

(a) they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body; or

(b) if they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either contracting party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organization or, if there is no such tribunal, to the Council of the said Organization.

Then the parties agree and undertake to comply with any decision that may be given on that reference. That agreement was entered into in 1949.

Senator McIlraith: Of course, there are a great many such agreements throughout the world.

The Chairman: Yes.

Senator Molson: Would these agreements be subject to the combines legislation in other countries, Mr. Chairman?

Mr. Cowling: I think that Dr. Thomka-Gazdik told us that such agreements would be subject to the combines legislation in the United States, but that there was a special exempting provision. The United States, of course, does not have the same kind of jurisprudence exempting regulated industries to the extent that we have it. The United States courts have always recognized that there is an opening for combines or anti-trust legislation, as they call it, even though the industry is regulated. I believe we were told by Dr. Thomka-Gazdik that they did have a special exemption in the United States.

Hon. Mr. Ouellet: Article 7 obviously indicates that these tariff agreements arrived at under the umbrella of IATA have to be ratified by the respective aeronautical authorities.

The Chairman: By the aeronautical authority of each country, yes.

Hon. Mr. Ouellet: The aeronautical authority in Canada is the CTC, and that is what we ask.

Senator Flynn: That is not in the bill.

Hon. Mr. Ouellet: We ask that the aeronautical authority, being the CTC, exercise its full authority over civilians. We do believe that for the time being there is no danger of a case developing until we have had an opportunity of correcting the situation in phase two, at which time we will put forward a definite position on this.

The Chairman: One danger, I think, Mr. Minister, was in the suggestion or statement you made, that being that the present bill, in relation to some aspects of it relating to service, would apply to transportation, and there might be other sections which, although not being exempt, would not be made to apply. The risk—and it is a real risk—is to have a divided liability. Who is going to draw the line as to when the bill applies and when it does not apply? For that reason, it would not appear to me at the moment to be the way of attacking the problem. After all, we all have a reasonable understanding and intelligence, and when a minister undertakes that nothing—and perhaps I am paraphrasing you—that nothing would be done to disturb the transportation system as it presently exists and is being carried on until the whole area of transportation had been fully studied and the responsibility put in whatever place

the government of the day determined it should be, that is one thing, but if that is the intent, certainly we have sufficient words in the English and French languages to be able to translate that meaning into legislation.

Hon. Mr. Ouellet: I believe the type of assurance that you want is because of this new legislation. In the meantime, until the second part of a series of amendments to the Combines Investigation Act is introduced, the air transporter in Canada will not be affected by the new scope covered by Bill C-2. It will not, in any way subject them to further regulations, or a difference of regulations, in this sense.

Mr. Cowling: Or prosecution.

The Chairman: Or prosecution.

Hon. Mr. Ouellet: Well, I cannot handcuff the Director of Investigation and Research. You know that.

Senator Flynn: You cannot change the law by an assurance.

Hon. Mr. Ouellet: I could not change the law. I can say this: There are two important elements, I submit, which should satisfy the members of this committee; first of all, the precedents that now exist; and, secondly, the clear indication that we will in the coming months come forward with a precise proposal to clarify the situation.

My brief, and my colleague's, the Minister of Transport, attempts to establish within the Canadian Transport Commission the mechanisms that will alleviate any doubt that does exist.

Mr. Cowling: What you are saying, Mr. Minister, is that in the meantime violations of the Combines Investigation Act by the air industry, and perhaps other regulated industries, would be tolerated.

Hon. Mr. Ouellet: That is not what I am saying. First of all, I say that Bill C-2, dealing with the service section, will not be promulgated for a period of time after the bill is passed. It will be a decision by order in council. In the meantime I hope that we can find the proper apparatus so that when the bill is promulgated this section dealing with services will be promulgated. Then the situation will be corrected.

Senator Cook: Mr. Chairman, I was about to say it seems to me that there is a good deal of doubt about the whole question of how far the jurisprudence goes and how far it does not. The committee report refers to the problem and to the minister's undertaking to give the whole question study before the next debate or the next session. We do reserve our right to reject these provisions if we are not satisfied with the final treatment of the matter. It seems to me that should be satisfactory at this time.

The Chairman: Well, like the illustration I used last night, no matter what the intentions are, or no matter what kind of statutory reservations you make, that does not bind the judge who may be trying the case to follow that law. He will read it and say, "This is what it says."

Senator Walker: Always.

The Chairman: This is like the pious hope in a lot of wills where the testator says, "I would like my executors to do thus and so." That is just a pious hope; there is no obligation on the executor to follow that.