

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

Summary Record of the 33rd Meeting of
Commission A held on Thursday, 24th July,
1947, at 2.30 p.m. in the Palais des
Nations, Geneva.

Chairman: H.E. Erik Colban.

1. Article 37 - General Exceptions to Chapter V.

Proposed new paragraph. The Commission continued its discussion of the proposal to add a second paragraph containing certain provisions formerly appearing in Article 25. The Delegate for Norway stated he was prepared to accept the date proposed by the Delegate for the United States, namely 1 January, 1951, as the date by which measures instituted under these provisions should be removed if inconsistent with the other provisions of Chapter V. This date was accepted by the Commission.

It was decided that the new provisions, instead of comprising a second paragraph, should be established as Part II of the single paragraph of the Article, so that these, as well as the provisions already contained in (a) - (1), should be subject to the general preamble. The text was then approved as follows:

"Part II, (a) Essential to the equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the Government of any Member;

- (b) Essential to the control of prices by a Member country undergoing shortages subsequent to the war;
- (c) Essential to the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member, or of industries developed in any Member country owing to the exigencies of the war which it would be uneconomic to maintain in normal conditions; provided that such measures shall not be instituted by any Member after the day on which this Charter enters into force except after consultation with other interested Members with a view to appropriate international action.

Measures instituted or maintained under Part II which are inconsistent with the other provisions of Chapter V shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than 1 January, 1951, provided that this period may, with the concurrence of the Organization, be extended in respect of the application of any particular measure to any particular product by any particular Member for such further periods as the Organization may specify."

Sub-paragraph (g). It was reported to the Commission that the Sub-Committee on Articles 25 and 27 had recommended the transfer of paragraph 2(f) of Article 25 to Article 37 as suggested by the United States delegation in document W.208, and that the Czechoslovak delegation had accordingly proposed in document W.252 a revised wording of sub-paragraph (g). The Members of the Commission preferred the text given by the Czechoslovak delegation in W.252 to the revised version in W.252 Rev.1.

Sub-paragraph (g) was adopted in the following form:

"(g) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as those relating to customs enforcement, the enforcement of monopolies operated under Section E of this Chapter, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices."

It was agreed that the reference in the above sub-paragraph to Section E of Chapter V might require

reconsideration after adoption of the final text of that Section.

Sub-paragraph (c). Recalling the remarks by Dr. H.C. Coombs at the meeting on 16th July, the Delegate for Australia said that it would be necessary for his delegation to lodge a provisional reservation against the inclusion of sub-paragraph (c) relating to fissionable materials.

Sub-paragraph (j). Reverting to the remarks by Dr. H.C. Coombs at the meeting on 16th July, the Delegate for Australia said that his delegation had no formal reservation to make concerning the association of measures to conserve exhaustible natural resources with restriction on domestic production or consumption.

Sub-paragraph (e). The Delegate for the Netherlands enquired whether the exceptions relating to emergencies in international relations and the essential security interests of Members could be worded in such a manner as to clarify their intended interpretation. The Delegate for the United States replied that these words had appeared in the original United States draft Charter as it was thought that some latitude must be granted for security as opposed to commercial purposes. The Chairman suggested that the spirit in which Members of the Organization would interpret these provisions was the only guarantee against abuse.

Proposed new sub-paragraph. The Delegate for the Netherlands proposed that the following new paragraph should be added:

"Necessary to protect the rights of the grower who improves plants of commercial use by selection or other scientific method."

Members of the Commission suggested that it would be difficult to accept this proposal, at least without careful study, and agreed to the suggestion of the Delegate for the Netherlands that it should be noted in the

report that he had submitted this proposal. (Note: This proposal was subsequently issued with a supporting statement in W.255).

2. Proposed Article 94 - General Exceptions.

The Chairman informed the Commission that the Sub-Committee on Chapter VIII wished to obtain the views of the Commission on the proposal of the United States delegation (W.236) that the following article should be inserted in Chapter VIII:

Article 94

General Exceptions.

"Nothing in this Charter shall be construed to require any Member to furnish any information the disclosure of which it considers contrary to its essential security interests, or to prevent any Member from taking any action which it may consider to be necessary to such interests:

a) Relating to fissionable materials or their source materials;

b) Relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;

c) In time of war or other emergency in international relations, relating to the protection of its essential security interests;

d) Undertaken in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security."

It was agreed to report to the Sub-Committee on Chapter VIII that the proposed Article had been examined and no objection had been found to it, except for the alteration of item (a) to read "Relating to fissionable materials or the materials from which they are derived".

During the discussion the Delegate for Australia stated that it should be clear that the terms of

Article 94 would be subject to the provisions of paragraph 2 of Article 35. On being assured that this was so he stated that he did not wish to make any reservation.

3. Article 16 - Freedom of transit.

Referring to the note on paragraph 1 of Article 16, the Delegate for Canada stated that he wished to withdraw his reservation in which he supported the Delegate for Chile in the view that the Article should be confined to goods only.

4. References to the Legal Drafting Committee.

The Chairman drew attention to the fact that the Legal Drafting Committee should be asked to ensure consistency in the use of the word "study" in substitution for "investigate" and the use of the word "may" in substitution for the words "is authorized to", in the technical Articles of Chapter V.

5. Further Meeting of the Commission.

The Chairman agreed with the suggestion of the Delegate for the United States that a further meeting of the Commission should be held to review once more all the reservations and notes contained in the commentary on the technical Articles.