

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

COMMISSION B

SUMMARY RECORD

of the Nineteenth Meeting held on Thursday, 3 July
1947 at 2.30 p.m. at the Palais des Nations, Geneva.

Chairman: Hon. L.D. WILGRESS (Canada)

1. CHAPTER VIII OF THE DRAFT CHARTER.

Article 88 - Entry into Force.

Paragraphs 1 and 2

The CHAIRMAN drew attention to the proposal of the United Kingdom delegation to transfer paragraph 1 to the end of the Charter.

Mr. KELLOGG (United States), referring to the question of signature, asked whether it would not be better to keep to the original plan, which was the plan adopted at Bretton Woods. In that case signatures were affixed to the document after acceptance had been accomplished. He spoke for U.S. Constitutional reasons and also because he believed that signature did not bind a country.

Mr. FAWCETT (United Kingdom) understood that acceptance of the Charter was equivalent to the former signature and ratification. It was the instrument of acceptance which made a Member party to the Charter. He wondered whether it would be possible to meet the feeling of the representative of the United States by merely initialling the text of the Charter.

Mr. KELLOGG (United States) said that the suggestion made by the representative of the United Kingdom would be acceptable to his delegation.

Mr. DAO (China) pointed out that in the United Kingdom amendment mention had been made only of the English and French languages. He wished to know why the three other official languages of the United Nations had not been mentioned.

Mr. DE GAIFFIER (Belgium/Luxembourg) supported the United Kingdom amendment. Referring to the remarks of the representative of China, he said that although there were five official languages of the United Nations, English and French were the only two working languages. Should any dispute arise it would be very difficult to interpret the Charter in five official languages.

Mr. DORN (Cuba) pointed out that according to the London draft, Chinese, English, French, Russian and Spanish were equally authentic and binding. The wording of Article 86 had been changed in New York to read that all official languages should be equally authoritative. He understood that the reason for using only two of the official languages was a practical one, but pointed out that the Commission was meeting in a country which had four official languages and those languages were used daily. He felt the problem was not insuperable and that it should be referred to the sub-Committee. He reserved his position regarding the Spanish language.

Mr. FAWCETT (United Kingdom) said that, in submitting its amendment, his delegation had in mind the fact that the Charter was a highly technical document, and to increase the number of authentic texts would merely impose a greater burden on those who had to interpret it. So far as he knew, no other specialized agency of the United Nations had authentic texts in

five languages and, as the International Trade Organization would, in some ways, be the most technical body of all, it should be the last to adopt this procedure.

Regarding the question of interpretation, he said the International Court had adopted the English and French languages for its proceedings although another language could be used if a party before the Court so required. It was fairly well established that English and French had become the standard languages for purposes of interpretation. Article 86, paragraph 1, referred to "the official languages of the United Nations". That was a slightly defective formula as those languages might well be changed.

Mr. DAO (China) pointed out that the constitution of the World Health Organization had stated its texts in the five languages equally authentic. Referring to the question of interpretation, he said that the Charter of the United Nations was drawn up in the five official languages and so far no difficulty had arisen regarding its interpretation.

Mr. NAUDE (South Africa) said that the Charter of the ITO would be the most technical document that the United Nations had attempted to draw up, and difficulties regarding translation had already arisen at the meetings in New York. He failed to see how judges sitting at the Hague, who had no knowledge of Chinese or Russian, could possibly penetrate the real meaning of a document drawn up in those languages. The matter should be approached from a technical point of view to see how a text could best be achieved on which there would be no difficulty of interpretation.

Mr. DORN (Cuba) pointed out that the International Court had the power to interpret the Charter of the United Nations whose text in five languages is equally authentic. It was true that Article 39 of the Charter referred to the two working languages of the Court, English and French, but the Court could authorise the use of any other language should a party to a dispute so wish. He felt there should be the same procedure in the case of the ITO.

Mr. FAWCETT (United Kingdom) said he had drawn attention to the fact that under paragraph 3 of Article 39 of the Charter of the United Nations a party might ask the International Court of Justice for permission to speak and to use documents in a language other than English and French, but it was to be noted that the Court had adopted English and French as its working languages and would therefore interpret the Charter in those languages unless a party to a dispute asked it to use another language. The fact that the United Nations Charter had not yet given rise to any dispute did not mean that no dispute would arise in the future.

The majority of the countries were familiar with English and French and representatives could be fairly sure that the English and French texts of the Charter were correct and could therefore sign them. His delegation would hesitate before putting its signature to a Chinese text thus giving it the same authenticity as a text in a language which was fairly well understood.

Mr. DAO (China) pointed out that a representative of the United Kingdom Government had not hesitated to sign the

... Charter, but was more important from the point of view of the peace and security of the world. There was now an efficient Chinese translation service at Lake Success which did not exist at the time of the signing of the Charter of the United Nations.

Mr. NAUDE (Union of South Africa) asked whether it would be possible to have two languages of equal authenticity and three official languages.

Mr. DAO (China) said he could not accept the proposal of the representative of the Union of South Africa.

Mr. DIETERLIN (France) suggested that the text in the five languages should be authentic as far as the Organization was concerned but if any other organization had to pronounce on the text of the ITO Charter then the English and French texts alone should be the authentic ones. He felt it would be practically impossible for the International Court to pronounce upon the Chinese or Russian versions of the Charter.

Mr. MARTINS (Brazil) suggested that the text of the ITO Charter should be drawn up in the five official languages of the United Nations but, in case of any doubt regarding interpretation, the English and French texts should be regarded as the authentic ones.

Mr. KELLOGG (United States) supported the suggestion made by the representative of Brazil and said that it showed that the Commission felt that the five official languages were of equal importance, but that should a dispute arise it thought only two texts should be used for the purpose of interpreting the Charter.

Mr. ANGUS (Canada) supported the Brazilian proposal and pointed out that the working languages of the Preparatory Committee were English and French. A text in another language would be a translation which should not be relied upon for purposes of interpretation.

Mr. MAO (China) said there were two proposals before the Commission, one made by the representative of Brazil and the other by the representative of France, and his delegation favoured the French proposal.

Decision: It was decided that the question should be referred to the Sub-Committee which should pay particular attention to the proposals of the representatives of Brazil and of France.

The CHAIRMAN pointed out, in order to assist the Sub-Committee, that at the meeting of the World Health Organization held on July 22nd, 1946, the Final Act was signed by all the representatives of the Governments present, but in the case of the signature of the Constitution words were appended to each signature such as "ad referendum", "subject to ratification", "subject to approval and acceptance", etc. That might be a possible way to overcome the difficulties of the United States delegation.

Decision: It was agreed that the United Kingdom proposal should be submitted to the Sub-Committee.

The CHAIRMAN said that the United Kingdom delegation had suggested a new paragraph to take the place of paragraph 1 of Article 88, and had proposed that paragraph 2 should be redrafted.

Mr. FAWCETT (United Kingdom) withdrew the amendment to paragraph 1 pending discussion in the Sub-Committee of the question of initialling the Charter instead of formal signature.

Referring to paragraph 2, he wished to draw attention to the connection between accepting the Charter and becoming a Member of the Organization.

Decision: It was agreed to submit the proposals of the United Kingdom delegation to the Sub-Committee.

Paragraph 3

Mr. FAWCETT (United Kingdom) said that the comment made in the Drafting Committee's report by the United Kingdom delegation was withdrawn.

In the redrafting of paragraph 3 his delegation wished to make it clear that it was the instrument of acceptance which was decisive and it preferred the expression "brought into force" to "make effective".

Decision: It was agreed that the proposal of the representative of the United Kingdom should be submitted to the Sub-Committee.

Paragraph 4

The CHAIRMAN pointed out that the French delegation had proposed a rewording of paragraph 3; the New Zealand delegation had suggested an amendment to the second sentence; and the United Kingdom delegation had proposed two paragraphs to replace paragraph 4.

Mr. DIETERLIN (France) said that the French amendment was purely a drafting one, and that it should be submitted to the Sub-Committee.

Mr. LAWRENCE (New Zealand) said that his delegation had suggested the recasting of the second sentence of paragraph 4 to make it clear that advice of acceptance by a member on behalf of a territory that was self-governing in matters with which the Charter was concerned, but which did not have complete international independence, followed upon the determination of that territory in respect of matters covered by the Charter. He felt that the second paragraph of the United Kingdom amendment was designed to cover the same point. The essential point was that the act on the part of a Member was in accordance with the desire of the separate customs territory. In view of the amendments submitted it was obvious that the text would have to be sent to the Sub-Committee, and he was quite agreeable that that should be done.

Mr. MARTINS (Brazil) suggested that the Sub-Committee should be kept informed as to the discussions taking place on the position of inviting the territories in question for the World Trade Conference.

The CHAIRMAN said it was expected that a decision would be reached on the question in the near future and the Sub-Committee would be instructed to take into account whatever decision was reached.

Decision : It was agreed that the three proposals regarding paragraph 4 should be submitted to the Sub-Committee.

2. Article 89 - Withdrawal and Termination.

Paragraph 1

The CHAIRMAN pointed out that the United Kingdom delegation proposed to add the phrase "or paragraph 2 of Article 85" after the words "Article 35".

Decision: The proposal of the United Kingdom delegation was accepted.

The CHAIRMAN said that consequential upon the proposal to redraft paragraph 4 of Article 88, the United Kingdom delegation had suggested an amendment to paragraph 1 of Article 89.

Decision: The proposal submitted by the United Kingdom delegation was referred to the Sub-Committee.

Paragraph 3

The CHAIRMAN stated that the United States delegation had suggested that paragraph 3 should be replaced by a new paragraph.

Mr. DE GAFFIER (Belgium - Luxembourg) said that he would prefer to reduce to a minimum any provisions likely to make it possible for countries to withdraw.

Mr. DIETERLIN (France) said he failed to see the practical value of the amendment. The same point had been raised in New York and after a short discussion everyone had agreed that it would be preferable to avoid inserting an article of that kind in the Charter.

Mr. DORN (Cuba) pointed out that there were important provisions in the Charter in accordance with which advantages under the Charter might be withdrawn if a Member violated a specific obligation, and giving to that Member the possibility of withdrawing from the Organization. He suggested that the Commission might examine the relationship between those provisions and paragraph 3 of Article 89 in order to find a formula which would co-ordinate all provisions.

Mr. KELLOGG (United States) stated that he recognised the validity of the points made by the French and Belgian representatives. It was true that Articles 24 and 25 had given the Organization certain powers and that the new suggestion did not greatly change the substance of the Charter. The proposal of the United States delegation was based on the fact that while the United Nations Charter contained provisions by which it was empowered to ask ITO to expel one of its members; no such sanction existed in the instrument of ITO itself. He considered that the suggestion of the delegate of Cuba was already covered by the cross reference in the first paragraph in the amendment of the United Kingdom regarding those provisions.

Mr. DORN (Cuba) pointed out that he had not referred to other possibilities of withdrawal, except those already contained in the Charter regarding sanctions against a violating member. In his opinion the existing provisions were more efficacious than those covered by the United States amendment. He referred particularly to Article 26. What he wanted was to make the special sanctions consistent with the amendment now before them.

Mr. VANTUYLE (Netherlands) appreciated the reasons for the United States amendment, and said that the Organization must not keep in its ranks a member who had violated the provisions of the Charter. He was included to agree with those who thought that it should not be made too easy for the Organization to expel a member. Once this had happened

there was no provision for their return. He suggested that a slight modification of the wording by inserting "and repeatedly" after the word "persistently" would make it more difficult for the Organization to require a member to withdraw.

Mr. DAO (China) said that although he understood the motives for the United States amendment, it would not be wise to insert such a provision in the Charter, since all possible cases would be covered by Articles 24, 25 and even possibly 26. He pointed out that in the case of an international organization, composed of sovereign States, expulsion would be a serious matter. He felt that if the Conference passed judgment on one of its members, it might give rise to all sorts of disputes as to whether a member had consistently violated the provisions of the Charter. He would prefer the provisions of Articles 24 and 25, which provided an opportunity for the member to withdraw voluntarily from the Organization.

Mr. MARTINS (Brazil) said that he wished to support the Netherlands delegate in regard to the importance and gravity of such a severe sanction as expulsion. Expulsion was severe in comparison with violation of an obligation, and he thought it necessary to examine the suggested paragraph 3 in conjunction with paragraph 3 of Article 66. It would then be seen whether it was necessary to insert a stricter procedure in order to prevent the Conference from taking such a step without having voted upon it by a sufficiently great majority.

Mr. TANGE (Australia) stated that his delegation had no objection to the proposed new paragraph, but would like to make certain observations. Attention had been drawn to the fact that provisions existed elsewhere in the Charter for releasing members from their obligations towards a particular member who had acted contrary to the rules of the Charter. The American amendment had a different effect. The other articles authorised ITO to take action against a member, but left that option open, while the proposed amendment implied compulsory action. He thought it well to draw attention to the fact that the proposed sub-paragraph would tend to operate more against smaller Members than larger ones. Perhaps consideration could be given as to whether or not the paragraph should provide for a qualified majority vote. Article 85, paragraph 2 of the Charter provided for amendments to the Charter, and if expulsion of a Member were considered as an additional obligation, it would require a two-thirds vote. He had specially in mind the clause relating to relations with non-Members. It was reasonable to suppose that that clause, although not yet drafted, would contain discriminatory action, and therefore expulsion should be regarded in that light. He considered that, in expelling a Member, ITO was taking action which would increase the obligations of that country and the same analogy existed in the Charter, where a two-thirds vote was required.

Mr. NAUDE (South Africa) stated that he had not yet made up his mind on this particular proposal. One difficulty which might be foreseen was that ITO might be called upon to assist the Security Council should the United Nations, under article 48(a) of the United Nations Charter, decide

to expel a member, and ask ITO to act likewise. The member so expelled might not have violated the terms of the ITO Charter. As regards the question of a majority vote, the South African delegation was still undecided. The question should be submitted to a sub-committee.

Mr. FAWCETT (United Kingdom) stated that his delegation had not yet made up their minds about the proposed amendment, although they were satisfied that it did add something to the Charter. He considered that it gave the Organization an additional sanction over a Member who might not have specifically come into conflict with another Member or with the Organization in breaking the rules of the Charter, but whose conduct was contrary to the general spirit of the Organization. The United Kingdom delegation felt that it met a situation which might arise and which had not so far been covered. The power of the Organization at present was not very great, and the introduction of such a provision would in no way be contrary to the existing provisions laid down in its Charter. He mentioned the strong precedent which existed in the Charter of the United Nations. He agreed with the representative of Australia that the point was linked up with Article 85 and perhaps Article 86. He considered that it would be necessary to ascertain whether a qualified vote was required and how large a vote must be cast for the sanctions to be applied. The United Kingdom delegation would be inclined to support the amendment, and asked that further discussion take place along the lines already indicated.

Mr. MINOVSKY (Czechoslovakia) said that it might happen that a Member violate the provisions of the Charter under pressure of some economic or political situation. He therefore

thought that the Sub-Committee should consider the amendment with the greatest care. Should the amendment be adopted it would be necessary to stress not only that the Member had violated the provisions of the Charter but also that it had acted in bad faith. There must be findings on the part of the Conference as regards the facts themselves and also as regards the bad faith shown by the violating Member.

Mr. KELLOGG (United States), replying to the delegate of Czechoslovakia, said that his delegation had had that difficulty in mind when drafting the amendment, and for that reason had inserted the sentence "subject to such conditions as it may deem appropriate".

Mr. KOJEVE (France) observed that the motives behind the amendment of the United States were clear to everybody. He believed that this amendment should be read in the light of the other provisions of the Charter. He would prefer not to say that the Conference could require a Member to withdraw from the Organization, but that the Conference having found that a Member has persistently violated the provisions of the Charter is no longer a Member of the Organization.

The CHAIRMAN thought that the discussion had clarified the motives behind the proposal of the United States and provided a basis for reaching an agreement which would satisfy all the Members of the Commission. He proposed that the amendment should be referred to the Sub-Committee, asking for account to be taken of the views expressed in the Commission.

Decision: The amendment was referred to the Sub-Committee.

The CHAIRMAN then passed to the last item on the Agenda, namely, the proposal by the Secretariat to add a new article

90 to the Charter on registration, the purpose of which was to relieve governments of this task.

Mr. FAWCETT (United Kingdom) said that his delegation thought this a most useful Article and would accept it.

Mr. De GAIFFIER (Belgium - Luxembourg) suggested a slight modification in the text as follows: "The Secretariat of the United Nations is authorised to effect registration"

Mr. RENOUF (Secretary) mentioned that he had merely incorporated in the new Article the phrase used in the Regulations regarding the Registration of Treaties.

The CHAIRMAN asked the Belgian representative whether he was satisfied with the explanations of the Secretariat, which Mr. De Gaiffier replied he was.

Mr. TANGE (Australia) assumed that the instrument itself would be registered, and the United Nations would also have a record of the parties to the instrument since the list would from time to time have to be completed by adherences. He interpreted this Article to mean that there would not only be an instrument but also a list of the parties to it as and when they occurred.

Mr. RENOUF (Secretary) replied that in the Legal Department of the United Nations, a complete register was kept which comprised not only the treaties themselves but also a register of the parties to them which was kept up-to-date with any adherences or withdrawals.

Decision: The proposal of the Secretariat was accepted.