SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT,
COMMISSION B
SUMMARY RECORD
of the 28th meeting held at the Palais des
Nations, Geneva, on Friday, 15 August, 1947 at 2.30 p.m.

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

1. CONSIDERATION OF THE REPORT OF THE LEGAL AND DRAFTING
COMMITTEE ON CHAPTER VI.

The CHAIRMAN opened the meeting and said that members would recall that when Commission B last considered Chapter VI it approved the reports of the Sub-Committees and established a text for the Chapter with the exception of Article 45. The report of the Legal and Drafting Committee was given in document E/PC/T/150 of August 5. As the Commission had already approved a definitive text for the Articles in that text, it would not be possible to accept any amendment which deviated in substance from the text already approved.

Referring to the memorandum submitted by the delegation of the United Kingdom (document E/PC/T/W/292), the Chairman said that that document would be considered when the Commission discussed Article 45.

Article 39

Paragraph 1

Decision: Approved without comment.

The CHAIRMAN asked whether there were any comments on the note by the Legal Drafting Committee on Page 2 of document E/PC/T/150.
Mr. COLBAN (Norway) said that the reservation he had made in connection with paragraph 1 of Article 39 had not been included in the Report of the Legal Drafting Committee. His Government had not had time to take a decision concerning that paragraph.

The CHAIRMAN said that the notes would be incorporated in the Report. The Legal Drafting Committee considered that it was not within its terms of reference to draft the notes.

Mr. THILTGES (Belgium) suggested that the French text of the passage beginning "to prevent............ set forth in Article 1" should be redrafted.

Mr. COUILLARD (Canada) and Mr. LECUYER (France) supported the proposal made by the representative of Belgium.

Decision: The proposal made by the Belgian representative was adopted.

Mr. THILTGES (Belgium), referring to the first paragraph of Article 39, said that it was linked with Article 1 of the Charter which had been modified at the suggestion of the Belgian delegation. In the new drafting of paragraph 1 of Article 39 the words "purposes of the Organization as" had been deleted and the words "objectives set forth in Article 1" substituted. If the word "objectives" meant all the objectives of the Charter, he would accept that drafting. If it did not have that meaning, he felt it should be qualified by the addition of a word such as "reasonable" or "justified".

Mr. VANDER POST (Union of South Africa) said that the point raised by the representative of Belgium was covered by Chapter 1 of Article 1. The amendment proposed by the Legal Drafting Committee brought into line the wording of Article 1.
Mr. THILTGES (Belgium) considered that, in order to clarify the matter, the words "and the purposes of the Charter" should be added to the words "interfere with the achievement of any of the other objectives set forth in Article 1."

Mr. TERRILL (United States of America) supported the remarks of the representative of the Union of South Africa.

Mr. HOLMÉS (United Kingdom) agreed with the representative of the United States, and felt that the text of paragraph 1 should be left unchanged.

Mr. VANDER POST (Union of South Africa) and Mr. (Canada) supported that point of view.

Mr. KORTEWEG (Netherlands) considered that the words "dans tous les cas" should be translated to read "whenever" in the English text.

The CHAIRMAN pointed out that the Legal and Drafting Committee were satisfied that the two texts agreed and were supposed to be experts in the two languages.

Decision: Paragraph 1 was approved.

Paragraph 2.

Mr. MUNOZ (Chile) stated that in sub-paragraph (c) of paragraph 2: "We note that the word 'between' has been substituted for 'among'. We would very much like to see the word 'among' retained in this paragraph as we consider that, in this particular case, it conveys more clearly what is meant by this provision. As a matter of fact we feel that the phrase which appeared in the New York text, which said 'among a number of countries', is far more better than the present text reading 'between two or more countries' and we suggest that this Commission approves this latter phrase. We have always maintained that if an enterprise does not possess the effective control
of trade in the world markets of the products which it sells, the provisions of this Article would not apply to such enterprise, and on this understanding we have given our approval to this paragraph. We would like you to leave this on record at this stage and, as stated before, suggest that the phrase remains as in the original text 'among a number of countries'."

The CHAIRMAN pointed out that the Legal Drafting Committee had decided that the use of the words "two or more" made it impossible to use the word "among" and that was why the wording was changed. He did not see any substantial difference between what was stated in the document the Commission was considering and the New York text.

Mr. VANDER POST (Union of South Africa) considered that the word "between" was the more correct one to use.

Mr. MINOVSKY (Czechoslovakia) supported the suggestion that the New York text should be retained.

Mr. VANDER POST (Union of South Africa) favoured the text proposed by the Legal Drafting Committee.

Mr. HOLMES (United Kingdom) replying to Mr. (Belgium) said that it was very difficult to argue that "among a number of countries" implied necessarily more than two countries. "Among two" was an unusual expression, but not an impossible one.

Mr. MUNOZ (Chile) suggested that the phrase should read "among a certain number of countries."

Mr. BARROS (Brazil) supported the text as at present drafted; it clearly indicated that the case of two countries was covered.

**Decision:** Paragraph 2 was approved without amendment.
Paragraph 3.

Mr. HOLMES (United Kingdom), referring to the second line at the top of page 5, said that there should either be commas after the word "copyrights" and after "Member" or none at all.

Mr. TEMINL (United States of America) said that the Legal Drafting Committee had deliberated on the comma in question for more than two hours, and the comma after "copyright" was dropped in an attempt to clarify the situation.

Mr. HOLMES (United Kingdom) proposed that the comma after the word "Member" should be deleted.

Mr. LECUYER (France) said he was satisfied with the drafting of the French text.

Mr. COLBAN (Norway) considered that Commission B should not constitute itself a super drafting committee.

The CHAIRMAN agreed.

Mr. HOLMES (United Kingdom) withdrew his suggestion.

Decision: Paragraph 3 was approved.

Paragraph 4

Mr. THILTGES (Belgium) said that the Legal Drafting Committee had modified the draft of paragraph 4 (b); the words "including control in the practice" had been replaced by "in a practice", and he wished to know why that had been done.

Mr. HOLMES (United Kingdom) felt that certain words should be added to the end of sub-paragraph (b) to show that when reference was made to a practice listed in paragraph 3 it concerned the particular practice which was in question at the time or the particular practice which was the subject of a complaint. The words "and specified in a complaint" would probably meet the point.
Mr. VAN DER POST (Union of South Africa) suggested that the word "any" should be substituted for the word "a" before "practice".

Mr. THILTGES (Belgium) preferred the original French text and said his observation only referred to the French equivalent of the English text.

Mr. LECUYER (France) considered that there was a difference between the French and English texts. He suggested that the word "possible" should be added to the original French text.

Mr. HOLMES (United Kingdom) felt that the words "and specified in a complaint" should be added after the words "of this Article". As suggested by the representative of France, the word "possible" could be inserted before the word "engagement".

Mr. LAURENCE (New Zealand) considered that the suggestion made by the representative of the United Kingdom would not help matters very much. He felt that the addition of a phrase such as "including control of its right to engage" might cover the point.

Mr. THILTGES (Belgium) said that having pointed out the discrepancy between the two texts, he was willing to support any text which might be adopted by the Commission if the Commission thought that the discrepancy did not matter.

The CHAIRMAN suggested that the words "control of engagement" should be changed to read "including the control of the possibility of engaging in a practice."

Mr. TERRILL (United States of America) supported the amendment suggested by the representative of the United Kingdom as it made it clear that control by public authority related to a particular practice or practices which were
complained about and not to other practices listed in paragraph 3.

Mr. COUILLARD (Canada) supported the remarks of the representative of the United States of America. The present English wording of the paragraph was quite clear. However, so far as the French text was concerned, he considered the original should be adopted.

Mr. VAN DER POST (Union of South Africa) did not agree with the suggestion made by the representative of the United Kingdom.

After a short discussion in which the representatives of the UNITED KINGDOM, NEW ZEALAND and NORWAY took part, the CHAIRMAN asked whether it was agreed that the English text should be left unchanged and that the French text should be amended to read "y compris un contrôle........" as suggested by the representative of Norway.

**Decision:** Paragraph 4 was approved with the amendment suggested.

**Article 40.**

**Paragraph 1.**

Mr. THILTGES (Belgium) asked that the word "lésé" should be retained as it corresponded exactly to the English word "affected."

Mr. COLBAN (Norway) did not agree with the representative of Belgium: "lésé" meant that a Member should prove actual damage, and that was not necessary. "Affected" meant more or less "interested", and if it were translated to read "intéressé" it would be better than using the term "lésé".

Mr. KORTEWEG (Netherlands) and Mr. LECUYER (France) supported the remarks of the representative of Norway.
Mr. THILTGES (Belgium) understood the objection of the representative of Norway to the word "lésé", but said that anyone who read Article 40 would be in no doubt that there must be an injury present or about to happen.

Mr. COLBAN (Norway) suggested that the words in the French text should read "qui se considère lésé", and the word "affected" maintained in the English text.

Mr. BARROS (Brazil) said that the difference between the words "lésé" and "affected" had been discussed at great length by the Legal Drafting Committee. He supported the suggestion made by the representative of Norway.

Mr. THILTGES (Belgium) stated that his delegation could not support the proposal made by the representative of Norway.

Mr. BARROS (Brazil) said the question to be solved was whether a Member State would have to prove to the Organization before investigation that he had suffered some injury, or whether he would have to furnish that proof during the investigation. If the latter idea were adopted, then the words suggested by the representative of Norway would apply.

Mr. THILTGES (Belgium) suggested that the words to the effect that the minimum information should cover the scope of injury as regards the complaining Member and the probability of such injury should be added after the first sentence of paragraph 3.

Mr. FLETCHER (Australia) pointed out that in the first part of paragraph 1 it was laid down that the "organization shall arrange, if it considers such action etc." If paragraph 3 were read in conjunction with paragraph 1 it would clarify the matter.
Mr. TERRILL (United States of America) supported the remarks of the representative of Australia, and considered that the English text of paragraph 1 should be retained.

The CHAIRMAN felt that it would be going beyond the scope of the Commission if words were added to the end of paragraph 3 as suggested by the representative of Belgium.

Mr. FLETCHER (Australia) said that he was satisfied with the English text but was not competent to express an opinion on the French text.

The CHAIRMAN put to the vote the suggestion made by the representative of Norway. Nine delegations expressed themselves in favour of the adoption of the proposal. The representatives of CZECHOSLOVAKIA, BELGIUM and the NETHERLANDS reserved their position.

The CHAIRMAN pointed out that there could not be reservations on points of drafting.

Mr. HOLMES (United Kingdom) proposed that the word "affected" in the English text should be deleted and that after the word "Member" the phrase "whose interests are concerned" should be inserted.

Mr. FLETCHER (Australia) supported the proposal made by the representative of the United Kingdom.

Mr. MUNOZ (Chile) asked what the French-speaking representatives felt about the proposed change in the English text.

Article 40, para. 1, page 6

Mr. HOLMES (United Kingdom) suggested that the word "affected" be replaced by the word "concerned".

M. LECUYER (France) did not consider that the drafting of para. 1 was vital. The idea underlying the word "lésé" in this
paragraph was purely subjective.

Mr. COLBAN (Norway) in the light of the remarks made by the French Delegate, proposed that the note by the Legal Drafting Committee on paragraph 1 be suppressed.

Paragraph 1 was approved, subject to this modification.

Mr. THILTGES (Belgium) proposed, for the sake of clarity, that a comma be inserted after the word "lése" in the third line of the French text of paragraph 2.

Paragraph 2 was approved subject to this modification.

Paragraph 3 was approved.

Paragraph 4 was approved.

Paragraph 5 was approved.

The CHAIRMAN asked whether there were any comments on the note by the Legal Drafting Committee on paragraph 6.

Mr. HOLMES (United Kingdom) said that the Sub-Committee, of which he was chairman was assured by the French Delegate that the word "decide" was, in this context, the best translation of the word "constater".

Mr. THILTGES (Belgium) explained that the use of the word "determined" had been queried on legal grounds, and the word "decide" substituted.

Mr. COLBAN (Norway) proposed that the difficulty be met by the use, in the French text, of the phrase "se prononcera sur la question de savoir" instead of "constatera" in the fourth line of paragraph 6.

Paragraph 6 was approved subject to this modification.

Paragraph 7 was approved.

Paragraph 8 was approved.

In reply to a question by the CHAIRMAN on the note by the Legal Drafting Committee on paragraph 9, Mr. BARROS (Brazil) recalled that the Sub-Committee had preferred the retention of
this paragraph, on the grounds that it was somewhat different to Article 42 which implied an obligation.

Paragraph 9 was approved.

Paragraph 10 was approved.

Subject to the substitution of a comma in the place of the word "et" in the fifth line of the French text on page 12.,

Paragraph 11 was approved.

Article 41, paragraphs 1 and 2 were approved.

The CHAIRMAN read the note of the Legal Drafting Committee on paragraph 1 of Article 42 and invited comment.

Mr. HOLMERS (United Kingdom) would be prepared to agree to the suppression of the last three lines of paragraph 1.

Mr. CHANG (China) proposed the deletion of the words "by legislation or otherwise" in the second line, and the retention of the remainder of the paragraph.

Mr. KORTEWEG (Netherlands) supported this proposal. He pointed out the "measures" in line 2 were not the same as the "measures" in the last line but 2.

Mr. VAN DER POST (South Africa) agreed to the deletion of the words "by legislation or otherwise" and also to the suppression of the last three lines, as proposed by the Delegate of the United Kingdom.

Mr. KORTEWEG (Netherlands) could not accept the deletion of the phrase "the Members' system of law".

Mr. TERRILL (United States of America) proposed the phrase "such assistance to be given in accordance with" instead of "such measures to be taken ...." This would make it quite clear that there was no question of the Organization interfering in a Member's legislation.

Mr. MUNOZ (Chile) was entirely in agreement with the Delegate of the United States.
M. LECUYER (France) drew attention to two errors in the French text: The phrase "traitera en concours" in line 12, should read "prêtera son concours" and the word "sa" should read "la".

Article 1, paragraph 1, as amended by the United States proposal and subject to the drafting modification proposed by the Delegate of France was approved.

Paragraph 2 was approved.

Paragraph 3 was approved.

The CHAIRMAN invited comments on the note from the Legal Drafting Committee on paragraph 4.

Mr. COLBAN (Norway) said that the Commission had already agreed to the use of the expression "dans le cadre de sa législation" in Article 42, paragraph 1. It was therefore only logical to retain it in the present paragraph.

Mr. HOLMES (United Kingdom) suggested that the opening phrase should more properly read "Each Member shall take full account of each request, decision and recommendation ..."

Subject to this comma, paragraph 4 was approved.

The CHAIRMAN invited comments on paragraph 5.

Mr. KORTEWEG (Netherlands) pointed out that the word "fully" at the beginning of the paragraph was far wider than the original text.

Mr. TERRILL (United States of America) who had been present when the question was discussed by the Legal Drafting Committee, said that the word "fully" had been added to indicate that reports should be detailed and not merely perfunctory. The request referred to in the paragraph was a reflection of a similar paragraph in Article 40.

Mr. HOLMES (United Kingdom) suggested that the insertion of the word "fully" went beyond the terms of reference of the Legal Drafting Committee. He proposed its deletion.
On a vote being taken, the proposal by the United Kingdom delegate was defeated.

Paragraph 5 was approved.

Paragraph 6 was approved.

Article 43, paragraphs 1 and 2 were approved.

Article 44, paragraph 1 was approved.

Article 45, paragraph 1 was approved.

The delegates for France and Norway repeated the reserves that they had already made on this paragraph.

Article 45, paragraph 2 was approved, subject to the word "thereby" being substituted for the words "or would be" in the last line on page 20. The last four lines of the French text on page 21 should run "et offriront des possibilités adéquates de consultation à fin de parvenir...."

Paragraph 2 was approved.

Paragraph 3 was approved.

Paragraph 4 was approved.

The CHAIRMAN, in opening the discussion on Article 46, paragraph 1, read the note by the Drafting Committee, and referred to the amendment to Article 46 proposed by the United Kingdom Delegation, E/PC/T/W/292.

Mr. HOLMES (United Kingdom) explained that the object of the United Kingdom amendment was to avoid a certain obscurity which figured in the London text.

Mr. MUNOZ (Chile) suggested the insertion of the word "inter-governmental" in the amendment, the opening phrase to read "any inter-governmental bilateral agreement".

He asked why the United Kingdom Delegation desired the retention of sub-paragraph (b).

Mr. HOLMES (United Kingdom) replied that considerable confusion would inevitably ensue if it were omitted.
Mr. MINOVSKY (Czechoslovakia) regretted that his Delegation could not accept the amendment, in that an important substance in the Charter was involved.

Mr. COLBAN (Norway) was of opinion that Articles 31 and 32 covered the whole field and rendered the United Kingdom amendment superfluous.

Mr. MUNOZ (Chile) wondered whether the amendment meant that state trading enterprises were exempt from Article 36.

Mr. TERRILL (United States of America) felt bound to agree with his Czechoslovakian colleague that the amendment was one of substance, and in the opinion of the United States Delegation it had serious aspects. His Delegation was in favour of the article being retained by the removal of the square brackets.

Mr. LEGUYER (France) felt that if these agreements were designed to include any form of enterprise, the scope was so wide that he would require time for further reflection.

Mr. LAURENCE (New Zealand) thought that the United Kingdom proposal was to incorporate in Article 45 the essential substance of Article 59, to which no objection had been made at the Conference. The manner in which state trading was to be carried on was already provided for in articles dealing specifically with that topic, and means were provided whereby Members could complain if they were not satisfied with the conduct of such enterprises. Any provision questioning the conduct of state trading enterprises in the Charter might lead to conflicting procedures. He considered therefore that the exclusion provided for in the United Kingdom proposal was desirable.

Mr. MINOVSKY (Czechoslovakia) desired that the same discipline should apply to state trading enterprises as to private enterprises. If state trading enterprises were to be excluded from Chapter 6, his Delegation must reserve its position.
Mr. FRESQUET (Cuba) thought that the United Kingdom amendment would have the effect of extending the scope of the exceptions under Article 46, and he opposed the amendment for that reason.

Mr. HOLMES (United Kingdom) pointed out that a perusal of the original Article 59 showed that the United Kingdom amendment was designed to introduce a slight narrowing of its scope.

Mr. TERRILL (United States of America) proposed that paragraph 1(b) and 2 should be eliminated altogether.

Mr. CHANG (China) was prepared to accept the United States proposal subject to the addition of the words "of Section E of Chapter 5 and..." and after the word "requirements" in sub-paragraph (a).

Mr. HOLMES (United Kingdom) regretted that he could not accept the United States amendment. He could not agree to any further narrowing of paragraph 1(b).

The CHAIRMAN, in summing up the discussion, said that there were five proposals before the Commission:

a. that of the Legal Drafting Committee at the bottom of page 23 of E/PC/T/150:

b. the proposal of the United States Delegation to suppress paragraph 1(b) and 2 of Article 46:

c. the amendment of Article 46 proposed by the United Kingdom Delegation E/PC/T/W/292:

d. the Chilean amendment, which consisted in the insertion of the words "inter-governmental bilateral agreements" and:

e. the Chinese amendment which consisted in the addition of the words "Section E of Chapter 5" paragraph 1(a).

The CHAIRMAN first put to the vote the United States proposal under (b) above.
This proposal was defeated by six votes to six.

He next put to the vote the United Kingdom amendment, under (c) above.

This vote was defeated by seven votes to three.

He next put to the vote the Chilean amendment, under (d) above.

This proposal was adopted by eight votes to three.

Mr. HOLMES (United Kingdom) desired to put it on record that his Delegation might raise the question again at another time and in another place.

Mr. LAURENCE (New Zealand) wished to make reservation on the part of his Delegation.

Finally, the withdrawal of the square brackets around paragraph 2 of Article 45.

The meeting rose at 8.15 p.m.