

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF TWENTY-FOURTH MEETING

Held at the Capitol, Havana, Cuba,
Tuesday, 3 February 1948, at 3.00 p.m.

Chairman: Mr. E. COLBAN (Norway)

1. CONSIDERATION OF NOTIFICATION TO COMMITTEES AND SUB-COMMITTEES BY
SUB-COMMITTEE ON CHAPTER VIII (Document E/CONF.2/C.6/49/Rev.1)

Mr. COUILLARD (Canada), Chairman of the Sub-Committee on Chapter VIII, said that the question of the relation between consultation and investigation procedures in other parts of the Charter and their relation to the similar provisions in Chapter VIII was fully discussed by the Sub-Committee. The Sub-Committee had circulated document E/CONF.2/C.6/49 to all Sub-Committees and Committees of the Conference as an explanation of its interpretation of the position of Chapter VIII vis-à-vis the rest of the Charter. As, however, some delegations had queried certain points of interpretation in that document, the matter was further discussed at a subsequent meeting and document E/CONF.2/C.6/49/Rev.1 was drawn up. That document was supported by all but one member of the Sub-Committee.

Mr. HOLMES (United Kingdom) considered that the alterations appearing in the revised text of the document under review were of a very important character. The phrase "unless the basis of the complaint is nullification or impairment of a benefit accruing to a Member", appeared to him to be rather odd in view of the disclaimer at the end of the same sentence that the rights of Members under Chapter VIII should not, unless it was so specified themselves be impaired. The effect of the document in its present form would be that the special procedures laid down in the case of a complaint or investigation arising out of a restrictive business practice - procedures which were provided for in Chapter V - could be short-circuited by recourse immediately to Chapter VIII. He agreed that nothing should be done to infringe the ultimate right of members to make complaints about the nullification or impairment of their benefits under the Charter according to the provisions of Article 89. He did not feel, however, that that meant that the special procedures which might be laid down for matters such as

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those mentioned in Chapter V in respect of restrictive business practices should be wholly ignored. He considered that if document E/CONF.2/C.6/49/Rev.1 was to be accepted as the view of the Sixth Committee it should contain a statement that the procedure of Chapter V should be followed before complaints were brought under Article 89, or a provision to that effect included in Chapter V itself.

Mr. KELLOGG (United States) did not agree with the remarks of the representative of the United Kingdom, and said that in the opinion of his delegation there was no question of short-circuiting any special procedures set up under Chapter V. He suggested that the matter should be referred to the Fourth Committee.

Mr. MONTEIRO DE BARROS (Brazil) agreed with the gist of the notification prepared by the Sub-Committee on Chapter VIII. Resort to the specific procedures of Chapter V should not in any way be construed as precluding Members, once they had exhausted those procedures, from resorting to the general procedures of Chapter VIII. As the matter was very complex and the problems involved were difficult to settle beforehand in the Conference, he suggested that it should be left to the Organization to co-ordinate the procedures laid down in Chapter V and Chapter VIII.

Mr. RIVERA (Colombia), after briefly reviewing the document prepared by the Sub-Committee, said that his delegation agreed with it, as it considered that there should be co-ordination between Chapter VIII dealing with general procedure and Chapter V which dealt with specific procedure.

Mr. KOJEVE (France) supported the statements made by the representatives of the United Kingdom and of Brazil, and considered that the document before the Committee was far from satisfactory. Instead of clarifying the relationship between the general procedures of Chapter VIII and the specific procedures of Chapter V, the draft could be interpreted in various ways. It was not clear whether the procedure laid down in Article 45 might be followed at the same time as the general procedure of Chapter VIII. It was also not clear whether the procedure laid down in Article 45 might replace that of Article 89. He supported the suggestion made by the representative of Brazil that the matter should be left to the Organization to settle, and the Sixth Committee should submit a resolution to the Conference to that effect.

Mr. MACEADO (Cuba) proposed the adjournment of the debate until a report had been received from the Sub-Committee on Chapter VIII.

Mr. AMADOR (Mexico) said that his delegation considered that the Charter should not contain any provisions which would hinder any Member from having access to the general procedures laid down in Chapter VIII, and supported the text of the notification submitted by the Sub-Committee. That document

/would help

would help in the definition of the procedure which should be followed by those representatives who were at present working on Chapter V.

Mr. OFTEDAL (Norway) agreed with the representative of France. A declaration regarding the relationship of Chapter VIII with procedures laid down in other Chapters was unnecessary. It was obvious that specific procedures should precede general procedures.

Mr. ELUSZTAJN (Poland) believed that the Sub-Committee was not competent to make stipulations regarding decisions taken in other Committees and Sub-Committees. He proposed the deletion of the words "...unless the basis of the complaint...a Member."

Mr. HAIDER (Transjordan) believed that specific procedures should hold priority over the procedures of Chapter VIII, but it should be left to the Organization to decide. There should be no duplication of similar procedures.

Mr. HOLLOWAY (South Africa) pointed out that the Committee was concerned with the structure of the Organization and not with its functions. It was merely notifying other Committees as to how the matter stood in order to assist them in their decisions, not presuming to dictate to them in any way.

Mr. FER (Turkey) pointed out that according to the definition in Article 44, only those business practices which had harmful effects might be taken into consideration; therefore the phrase "unless the basis of the complaint...accruing to a Member..." was redundant.

Mr. RIVERA (Colombia) believed the phrase under discussion should either be deleted, or it should be made clear that it referred exclusively to Article 89. Specific procedures should be established as holding precedence over Chapter VIII.

Mr. ABELLO (Philippines) agreed with the representatives of the United Kingdom and Poland, but thought the whole matter could well be left to the first regular session of the Conference of the Organization.

Mr. POLITIS (Greece) said it should be made clear that first resort should be made to specific procedures.

Mr. KARMARKAR (India) pointed out that the Sub-Committee notification attempted to harmonize the various situations that might arise. It was not of a mandatory character. However, it should be made clear at the present Conference and not left to the Organization to decide upon the scope of Chapter VIII.

Mr. COUILLARD (Canada) as Chairman of the Sub-Committee on Chapter VIII, said that the notification was intended to clarify the situation between consultation and other similar types of procedures laid down in the Charter vis-à-vis those provided in Chapter VIII, and to state the opinion that that

/Chapter stood

Chapter stood behind the entire Charter unless Committees or Sub-Committees decided otherwise. There was no prejudice to the procedures of Chapter V.

Mr. KOJEVE (France) stated that if it were agreed to send the notification, he would support the proposal of the representative of Poland to delete the sentence "unless the basis... accruing to a Member".

In reply to Mr. KARMARKAR (India) he said that other committees might decide as to whether the two procedures might be used concurrently or be mutually exclusive. He would accept the Philippine proposal.

Mr. AUGENTHALER (Czechoslovakia) agreed that the words "unless... accruing to a Member..." should be deleted.

The proposal of the Sub-Committee on Chapter VIII (document E/CONF.2/C.6/49/Rev.1) was approved with the deletion of the words: "...unless the basis of the complaint is nullification or impairment of a benefit accruing to a Member...." by a majority of 26 to 14.

2. CONSIDERATION OF THE REPORT OF THE SUB-COMMITTEE ON PARAGRAPH 2 OF ARTICLE 68 (MEMBERSHIP) (Document E/CONF.2/C.6/58)

After Mr. ALAYZA (Peru) had reiterated his opposition to the Report, the text prepared was approved.