SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

COMMISSION B

SUMMARY RECORD

16th Meeting held on Friday, 27 June 1947, at 2.30 p.m. in the Palais des Nations, Geneva.

Chairman: The Hon. I.D. WILGRENS (Canada)

CHAPTER VI - RESTRICTIVE BUSINESS PRACTICES.

The CHAIRMAN, in opening the meeting, said that the Commission would go through Articles 39-45 once more in the light of the reports from the two Sub-Committees. The new drafting of these Articles was contained in document E/PC/T/102.


Mr. HOLMES (United Kingdom) proposed that the comma at the end of line 4, after "enterprises" should be deleted.

Decision: Article 39, Paragraph 2 was adopted with this deletion.


Mr. VAN DER POST (South Africa) said that the proposal made by his delegation in document E/PC/T/W/226 did not raise any question of principle. Its object was to make it clear that when complaints were made, the Organization had to investigate the complaints and not the practices themselves.
Mr. TERRILL (United States) thought that if a complete re-draft of the Article as proposed in the South African document were necessary, it would have to be referred to a Sub-committee. This was undesirable, as it would delay the work of the Commission. He sympathised with the point raised, and thought it might be met by inserting the words "complaints regarding any of" after the words "paragraph 1" in line 5, and substituting the word "such" for the word "a" after (a) in paragraph 2 (a).

Mr. VAN DER POST (South Africa) agreed with the observations of the United States delegate, and the suggested solution had also occurred to him, but sub-paragraphs (b) and (c) were connected by the word "and", and in his opinion, this prejudged the issue. It was for the Organization to decide whether the practices were actually engaged in, and by what enterprises. This was made quite clear in the text submitted by his delegation.

Mr. HOLMES (United Kingdom) explained that the burden of the complaint was not that the practices were engaged in, but that the practices were or were about to have harmful effects on the expansion of production or trade, as specified in Paragraph 1. He thought that perhaps the South African delegate was under a misapprehension on this point.

Mr. VAN DER POST (South Africa) considered that his document clarified the point raised by the United Kingdom delegate.

A discussion then took place and agreement was reached on the possibility of incorporating the United States amendment in the French text.

Decision: Paragraph 2 (a) and (b) were approved with the addition of the United States amendment.
Paragraph 2 (c).
Mr. MUNOZ (Chile) questioned the substitution of the words "two or more" for the words "a number of". He had stated in the Sub-committee that his delegation understood that Article 39 was not applicable to enterprises which did not control in the world market the products they sold. He was not sure whether the substitution was a matter of substance or merely a matter of drafting.

Mr. HOLMES (United Kingdom) thought that this change had been made before the Drafting Sub-committee had been appointed. He did not see any real difference between the two phrases.

Decision: Paragraph 2 (c) was adopted.

Paragraph 3.
Decision: The South African suggestion to replace the word "as follows" by the words "the following" was adopted without comment.

Paragraph 3 (f).
Mr. KORTEWEG (Netherlands) referred to the observations he had made at the last meeting with regard to the deletion of sub-paragraph (f). It had been argued that only changes of a drafting character had been submitted by his delegation, and that therefore it was not in order for him to propose the deletion of this sub-paragraph. He therefore now proposed the deletion of the words "properly" at the beginning of line four, and "immediately" in the last line of this sub-paragraph.
Mr. TERRILL (United States of America) agreed that these words were superfluous. They had been held over from the original London text, in which extensive changes had been made.

Mr. VAN DER POST (South Africa) proposed the deletion of the letter "s" from the word "Subjects" in the last line of paragraph (f).

The CHAIRMAN thought that this change could be left to the Legal and Drafting Committee.

Decision: Paragraph 3 was adopted with the proposed deletions proposed by the Netherlands delegate.

Mr. VAN DER POST (South Africa) felt that the words "over which there is effective control by public authority" in paragraph 4 (b) were redundant and unnecessary.

Mr. HOLMES (United Kingdom) explained that the words were part of a compromise on a point of major difficulty.

The CHAIRMAN took it that as a point of substance was involved the delegate of South Africa would not wish to maintain his objection.

Mr. MUNOZ (Chile) felt that the wording of paragraph 4 implied exemptions under Articles 45 and 59, and that clarification was required.

The CHAIRMAN pointed out that sub-paragraph (b) of Article 45 had been left in square brackets by the Sub-Committee pending clarification of Article 59.

Mr. TERRILL (United States of America) said the Sub-Committee had recognised the existence of the point to which the delegate of Chile had just called attention, and had realised that it would be an absurdity to exempt from the provisions of Chapter VI all arrangements between state trading enterprises and
enterprises in other countries relating. A given state trading enterprise, holding a monopolistic position in some commodity or some type of technology, might through a series of bi-lateral agreements with other enterprises control the world market and engage in harmful business practices, and should be at least subject to a complaint to the Organization. It had not been intended to exempt such situations, and Article 45 should be appropriately modified in the light of any changes that might be made in Article 59.

Mr. MUNOZ (Chile) thanked the delegate of the United States of America for his explanation, which covered the point his own delegation had had in mind.

The CHAIRMAN explained that after the Sub-Committee dealing with Chapter VII had submitted its report to the Commission, and when the report had been approved and the text of Article 59 established, Commission B would be asked to complete the text of Article 45.

Mr. COLBAN (Norway) said he had submitted the report of the Sub-Committee on Article 39 to his Government, but had been informed by telegram that consideration of the article had not yet been completed. He wished, therefore, to reserve the final position of his Government, but was asking for a decision as soon as possible, and hoped to be able to give some definite information before the matter came up in the Preparatory Committee.

Decision: Article 39 was approved.

ARTICLE 40: PROCEDURE WITH RESPECT TO INVESTIGATIONS AND CONSULTATIONS.

Decision: Paragraphs 1 to 8 (inclusive) of Article 40 were approved.
The CHAIRMAN drew attention to the amendment proposed by the delegation of South Africa to paragraph 9 (E/PC/T/W/226, page 2). The paragraph, as amended, would read:

"The Organization may request any Member concerned to report fully on remedial action it has taken in any particular case."

Mr. MULHERKAR (India) was opposed to the South African proposal: he felt it should be an obligatory function of the ITO to see that the remedial action recommended by it was properly carried out by the Member concerned.

Mr. NAUDE (South Africa) said the motive behind the amendment was that the Organization should not be compelled to request all Members to report, as in some cases a report might be unnecessary.

Mr. DIETERLIN (France) noted two points with regard to the proposed amendment. The replacement of "shall" by "may" was a change in substance, and the French delegation opposed such a change. The other proposed alterations in the text were, however, an improvement on the original, and he felt that the Commission might consider them.

Mr. TERRILL (United States of America) considered that a procedural question was involved which related also to paragraph 5 of Article 42. It seemed to him that members should report without being specifically requested to do so. If, however, a certain member had not reported after a period of, say, 90 days, the Organization would then write and request information on what action had been taken in the case. If that were understood to be the nature of the procedure, the South African amendments made sense and the point appeared to be merely procedural rather than substantive.
Mr. FLETCHER (Australia) suggested that the paragraph should read: "All members concerned shall report fully on the remedial action they have taken in any particular case".

The CHAIRMAN pointed out that such an amendment would require the paragraph to be placed under Article 42: Obligations of Members.

Mr. DIETERLIN (France) considered that the delegate of the United States of America had correctly interpreted the implications of the proposed amendment. To his own mind also it was a procedural question when linked with paragraph 5 of Article 42, and he adhered to the interpretation by the delegate of the United States of America.

Decision: The amendment proposed by the South African delegation to paragraph 9 of Article 40 was approved.

Decision: Paragraph 9, as amended, was approved.

Decision: Paragraphs 10 and 11 were approved.

ARTICLE 41: STUDIES RELATING TO RESTRICTIVE BUSINESS PRACTICES.

Decision: Paragraphs 1 and 2 were approved.

ARTICLE 42: OBLIGATIONS OF MEMBERS.

Mr. LAURENCE (New Zealand) recalled that he had spoken at the previous week's meeting on the relationship between paragraph 1 of Article 39 and paragraph 1 of Article 42. Two points had been at issue, and he thought one of them could be overcome by striking out the words "other Members and" in
paragraph 1 of Article 42, and by inserting between the words "and" and "shall" the words "in addition". He did not propose to pursue at present the other point he had raised, and it might not be necessary to do so at all.

Mr. HOLMES (United Kingdom) pointed out that the meeting of the members of Sub-Committee II, which had been called to discuss the difficulties felt by the delegate of New Zealand, had been an informal one, and therefore it had not seemed necessary to submit a report; but he thought the members of the Sub-Committee would all agree with the proposal now put forward by the delegate of New Zealand. As the meeting had not been a formal one, the proposal had to come from that delegate; otherwise he felt that the Sub-Committee would have reported along the same lines.

Decision: The amendment proposed by the delegate of New Zealand to paragraph 1 of Article 42 was approved.

Mr. ANGUS (Canada) felt that the phrase "all possible steps" in the first line of the paragraph and the phrase "such measures" in the sixth line should be made consistent with each other.

Decision: It was agreed that the word "steps" in the first line of paragraph 1 should be replaced by the word "measures".

Mr. THILTGES (Belgium), supported by Mr. DIETERLIN (France) proposed that in the French text the words "qui produiraient" should be replaced by "qui produisent".

Decision: The amendment proposed to the French text was approved.
Decision: Paragraphs 1, 2, 3 and 4 of Article 42 were approved.

The CHAIRMAN pointed out that they had before them a consequential amendment from the South African delegate in relation to paragraph 9 of Article 40. The amendment proposed in paragraph 5 of Article 42 was the deletion of the words "as requested by the Organization".

Decision: The amendment was agreed to and paragraph 5, as amended, was approved.

Decision: Paragraph 6 was approved.

ARTICLE 43: SUPPLEMENTARY ENFORCEMENT ARRANGEMENTS.

Decision: Paragraphs 1 and 2 were approved.

ARTICLE 44: CONTINUED EFFECTIVENESS OF DOMESTIC MEASURES AGAINST RESTRICTIVE BUSINESS PRACTICES.

Decision: Article 44 was approved.

ARTICLE 44 - A: PROCEDURE WITH RESPECT TO SERVICES

Mr. COLBAN (Norway) stated that on the basis of the reasons he had previously given for reserving the position of his government in regard to Article 44 - A, he must maintain that reservation.

Mr. DIETERLIN (France) associated his delegation with the reservation made by the delegate of Norway with regard to Article 44 - A.
The CHAIRMAN pointed out that the revised text of Article 44 - A was given in document E/PC/T/104. Subject to the reservations by the delegates of Norway and France, it would be considered paragraph by paragraph.

Decision: Paragraphs 1 and 2 were approved.

Mr. HOLMES (United Kingdom) proposed that the words "specialised inter-governmental agency" in lines 4 and 5 of paragraph 3 be replaced by "inter-governmental organization", which was the expression used throughout the Draft Charter. He made the same suggestion with regard to line 7.

Decision: The amendments proposed by the delegate of the United Kingdom to paragraph 3 were approved and the paragraph, as amended, was approved.

Mr. HOLMES (United Kingdom) proposed that in paragraph 4 the words "specialised inter-governmental agencies" be replaced by "inter-governmental organizations".

Decision: The amendment was approved.

Mr. NAUDE (South Africa), speaking with regard to the reference in paragraph 4 to Article 61 (e), pointed out that there was a possibility that Article 61 (e) might be deleted.

The CHAIRMAN said the text of all the articles under consideration was subject to alterations in other articles. Should Article 61 (e) be deleted, paragraph 4 of Article 44 - A would have to be re-considered either by Commission B or by the Legal and Drafting Committee.

Mr. FLETCHER (Australia) proposed that the word "agencies" in the sixth line be replaced by "inter-governmental organizations".

Decision: The amendment was agreed to, and paragraph 4, as amended, was approved.
ARTICLE 45: EXCEPTIONS TO THE PROVISIONS OF THIS CHAPTER.

Mr. HOLMES (United Kingdom) pointed out that in document E/PC/T/W/131 his delegation had proposed amendments to Article 45. He was now happy to withdraw those proposals and his delegation was satisfied with Article 45 in view of the adoption of Article 44 - A, although it had been noted that that article was subject to reservations on the part of the delegates of Norway and France. He wished however his withdrawal of the proposed amendments to be regarded as contingent upon ultimate approval of Article 44 - A.

The CHAIRMAN stated that a note would be made in the report indicating that the withdrawal of the proposed amendments by the United Kingdom was contingent upon approval of Article 44 - A.

The Chairman noted that the portion of Article 45 in square brackets would be held over until a definitive text had been established for Article 59.

Decision: Article 45 was approved, subject to the reservation stated by the Chairman.

AMENDMENT PROPOSED BY THE DELEGATION OF BRAZIL TO ARTICLE 15 - A.

The CHAIRMAN drew the attention of delegates to the proposed Brazilian amendment to Article 15 - A, which had been considered in a sub-committee of Commission A. The proposal would be found in document E/PC/T/W/150, page 10. The United States delegation had suggested insertion of the following new article 15 - A:

"The products of any Member country exported to any other Member country shall not be subject to any measure imposed by either the exporting or the importing country requiring such exports to be financed, shipped or insured by enterprises of any prescribed nationality."
The Brazilian delegation, seconding the United States proposal, proposed the addition of the following paragraph:

"Member countries shall take the necessary steps to prevent transport or insurance undertakings from establishing discriminatory rates in favour of countries of origin or of destination."

The "Sub-Committee on Articles 14, 15, 15 - A and 24" had decided to refer the proposed amendment to Commission B, to ascertain whether in the opinion of the Commission there was any conflict between the proposed amendment and Chapter VI (Restrictive Business Practices).

Mr. MONTEIRO de B'ROS (Brazil) said his delegation had submitted an amendment to complement the proposal of the delegation of the United States for the insertion of Article 15A. The United States proposal would ensure that services connected with international trade would be granted the necessary freedom and that goods need not necessarily be shipped upon vessels belonging to the countries selling those goods. His delegation considered that Governments should take action to prevent insurance and shipping companies from establishing discriminatory rates in regard to the transport of such goods. If the United States proposal were adopted, then the Brazilian amendment to that proposal should also be adopted. Should the United States proposal be adopted and the Brazilian amendment rejected, then his delegation would have to reserve its position vis-à-vis the United States proposal, and would not be able to support it.
He would also like to know how the commission interpreted sub-paragraph (o) of paragraph 3 of Article 39. It seemed to him a general text which drew no distinction between services and goods. Article 44A tended to place services under the provisions of the Charter and sub-paragraph (c) of Article 39 dealt with discriminatory practices in general regardless of whether they concerned goods or services. If that was the interpretation given by the Commission, then the point of view of his delegation would be covered.

Mr. THILSEGES (Belgium) considered that it was not within the competence of the Commission to pronounce on a question the substance of the Brazilian amendments to Article 15 A. The Commission had to decide whether there was a conflict between the two proposals for Article 15 A and the provisions adopted for Chapter VI. He felt that there was no such conflict.

Mr. DIETERLIN (France) agreed with the remarks of the representative of Belgium that there was no conflict between the general provisions of Chapter VI, Article 15 A as proposed by the United States delegation, and the amendment to that Article proposed by the Brazilian delegation. Referring to the remarks of the Brazilian representative regarding the interpretation to be given to sub-paragraph (c) of paragraph 3 of Article 39, he said it would be for the Organization to decide in each particular case whether the practices referred to were harmful or not. The Commission should not prejudge the adoption of the provisions in question.
The CHAIRMAN said the Commission was concerned with the substance of the proposed amendment to the new Article 15A. Commission A had asked for guidance from Commission B as to the relation of the proposal by the Brazilian delegation to Chapter VI. The question should be considered from two points of view:—

1) Was there any conflict with the provisions of Chapter VI?

The Belgium and French representatives considered that there was no such conflict. (2) Both the United States proposal and the Brazilian amendment placed certain obligations on Members with respect to services, and it was necessary to consider the Brazilian amendment in relation to Article 44A as well as with other parts of Chapter VI.

Mr. TERRILL (United States of America) said that, considered on the practical level, the proposal of the Brazilian delegation regarding Article 15A upset everything the Commission had attempted to do by way of settling the question of services in Article 44A. He recalled that the issue had been settled by provision, consultation between Members in regard to restrictive practices in the field of services and that ITO, on presentation of a complaint, would bring it to the attention of the proper agency, or, if no such agency existed, would make recommendations requested to do so. The decision as to what was a discriminatory shipping, aviation, telecommunications or insurance rate was a highly complicated matter, and if ITO were to take action in the field of services it would destroy the integrity of any future international organization that might be established in that field.
The amendment proposed by the Brazilian delegation was in no way complementary to the United States proposal which related to services tied directly to particular export shipments and proscribed such tying legislation. The Brazilian amendment referred to a question connected with the performance of the service as such.

The ITO could not be put into specialized fields such as shipping, aviation, telecommunications and insurance for which it was proposed there should be international agencies established in the near future.

Mr. MONTEIRO DE BARROS (Brazil) did not agree that the amendment suggested by his delegation would upset the application of Article 44A. On the contrary, his delegation wished to clarify the question and to know whether, in the interpretation of the United States representative, if a country considered that discriminatory rates had been imposed regarding shipping and insurance, it might apply to the Organization, in conformity with Article 44A, and ask for the matter to be referred to the competent agency. He considered that that point should be elucidated and made clear in the records of the present meeting in order that it might serve as an aid for the interpretation of the provisions of the Charter.

Mr. DIETERLIN (France) said the explanations given by the representative of the United States referred to the substance of the proposals. It was not for the Commission to discuss the substance of the proposals but to see how those proposals would bear on Chapter VI.

If Articles 13A and 44A were adopted, the Organization would in Article 15A have another means of judging such cases submitted to it, regardless whether the Brazilian amendment was adopt...
submitted to it, regardless whether the Brazilian amendment was adopted or not. If, on the other hand, Article 44A were not adopted, the Organization would not be competent to deal with such matters and the Commission would have to find other means of implementing Article 15A.

The CHAIRMAN said that the representatives of Belgium and France had indicated that they felt that the Brazilian amendment to Article 15A did not come within the scope of restrictive business practices, i.e. did not fall within the purview of Chapter VI. The United States representative had pointed out that the adoption of the Brazilian amendment would bring services within the scope of the Charter to an extent which went beyond that agreed upon in Article 44A of Chapter VI. He felt the Commission would be fulfilling its duty in relation to the request referred to it by Commission A if it informed the latter that Commission B was of the opinion that the Brazilian amendment related more to the field of commercial policy than to that of restrictive business practices, but, at the same time, that Commission B was of the opinion that the adoption of the Brazilian amendment would bring services within the scope of the Charter to an extent that went beyond that agreed upon in Article 44A of Chapter VI with respect to restrictive business practices in relation to services.

Mr. MONTEIRO DE BARROS (Brazil) said he had asked for a clarification of the matter and had not received a reply. If the reply to his question was that Article 44A covered the question of discriminatory rates he would be satisfied. But if Article 44A did not cover the case his delegation would have to reserve its position and study the matter further.

Mr. COLEaN (Norway) agreed with the proposal of the CHAIRMAN and suggested that a copy of the minutes should be
attached to Commission B's report to Commission A.

Mr. HOLMES (United Kingdom) did not agree with the drafting of the United States proposal and did not understand the Brazilian amendment. He considered that it was difficult to discuss this matter without prior notice.

The CHAIRMAN agreed that it was difficult to discuss the subject without prior study. He pointed out that since this was the last time that Chapter VI would be discussed for some weeks it was necessary to consider the issue at this meeting. Commission A could not shirk the responsibility of dealing with the substance of the matter. The proposal before the Commission related chiefly to the field of commercial policy and he felt it should be possible for Commission B to give some indication to Commission A as to the relation of the Brazilian proposal to Chapter VI, and that was why he had suggested his formula. The Brazilian representative had raised certain questions regarding the interpretation of Chapter VI, in particular in relation to discriminatory rates. He felt it was for the representative of Brazil to judge how far the practices listed in paragraph 3 of Article 39 covered or did not cover the cases referred to in his amendment.

Mr. MONTEIRO DE BARROS (Brazil) thanked the Chairman for his explanations, and pointed out that as he was a legal expert he had his own opinion as to how the Chapter should be interpreted, but he wished to know the Commission's interpretation of it.

Mr. FLETCHER (Australia) supported the Chairman's proposal. If the Commission were to attempt to express an opinion on the relationship between the Brazilian proposal and Chapter VI it would first be necessary to have a definition of what was meant by a discriminatory rate.
Perhaps Commission B could inform Commission A that so far as Chapter VI was concerned it would not matter whether both Article 15A and the Brazilian amendment were adopted or rejected.

The CHAIRMAN asked whether Commission B was agreed on the reply to be sent to Commission A, i.e. along the lines of the proposal of the Chairman supplemented by the addition suggested by the Australian representative and attaching a copy of the Minutes of the meeting.

Mr. FLETCHER (Australia) said he supported the Chairman's first formulation and did not propose that anything else should be added.

**Decision:** It was agreed to reply to Commission A in accordance with the Chairman's proposal.

The CHAIRMAN announced that Commission B would probably meet on the following Monday if the report of Sub-Committee on Chapter VII could be prepared in time for circulation on Saturday. Before the meeting of Commission B there would be a meeting of the Plenary Committee in executive session to consider the Ninth Report of the Tariff Negotiations Working Party.

The meeting rose at 6.5 p.m.