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

VERBATIM REPORT

FIFTH MEETING OF COMMISSION A.

HELD ON FRIDAY, 30 MAY, 1947, AT 11.25 A.M. IN THE PALAIS DES NATIONS, GENEVA.

M. MAX SUETENS (Chairman) (Belgium)

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CHAIRMAN: (Interpretation): The Meeting of Commission "A" stands to order.

We now pass on to the discussion which we postponed the other day of Article 12 on the South African Amendment which is in E/PC/T/W102 of 21st May.

Before I open a general discussion on this Amendment I would ask the Delegate for South Africa to present any observation he might deem necessary.

Mr. HOLLOWAY (South Africa): I make no apology for having been difficult on Wednesday night, when the Amendment might have seemed to be quite unimportant and one that could be finished at the fag end of the Meeting.

As to the note to the Amendment which was handed in by the South African Delegation, the intention was to raise a very substantial question of principle, and for procedural reasons to make Article 12 a test case. I want to mention that question of principle straightaway. That is, whether the Draft as we got it from New York does not in effect constitute a supra-national authority of the ITO. In spite of the views which have been given to me by Members of this Conference who took part in both the London and New York Meetings, I shall try to indicate to you in the course of my remarks that that is in fact what the present Draft does.

I brought it up as a matter of procedure under Article 12, because that is the first Article under which I could raise it. It could have been brought up under Article 35 - it might even be said it belongs more appropriately to Article 35 - but if I had waited until the question of principle, which influences a large number of Articles, came in its regular order of sequence, a good deal of time would have been wasted in the meantime, whatever

happened, whatever way the Commission decided.

Because the decision on this question affects, firstly, the wording of certain Articles; secondly, it affects the substance of a number of Articles, for if it is indeed the intention of the Preparatory Committee to create an International Trade Organisation with supra-national powers, then obviously those who under those conditions want to join the Organisation must examine the substance of Articles very much more closely, because it is practically the last opportunity that they will have. As they say in the Wedding Service, "If you wish to speak speak now, or forever hold your peace"; so that it does affect the order very materially, and for that reason it has been raised at the first stage - whether (or not) it could have been raised in the order which is prescribed.

Now I want to quote to you one sentence from an Address delivered by Mr. Wilcox - I do not see him here, but he is probably behind me somewhere - I hope he will not mind my quoting from an Address - it was a public Adress given in the United States of America:

In this Address, he said: "The I.T.O. is not a supra-national Government. It has no powers, legislative, executive or judicial, that would impinge upon the sovereignty of the Member States". That exactly represents the view of the South African Delegation as to what the I.T.O. should be.

The text, I think, is the very opposite. It gives it those supra-national powers. When one is dividing powers of carrying out administration, there is, I think, a clear test of whether powers are being surrendered or powers are simply being entrusted to a subordinate agency. If powers are being entrusted purely to a subordinate agency, they are transferred by devolution: they remain with the contracting parties, but they appoint an agent to do certain things for them. However, as soon as you transfer sovereignty you give powers of initiation of which you divest yourself, and that is the difference between a subordinate agency and a sovereign body.

By devolution you always exactly circumscribe the powers of a subordinate body, and that subordinate body cannot go beyond its exactly circumscribed powers. I wish to indicate that we have gone a great deal beyond that in the Charter as it is now drafted. I think the confusion in the minds of those who think that the powers conveyed by the Charter are not powers of sovereignty derives from the fact that at a certain stage you pass over almost unnoticeably, by using certain words which you have not tested out, into a new sphere from devolution to sovereignty.

I think there is general agreement that the International Trade Organization should have certain sanctional powers. It should have the sanctional power for certain cases which is laid down in Article 35, that is, the power to relieve other Members of their obligations to a defaulting Member. Now I come back

to the point that I made, that when you transfer power by devolution you must exactly circumscribe that power. There can be no objection to an agency being entrusted with the task of exercising these sanctional powers when the States who become Members of the I.T.O. have very definitely indicated that they are prepared to do certain things. They have, for example, contracted with their fellows in the Organisation to bind certain rates of duty or certain rates of preference, to give each other Most-Favoured-Nation treatment, not to discriminate. I am mentioning these as examples.

The question as to whether bound rates have not been observed; whether preferences have been extended; whether discrimination has taken place; whether Most-Favoured-Nation treatment has been given,--these are all simply questions of objective fact; and the International Trade Organisation is a body that can very well be entrusted with examining those questions of objective fact and deciding on them, and using the powers which are vested in it for that purpose.

Here we have fixed and contractual obligations. Broadly speaking, it covers the substance of Chapter V. Broadly speaking, I do not wish to say that it even covers everything in Chapter V. Broadly speaking, it may also cover certain things in Chapters VI and VII. However, as soon as you go beyond the fixed contractual obligations which have been given to one another by negotiations, you get into a very much more uncertain field. When you are dealing with Chapters VI and VII you are undertaking to create a certain atmosphere for certain kinds of transactions influencing international trade. You are going -- perhaps in some cases imperceptibly -- but you are going further than the very definite limits that you have over the greater part of Chapter V, and the question will have to be faced: if you want to give sovereignty to this body,

to what extent this body should have the power to apply sanctions in respect of Chapters VI and VII.

But I will not stand still at Chapters VI and VII, because the principle of sovereignty comes out very much more clearly when we come to Chapters III and IV. In Chapters III and IV we go a great deal further in the matter of general lines of development than we do even in Chapters VI and VII. In Chapters III and IV we make a confession of faith. We proclaim that we hold to certain ideals and we will do our best to carry them out. I do not want to go into detailed wording, but the main substance of that is that Members will take action to obtain and maintain full employment; that they will maintain suitable labour standards; that they will make appropriate contributions - "appropriate contributions", a very vague phrase - to correct maladjustments in balance of payments, that they will take action designed to raise standards of productivity. Obviously you cannot be more than perfectly general about those matters.

Now, if sanctions are to be applied in regard to these matters, as sanctions are being applied in the present draft, as powers kept in this present draft apply sanctions, then you must create an authority which is outside of the principals and which can bind principals in the way in which, in the opinion of the outside authority, the principal should have acted. That is sovereignty - that is nothing less than sovereignty. There is no longer devolution here. The power is taken away from the principals and is handed over to an outside body. The outside body can say "In our opinion, if certain things had been done you would have contributed towards the objective of the Charter. You have not done those things and, therefore, we now decide to relieve other members of the obligation towards you." Now, it may be said that the Organisation is not likely to apply any sanctions to 4 and 5, but if it is not, then why give the power? The matter is more important than just the question of whether it is the basic problem and whether we wish to give sovereignty to this body or whether we wish it to be a subordinate agency having powers by devolution. Now, I have heard suggestions that some delegations want to give a degree of international sovereignty to ITO. I do not know whether that is just a general view expressed casually in conversation, or whether that is the attitude which members wish to adopt in drafting the Charter. It is essential, because this is a thing which governs the whole of the Charter, which creates an atmosphere round the drafting of the whole of the Charter, and so that at an early stage we should be perfectly clear as to which of the two relations we are following. When you came to the problems arising out of these ideals - problems arising out of the credo to which

you have subscribed in Chapters III and IV - you could, of course, deal with it in two ways. You could give sovereignty to somebody, you could tell them "We vest in you the power to take the decisions and we are subordinate to you in that respect." But that is not the only manner in which we can deal with it. We are dealing with the problems arising out of that. We can also make provisions purely for international consultation. Now, the view might be held that an agreement that you will discuss binds you to very little. I want to suggest to members that, if we did that for the general matters described in Chapters III and IV, we are making a very big advance - we are taking a very big step forward from that jungle stage of international relations which we had immediately before the war. A stage when countries lay in wait and pounced on the commerce of other countries without even giving the roar of warning which the lion gives before he springs on his prey. We were then definitely in the jungle stage, but if we agree to meet, gentlemen, around this table over these things, I think we have made a very big advance. It is essential whether we choose between the two methods of approach, but I do not think that even in dealing with Chapters III and IV and the application of section 35, subject to quite a lot of rigmarole and investigation, we have got to the extreme view where the proponants of sovereignty for the ITO have got their ideas written into the Charter. In Chapters III and IV the principals of the contracting powers have at least said: "Well, we believe in this and have circumscribed as much as we could". They have said: "The boundaries are somewhere in this or that direction. We do not know where they are, but we know that there are boundaries." But in the first sentence of paragraph 2 of

Article 35, all pretence of having ITO powers by devolution, disappears entirely. That sentence gives the ITO power in its final analysis, to apply sanctions if any member is applying any measure whether or not it conflicts with the terms of the Charter or if any situation exists which has the effect of nullifying or impairing any object of the Charter - the widest wording that you can get. It does not matter whether it conflicts with the terms of the Charter, it does not matter whether it does or does not conflict. Even if it does not conflict with the wording which we have tried our best in this Conference to limit to such an extent that we could at least accept, then the ITO shall still walk in and say: "This impairs (remember please the vaguest word you can get there with the widest meaning) this impairs in some way the objects of the Charter and you are for it."

Well, I cannot see how words like that can be put into a Charter unless we accept as the basis of the Charter the principle of sovereignty. There it would be complete sovereignty, stripped of any sort of argument which could make it anything else.

Mr. Chairman, the South African Delegation considers that the Charter should be drafted on the principle of devolution and not on the principle of surrender of sovereignty by the contracting State. This means, in effect, that instead of using in various parts of the Charter the vague phrase "any obligation undertaken under this Charter", we should, whenever sanctions are provided for, limit their application to specific and contractual obligations and limit it very severely, and, where there is any doubt whether it is specific, contractual or not, or goes beyond it, then, in order to steer clear of vesting in the ITO international sovereignty, we should rather arrange for those doubtful matters to be subject to consultation and not subject to sanctions.

Mr. Chairman, there is a saying in English: "The road to Hell is paved with good intentions." We have a very large number of good intentions in this Charter: I hope we are not laying paving stones to Hell.

Dr. H.C. COOMBS (Australia): Mr. Chairman, I agree with the delegate of South Africa that the issues he raises here are fundamental, and that they are worthy therefore of the most careful consideration by this Commission.

The delegate for South Africa differentiates between the obligations embodied in the Draft Charter. He refers to part of them as specific contractual obligations, and describes the others as part of the credo to which we are adhering.

I would like to say very definitely that in the minds of the Australian Delegation there is no such distinction between the obligations embodied in this Charter. They are all, so far as we are concerned, specific and contractual. It is true that they differ a little in the subject matter with which they deal. It is true that whether they have been implemented, observed, or not, is to some extent a question of degree, but is none the less a question of fact.

The delegate for South Africa referred particularly to the obligations embodied in Chapters III and IV of the Draft Charter and also to those embodied in VI and VII. In our opinion the inclusion of these obligations in the Draft Charter represents a substantial advance towards realism which has been made in the work of this Committee.

This is not the first international conference which has concerned itself with measures designed to bring about reductions in trade barriers. The history of the inter-war years is littered with the records of such conferences. There is little evidence, however, of their having contributed anything significant to the solution of the economic problems which devastated the world in those years. That is because the reduction of trade barriers and the limitation of national freedom in commercial policy becomes practicable

only in certain circumstances. Furthermore, we can be certain that it would be good only if certain prescribed conditions are existing. The whole theory on which the belief that a reduction of trade barriers would be good for world trade, the whole theory on which that belief is based, depends upon certain assumptions. Those who have studied the economic theory of the last and this century in relation to international trade, will agree that the belief that a reduction of trade barriers will lead to a more efficient use of the world's resources depends upon two assumptions, firstly, that the resources of the world, human and physical, will in any case be fully employed. It is based also on the assumption that the balances of payments between the various countries of the world are, in fact, in balance; that any departure from such balance will automatically correct itself. It is also based - although this assumption has been less consistently stated - upon the fact that the world economy has been continuously subjected to the stimulus of economic development both extensive and intensive. In the absence of the conditions implied by these assumptions it cannot be said with certainty that a reduction of trade barriers will lead to a better use of the world's resources or even to an expansion of world trade.

What we have sought to do, what this Commission has sought to do therefore in Chapters III, IV, VI and VII, is to create the conditions in which the assumptions will be realised on which the belief that a reduction of trade barriers will improve the use of the world's resources are in fact based.

DR. H.C. COOMBS (Australia) (Contd.): Now, this is important to those countries which are being asked to undertake obligations in relation to their commercial policy. It affects, in my opinion, the honesty with which they can undertake such obligations.

Let me say quite definitely for the Australian delegation that unless there is some reasonable assurance that the undertakings we give in Chapter V of the Charter are going to be implemented in conditions in which there is reasonably full employment, in which the balances-of-payments of the major countries of the world are not seriously in disequilibrium, and if the conditions are not such that the progressive developments of the economic resources of the world can in fact proceed, then we know that we cannot carry out the undertakings we give in Chapter V, and it is no good pretending that we can.

If we face again the wide-spread collapse of international demand that the world experienced in the 1930's; if we face a collapse of the prices of our primary products and inability to sell the products upon which our economy depends, we will not be able to carry out the undertakings in Chapter V, because to implement those undertakings in such circumstances would intensify the already existing depression in our own economy and place increased burdens upon the people of our country. We would, therefore, I believe, be dishonest if we were to tell this conference that we were prepared to accept the undertakings in Chapter V in any circumstances.

I believe that that is true, not only for Australia, but I believe it is true for most of the countries in the conference, that if we face again the conditions of 1930, that they will not be able, whatever they have put their signature to before-hand

to observe the commitments which are included in Chapter V. To us, therefore, the commitments embodied in Chapters III, IV, VI and VII on the one hand, and those in Chapter V on the other, are inter-dependent.

We are prepared to accept the commitments in Chapter V provided that the world conditions are such that we can, in fact, carry them out. That leads us, therefore, to consideration of the point specifically raised by the South African delegate as to whether the commitments involved in Chapters III, IV, VI and VII should be subject to the same procedure of complaint and release from obligations in the event of a failure to carry them out as applied to the undertakings in Chapter V.

So far from thinking that that procedure is less important in relation to these undertakings, we believe it is more important, because only in that way is it possible for a country to establish that conditions completely beyond its power to control are making it impossible for it to carry out its undertakings.

So, Mr. Chairman, we would resist bitterly any proposal to modify the right of a country to seek a modification of the undertakings it has given if, by the action of others, conditions are created in which it can no longer carry out those undertakings. In other words, if there is a world-wide collapse of demands; if a shortage of a particular currency places us all in balance-of-payment difficulties; if we become subject again to wide-spread fluctuations in the prices of primary products with devastating effects upon individual economies; if it is not possible in those circumstances to seek, with international approval, a modification of particular undertakings we have given, then we must think twice - indeed, many times - about whether we can honestly undertake those obligations.

Now, the delegate for South Africa has raised the very important issue of national sovereignty. He has suggested that the establishment of this procedure by which we can have our obligations modified involves a restriction of the sovereignty of Member governments. So far as we can see, the question of sovereignty does not enter into this. There are no sanctions provided for in the Charter. In the event of a country failing to carry out its obligation to maintain employment and effective demand, to take that case as an example, and that failure seriously impairs the economy of another Member, it is provided that the country whose economy is impaired can seek the assistance of the Organization first of all in arranging consultation with the country or countries in which these conditions have arisen. If that consultation fails, the Organization may authorise the Member to suspend some of its obligation to some or all of the other Members. It could also offer recommendations to the countries concerned. Those recommendations could be accepted or rejected. If they are rejected the Organization has no powers of coercion. All it can do is release the other countries adversely affected from certain of their obligations. Now that country could itself release itself from those obligations by withdrawing from the Organization. Therefore, there is no interference with national sovereignty. What is the difference?

The difference is, that instead of a country being forced - in order to have its obligations reviewed in the light of realistic circumstances - instead of it being forced to withdraw from the international community, it has the opportunity to state its case to the international community, and have its obligations reviewed with full international approval. But the freedom of a country which may have been the cause of these conditions is unimpaired. If it does not wish to take necessary action to correct the circumstances, the most that can be done is that they must receive Recommendations. They are under no specific and contractual obligations to accept those Recommendations.

The suggestion has been made that it would be sufficient for us to provide for consultation. Consultation is provided for. Withdrawal from the Organisation, and the right which that would give to vary undertakings, persists. All that the Charter does is to give a country affected an alternative to withdraw. It gives it the right to appeal to the international community and to demonstrate that circumstances outside its own control have made necessary a review of its obligations.

Do not let us have any delusions. The circumstances against which Chapters 3, 4,6 and 7 are directed develop - and the obligations in Chapter 5 will be broken; and it is, in our opinion, infinitely preferable that they should be varied by consultation, by agreement that illumines with international understanding any consideration of the effects of such alteration on other countries. In other words, intelligently; rather than that they should be altered unilaterally in an atmosphere of antagonism and prejudice.

Mr. Chairman, to the Australian Delegation, the undertakings 3, 4, 6 and 7 are fundamental. They alone create the conditions

in which a substantial advance along the road of the reduction of trade barriers and the development of international co-operation in the field of trade become possible. Upon their implementation depends the capacity of other countries to implement their specific contractual obligations.

We therefore feel that it is fundamental for the success of the International Trade Organisation, and to the acceptability of the Charter to the Governments concerned, that the interdependence of the obligations in all sections of this Charter should be clear; and secondly, that there should be no distinction drawn in principle between any of those obligations.

It is obviously necessary to accept as a fact that some of those undertakings can never be implemented to the degree of 100 per cent., and that, therefore, whether a failure to implement them, in fact, exists, is a question of degree; and that, therefore, we have to provide some means of determining whether, in fact, a failure has occurred to a degree which represents a significant failure affecting the conditions of other countries. But that does not alter the nature of the undertaking, nor does it separate it from the undertakings in other parts of the Charter which are capable of being expressed in a way in which failure to achieve them is precise, definite, and not a matter of degree.

But the fact that we have to be intelligent in our interpretation of these undertakings, and in our judgment as to whether they have been adequately implemented, does not, in fact, change the nature of the undertakings. We stand, Mr. Chairman, therefore, firmly on the principles that all the undertakings in the Charter are of equal significance, essentially identical in character, and that they cannot be differentiated from the point of view of the obligations of the countries which have to carry them out, nor of the rights which failure to carry them out gives to other countries adversely affected by them.

CHAIRMAN (Interpretation): I wish to thank the two speakers who have raised questions of very great importance. It is too late to pursue these further now. We will adjourn until Monday afternoon.

Dr. HOLLOWAY (South Africa): The Chairman of the Steering Committee has just drawn my attention to the fact that the business between this and Article 35, when this matter comes up again, does not affect the issue; it just happens that the arrangement is that way. If Monday conflicts with another meeting, the matter could very well stand over until the discussion on Article 35 without prejudicing anybody.

CHAIRMAN (Interpretation): I prefer to have a meeting on Monday, since Monday is free in any case.

Gentlemen, the Meeting is adjourned until Monday afternoon.

The Meeting rose at 12.55 p.m.