations*, Department of State Publication 2728, Commercial Policy Series 98 (1946).

<sup>18</sup> *Report of the First Session, op. cit., supra*, footnote 9, at 25.

<sup>19</sup> It is not clear from the record who proposed that the rules of procedure be amended.

<sup>20</sup> Category A, according to the ECOSOC Report, includes organizations having a basic interest in most of the activities of the Economic and Social Council. Typical organizations in Category A include those representing labour, management and business, farmers, and consumers.

<sup>21</sup> UN Doc. E/PC/T.37 (1947).

“a burden heavier than was anticipated”. It also explained that no procedure was yet available for responding to the points being made by NGOs.<sup>22</sup>

When Article 81 of the Lake Success Draft Charter was taken up at Geneva, the United States proposed that the phrase in paragraph 3 “and may invite them to undertake specific tasks” be deleted, on the ground that the clause seemed “to be redundant as it is clearly covered by the first part of the paragraph.”<sup>23</sup> This was the only discussion that Article 81, paragraph 3, received at Geneva, and the change proposed by the United States was accepted by the Second Session.<sup>24</sup> Once again, due to the addition of new Articles, the numbering of provisions changed and Article 81 of the Lake Success Draft became Article 84 of the Geneva Draft. The Geneva Draft now read:

“The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Charter.”<sup>25</sup>

Following the Second Session of the Preparatory Committee, the actual UN Conference on Trade and Employment met in Havana from November 1947 to March 1948. Article 84, paragraph 3, of the Geneva Draft was approved without discussion<sup>26</sup> and, with additional Articles being incorporated into the Charter, the Article entitled “Relations with Other Organizations” became Article 87 of the final Havana Charter for an International Trade Organization. (Due to the deletion of a provision, the paragraph dealing with non-governmental organizations became paragraph 2.) Article 87, paragraph 2, of the ITO Charter reads:

“The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Charter.”<sup>27</sup>

It is important to note that NGOs played a substantive role in the UN Conference at Havana. For instance, three organizations—the ICA, the ICC, and the International Organization of Industrial Employers—took part in the general debate.<sup>28</sup> Moreover, it was decided early on that “papers submitted by NGOs *would* be circulated as Conference documents, and that the views of NGOs could be sponsored by any delegation.”<sup>29</sup> (emphasis added).

<sup>22</sup> UN Doc. E/PC/T/113 (1947).

<sup>23</sup> UN Doc. E/PC/T/W/204 (1947), at 5.

<sup>24</sup> UN Doc. E/PC/T/B/SR/18 (1947), at 3.

<sup>25</sup> *Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment*, UN Doc. E/PC/T/186 (1947); reprinted as *Draft Charter for the International Trade Organization of the United Nations*, Department of State Publication 2927, Commercial Policy Series 106 (1947).

<sup>26</sup> UN Docs.: Press Release/ITO/C.6/26 (1948), at 1; and E/CONF.2/C.6/SR.41 (1948), at 2.

<sup>27</sup> *Havana Charter for an International Trade Organization and Final Act and Related Documents* (hereinafter *Havana Charter*), U.S. Department of State Publication 3117, April 1947, at 48. The Charter has recently been reprinted in Michael Hart (ed.), *Also Present at the Creation: Dana Wilgress and the United Nations Conference on Trade and Employment at Havana*, Centre for Trade Policy and Law, Ottawa, 1995, Part III.

<sup>28</sup> UN Docs.: Press Release/ITO/82 Takes #5 and #6, 29 November 1947; Press Release/ITO/92, 1 December 1947; Press Release/ITO/96, 1 December 1947; Press Release/ITO/99, 2 December 1947; Press Release/ITO/101, 2 December 1947.

<sup>29</sup> UN Doc. Press Release/ITO/109, 6 December 1947.

In summary, then, the NGO provision of the ITO Charter goes beyond the UN Charter by adding “co-operation” to “consultation”. This provision of the ITO Charter was uncontroversial among the delegates that wrote the ITO Charter and the GATT. Furthermore, it was generally understood that NGOs could be asked either to carry out studies or to advise the ITO on matters within their competence. In what might be considered a significant precedent, NGOs attended and were involved in the Preparatory Committee as well as the final UN Conference. From the First Session of the Preparatory Committee in 1946, where individual NGOs were identified in the rules of procedure as having consultative rights, to the UN Conference in 1948, at which private groups made broad policy statements to the Plenary Session, NGOs played an expanding and significant part in the deliberations leading to the creation of the ITO.

### III. IMPLEMENTATION OF SUB-ARTICLE REGARDING NGOS

The language of ITO Article 87, paragraph 2, is vague. It says that the Organization “may” make “suitable” arrangements for consultation and co-operation with NGOs. Why “may” rather than “shall”? What does “suitable” mean? In looking for answers to such questions, it will be helpful to carry the story forward to see how this provision began to be implemented.

Following the Havana Conference, an Interim Commission for the International Trade Organization (ICITO) was set up to help prepare for the first session of the ITO. In the Resolution establishing the ICITO, there was an instruction to the Commission to “prepare, in consultation with non-governmental organizations, for presentation to the first regular session of the Conference, recommendations regarding the implementation of the provisions of paragraph 2 of Article 87 of the Charter.”<sup>30</sup>

The ICITO met following the UN Conference in Havana, where it elected an Executive Committee of eighteen Member Countries.<sup>31</sup> As was provided for in the Resolution establishing the Commission, the Executive Committee assumed the functions of the ICITO.<sup>32</sup>

The Executive Committee met in August 1948 in Geneva. Six NGOs attended this Executive Committee meeting: the ICC, the ICA, the International Federation of Agricultural Producers, the International Organization of Industrial Employers, the Inter-Parliamentary Union, and the World Federation of United Nations Associations.<sup>33</sup> One of these groups, the ICC, had been asked to submit its views on ITO/NGO relations.<sup>34</sup> In addition, when the subject of relations with NGOs was being

<sup>30</sup> *Havana Charter, op. cit., supra*, footnote 27, at 71.

<sup>31</sup> Nearly half of these were developing countries. See UN Doc. Press Release/ITO/209 (22 March 1948), at 6.

<sup>32</sup> See *Havana Charter, op. cit., supra*, footnote 27, at 71. The Resolution provides that “the Commission shall elect an Executive Committee of eighteen members to exercise any or all of its functions as the Commission may determine on electing the Committee.”

<sup>33</sup> ICITO/EC.2/INF.2 (1948), at 6.

discussed by the Executive Committee, non-governmental organizations in attendance were invited to address the Committee.<sup>35</sup>

The Interim Commission and its Executive Committee were assisted by a Secretariat. Its Executive Secretary was Eric Wyndham White. The Deputy Executive Secretary was Julio Lacarte. This ICITO Secretariat gradually evolved into the GATT Secretariat.

To implement Article 87, the Secretariat of the Interim Commission prepared a Note entitled "Relations with Non-Governmental Organizations".<sup>36</sup> This submission served as the basis for the recommendations that the Commission was instructed to give to the ITO. The Secretariat's submission began by reviewing practices of NGO involvement in other international organizations. It then made several key points:

- (1) The procedures regarding NGOs appropriate to a "deliberative body" such as the ECOSOC were not necessarily the most suitable for the ITO.<sup>37</sup> The problem with the ECOSOC procedures is that they established categories<sup>38</sup> of NGOs that were too rigid for the trade field.<sup>39</sup> These categories would connote levels of prestige that might wrongly be interpreted as measuring the importance of the organization. Moreover, the fullest consultation rights would be given to NGOs with the broadest policy interests, whereas the ITO might benefit more from consultations with NGOs having specialized interests directly related to the ITO's work. Thus, it was recommended that the ITO envisage a more flexible NGO arrangement.
- (2) The first ITO Conference "should formally place on record that the ITO is desirous of taking full advantage of the knowledge and experience of non-governmental organizations engaged in work within its purview and instruct the Director-General to act accordingly."<sup>40</sup>
- (3) The ITO should invite NGO observers to its Conference sessions. Such NGOs "should have the right to suggest items for inclusion in the provisional agenda of the Conference" and, if these items are accepted, the NGOs should be able to make statements to the Conference.<sup>41</sup>
- (4) The ITO Director-General should circulate to ITO members "a list and brief description of all communications received from non-governmental organizations."<sup>42</sup> At the request of any government, such communications

<sup>34</sup> ICITO/EC.2/11 (1948), at 20–23.

<sup>35</sup> ICITO/EC.2/SR.8 (1948), at 7.

<sup>36</sup> ICITO/EC.2/11 (1948).

<sup>37</sup> *Id.*, at 4. It is interesting to note that, forty-five years later, this argument has been reversed. Now some GATT representatives say that the NGO procedures appropriate for a talk shop like the ECOSOC are not appropriate for a deliberative body like the WTO.

<sup>38</sup> The ECOSOC categories were as follows: Category A—Organizations having a basic interest in most of the activities of the Council, including those representing labour, management and business, farmers, and consumers; Category B—Organizations with special competence but concerned with only a few fields of the Council; and Category C—Organizations concerned with the development of public opinion and the dissemination of information.

<sup>39</sup> ICITO/EC.2/11 (1948), at 4.

<sup>40</sup> *Id.*, at 5.

<sup>41</sup> *Id.*

would be circulated to all governments.

- (5) "All organs of the ITO as well as the Director-General should observe the general policy laid down by the Conference to consult with non-governmental organizations."<sup>43</sup>
- (6) The Director-General should have the right to appoint advisory committees consisting of representatives of NGOs.<sup>44</sup>

The Secretariat's submission also provided a list of NGOs that might become involved in the ITO.<sup>45</sup> It included several organizations interested in commercial policy, such as the ICC, the ICA, the International Organization of Industrial Employers, the International Federation of Agricultural Producers, the International Association for the Protection of Industrial Property, the International Fairs Union, the World Federation of Trade Unions, the International Transport Workers Federation, and the International Federation of Christian Trade Unions. It also included organizations interested in social issues such as the International Co-operative Women's Guild.

Some of these organizations submitted proposals to the Secretariat. The ICC expressed great interest in the NGO provision and made several specific suggestions. For example, the President of the ICC explained that it was important for ITO documents to reach it about three months in advance of ITO meetings to allow time for distribution and consultation.<sup>46</sup>

When discussion of NGOs began within the Executive Committee, the ICITO Executive Secretary, Mr Wyndham White, made some additional points beyond those in the Secretariat's submission. He suggested that the ITO Conference adopt a list of consultant NGOs that would receive invitations to send observers to ITO Conferences. These NGOs would be provided with Conference documentation. NGOs would also "have the right to propose items for the Conference agenda"<sup>47</sup> which would be accomplished by allowing NGOs to represent such items to the ITO Executive Board. For its other activities, beyond the annual Conference, Mr Wyndham White suggested that the Director-General would carry out ongoing consultations with listed NGOs. ITO committees and commissions would also be able to hear representatives of NGOs.<sup>48</sup> In addition, Mr Wyndham White suggested that the ITO Director-General have the authority to set up an advisory committee of NGO representatives.<sup>49</sup>

In the Executive Committee's discussion, there was general agreement with the Secretariat's submission and with Mr Wyndham White's additional proposals,<sup>50</sup> but some important points were raised by various delegates. The delegate from Czechoslovakia noted that the ITO would be considering some highly confidential

<sup>42</sup> *Id.*, at 6.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, at 7–19.

<sup>46</sup> *Id.*, at 20–23.

<sup>47</sup> ICITO/EC.2/SR.8 (1948), at 2.

<sup>48</sup> *Id.*, at 3.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*, at 8.



matters and therefore NGO relationships would have to be treated with the greatest care.<sup>51</sup> The delegate from the United States underlined the distinction between non-Member governments and NGOs—namely, that the latter could only speak at official sessions upon invitation.<sup>52</sup> He also proposed that standard rules for NGO consultations be established to avoid *ad hoc* decisions that might cause resentment. Finally, he suggested that the most important consultations with NGOs would occur between ITO sessions.<sup>53</sup>

The delegate from France expressed doubts about the desirability of a permanent advisory committee and wondered how a satisfactory composition could be obtained.<sup>54</sup> The delegate from Australia (Mr Tonkin) stated that the issue of the advisory committee could be held over until the ITO came into being. He also noted that some documents might be withheld from NGOs.<sup>55</sup> The delegate from the United Kingdom said that he had “at first thought it unwise to give NGOs any semi-permanent form of representation”, but now believed that the Director-General should be given some discretion and that an NGO advisory committee might be helpful.<sup>56</sup> The delegate from Greece declared that the NGO advisory committee should not be a standing committee because that would tend to give it rights which he did not think it should have and because there would be great competition to obtain membership.<sup>57</sup> The delegate from Benelux agreed with some of the other delegates that the responsibility for the list of consultative NGOs should not be placed solely on the Director-General.<sup>58</sup> The representative of the ICC participating in the Executive Committee meeting stated that his organization would always be ready to assist the work of the ITO.<sup>59</sup> At the end of the discussion, the Executive Committee referred the matter of NGOs to the Subcommittee on Administration.

The Report of the Subcommittee on Administration, headed by Mr Tonkin, followed essentially the same lines as the Secretariat’s submission.<sup>60</sup> The recommended procedures combined flexibility with respect for UN practice. In its report to the Executive Committee, the Subcommittee suggested that the ITO draw up a list of organizations “chosen in the first instance from the Economic and Social Council list of Organizations to which it has accorded consultative status”, but added that “the Executive Board shall include in its recommendations any other organizations which have special competence in the field of the ITO.”<sup>61</sup> In recommending that the ITO choose additional organizations having competence in its field, the Subcommittee proposed that the Organization “consult as necessary with the Economic and Social

---

<sup>51</sup> *Id.*, at 3–4.

<sup>52</sup> *Id.*, at 4.

<sup>53</sup> *Id.*, at 5.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, at 6.

<sup>56</sup> *Id.*, at 6–7.

<sup>57</sup> *Id.*, at 7.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*, at 7–8.

<sup>60</sup> See ICITO/EC/2/14 (1948), at 19–22; and ICITO/EC.2/SR.13 (1948), at 1–2.

<sup>61</sup> ICITO/EC/2/14 (1948), at 19.

Council”, noting that such consultation would help “facilitate conformity with the policies of the United Nations”.<sup>62</sup> It should also be noted that, apart from the specific recommendations in its report, the Subcommittee on Administration expressed its view that “the most fruitful field of collaboration” between the ITO and NGOs would be in consultations outside the Conference.<sup>63</sup>

When presenting the report of his Subcommittee, Mr Tonkin pointed out that a “proposal that the Executive Board [of the ITO] set up a committee of NGOs, although unopposed, was left for later consideration by the ITO in the light of experience.”<sup>64</sup> Mr Tonkin also noted that his Subcommittee recommended that:

“The Director-General should have full discretion to consult NGOs whenever necessary; [and that] such consultative arrangements should not be formalized by the creation of a permanent advisory committee.”<sup>65</sup>

Thus, an advisory committee was not established, but it was recognized that the ITO might re-visit that issue.

In the discussion of the Subcommittee’s report by the Executive Committee, the delegate from the Philippines suggested that the report might make it clear that the ITO Conference would not be prevented from excluding NGOs from attending specific meetings when it so decided.<sup>66</sup> The Chairman (Mr Wilgress from Canada) responded that such a clarification was unnecessary because it was generally understood that an organization like the ITO would be able to hold closed meetings.<sup>67</sup>

In March 1949, the Secretariat of the ICITO incorporated both the discussions of the Executive Committee and the contents of the Subcommittee’s report into a draft of a Proposed Report of the Interim Commission to the First Conference of the International Trade Organization (March 1949).<sup>68</sup> This Proposed Report includes final recommendations for the ITO’s relationship to NGOs:

“The recommendations of the Executive Committee are:

- (1) The Organization shall take full advantage of the knowledge and experience of non-governmental organizations engaged in work within its purview.
- (2) To this end, arrangements shall be made for including appropriate non-governmental organizations in a list of consultants to the Organization.

...

- (4) Consultative organizations shall have the following facilities and responsibilities:

...

Consultative organizations shall be invited to be represented by observers at the Annual Conferences. Wherever matters or suggestions have been submitted to the Conference

<sup>62</sup> Id., at 19–20.

<sup>63</sup> Id., at 19.

<sup>64</sup> ICITO/EC.2/SR.13 (1948), at 2.

<sup>65</sup> Id.

<sup>66</sup> Id., at 5.

<sup>67</sup> Id.

<sup>68</sup> See pages 57 to 61 of the *Proposed Report in Interim Commission—General*, file folder, Box 153, Lot File 57D-284 of U.S. National Archives.

by a consultative organization ... and are under discussion by the Conference, the representative of the organization concerned may make a statement or statements to the Conference. On other occasions, representatives of consultative organizations may speak at the discretion of the Chairman of the meeting on a matter as to which the Organization has a special concern or competence.

...

Consultant organizations shall receive all unrestricted conference documents and such other documents as are necessary for effective consultation ... Documents submitted to the Organization by consultant organizations shall be distributed at the discretion of the Director-General. The Director-General shall also circulate a list of all communications received from consultant organizations and any document so listed shall receive full distribution at the request of any Member government.”<sup>69</sup>

These recommendations indicate that the ITO intended to take “full advantage” of the knowledge and experience of NGOs. Not only would NGOs be able to attend Conference sessions, but it was also proposed that they be able to submit “matters or suggestions” to the Conference for its consideration.<sup>70</sup> In addition, provision was made for NGOs to receive any documentation “necessary for effective consultation”. Moreover, documents submitted by NGOs to the Conference would be referenced and made available through “a list of all communications received from consultant organizations”.

The Executive Committee’s Proposed Report was never adopted by the ITO because the ITO did not come into being. Had opposition to the ITO not developed, there is every indication that the recommendations of the ICITO concerning NGOs would have been approved by the First Conference of the ITO.

Although the GATT took no action under GATT Article XXIX to provide for an NGO role in GATT activities, the benefits of NGO involvement remained apparent to the trade community. For example, Article 11(c) of the proposed Organization for Trade Co-operation (of March 1955) stated that the Organization “may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Organization.”<sup>71</sup> As with the ITO, the Organization for Trade Co-operation never came into being. It is interesting to note that the ICITO remained in existence throughout the history of the GATT as the institutional embodiment of the GATT Agreement and was not terminated until late 1994.

#### IV. SUMMARY AND CONCLUSIONS

Article V.2 of the Agreement Establishing the World Trade Organization provides that:

“The General Council may make appropriate arrangements for consultation and

<sup>69</sup> *Proposed Report, op. cit., supra*, footnote 68, at 58–61.

<sup>70</sup> See ICITO/EC.2/SR.8 (1948), at 2.

<sup>71</sup> See GATT, BISD I (Revised)/75.

co-operation with non-governmental organizations concerned with matters related to those of the WTO.”

So far, the WTO has taken no action to operationalize this provision.

When the WTO does begin to implement Article V.2, it would probably be useful to start with the proposals put forward by the ICITO Executive Secretary in 1948. Mr Wyndham White suggested that:<sup>72</sup>

- (1) A list of NGOs with consultative status to the ITO (WTO) should be drawn up.
- (2) Listed NGOs should be invited to send observers to ITO (WTO) Conferences; they should also be provided with Conference documentation. The NGOs should have the right to propose items for the Conference agenda and to speak in favour of these items before the Executive Board (General Council).<sup>73</sup>
- (3) Subsidiary ITO (WTO) organs should consult with listed NGOs competent in the field of activity being considered.
- (4) The Director-General should have the authority to set up an advisory committee of NGO representatives.
- (5) The listed NGOs should receive copies of all unrestricted documents of the ITO (WTO). Communications submitted by NGOs should be distributed to national delegations at the discretion of the Director-General. A catalogue of all such communications would be circulated to national delegations who could request full distribution of any communication.

In conclusion, the architects of the post-war trading system saw the appropriateness of providing for NGO participation. It was recognized that NGOs were interested in trade policy and could make a constructive contribution. Thus, a specific provision was written into the ITO Charter providing for liaison with NGOs.

Had the ITO gone into operation as planned, the NGO provision would most likely have been implemented with the strong support of the ITO Secretariat. Sadly, the institutional failure of the ITO suspended the notion of NGO involvement for over four decades. Given its institutional insecurities, the GATT turned insular and took no action to develop ties to NGOs.

With the creation of the WTO, the original design of NGO involvement can now be implemented. WTO Article V.2 is essentially the same provision as was agreed to at the ITO Preparatory Conference of 1946. Sir Eric Wyndham White's proposals are still relevant and constructive. After over forty-five years of inaction, NGOs are looking to see how the trading system will carry out “consultation and co-operation”. Further delay may suggest that the resistance stems not from any impracticality of NGO involvement, but rather from an unwillingness to listen to what NGOs may say.

<sup>72</sup> A summary of Mr Wyndham White's presentation was later reprinted as ICITO/EC.2/SC.3/5 (1948). The words in brackets are the contemporary names for the institutions he discussed.

<sup>73</sup> The ITO Executive Board was structurally different from the WTO General Council.