

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

Summary Record of the 40th (2) * Meeting of Commission A held on Friday, 15th August, 1947, at 10.30 a.m. in the Palais des Nations, Geneva

Chairman: H. E. Erik COLBAN

Technical Articles

ARTICLE 20, Paragraph 7

Replying to the Chairman, Mr. MUNOZ (Chile) regretted that he had not yet received the further instructions from his Government which would enable him to withdraw his reservation regarding Article 20, Paragraph 7. He hoped to receive instructions before the Plenary Meeting of the Preparatory Committee.

ARTICLE 21, Paragraph 3

Mr. de GAIFFIER (Belgium) recalled that at the last meeting, it had been thought that there was some contradiction between sub-paragraphs (a) and (b) of this paragraph. In consultation with the delegates of the United States, New Zealand and France, and the Chairman, he had prepared a new draft.

In his proposed draft sub-paragraph (a) was divided into two new paragraphs, a new sub-paragraph (b) beginning with the words "each Member shall maintain". The word "more-over" became redundant and was therefore deleted. The former sub-paragraph (b) was re-lettered (c) and in line 2 the words "sub-paragraph (a)" became "sub-paragraph (b)". At the end of the sub-paragraph the words "and those of sub-paragraph (a)" should be added.

* Reference Meeting 40th (1), Article 5, see Verbatim Report.

He pointed out that in page 39, line 2 of the French text, there was no translation of the word "objective" in the English text. He proposed the word "impartiale" and suggested that the word "impartial" might be inserted in the English text also.

Mr. HOLMES (United Kingdom) was not certain that "impartial" in French was an exact equivalent of the word "objective" in English. He had no objection to the insertion of the word "impartial" in the English text. On the suggestion of the Chairman, it was agreed that the Secretariat should draw the attention of the Legal Drafting Committee to the linguistic difficulty raised by the United Kingdom delegate.

The new draft of Article 21, paragraph 3, proposed by the Belgian delegate, was approved.

ARTICLE 18, paragraph 5

The CHAIRMAN drew the attention of delegates to the Note to paragraph 5 submitted by the Chinese delegation (E/PC/T/W/283).

Mr. WUNSZ KING (China) said that at the last meeting, there had been some misgivings regarding the formula "in accordance with changes in the market value of currency" which he had submitted. He had since had formal talks with delegates and with the representatives of the International Monetary Fund. It appeared that some delegates feared that it might be the intention of the Chinese Government to take the market rates of currencies as a basis for customs valuations. What the Chinese Government sought was the opportunity to re-adjust official rates in the light of currency fluctuations. He assured delegates that such

action would not be taken indiscriminately or unwisely.

He believed that the misgivings previously felt had been dispelled and submitted a new formula (E/PC/T/W/283) replacing the explanatory Note on page 25 of document E/PC/T/154. If the formula were accepted, he would withdraw his reservation.

Mr. ROUX (France) said he was not completely satisfied by the Chinese delegate's explanatory statement. He suggested that the representative of the International Monetary Fund might be asked to say whether the Chinese proposal was orthodox from the Fund's point of view.

Mr. WUNSZ KING (China) said that he had already consulted the representative of the International Monetary Fund and in the opinion of the latter the Chinese proposal was not inconsistent with the International Monetary Fund agreement.

Mr. de GAIFFIER (Belgium) believed that the question was a simple one. There were two rates of exchange in China, the official rate and a commercial rate. Some difficulty was experienced in bringing the two rates into line. He believed that if the International Monetary Fund could be asked to restore the equilibrium, there would be no difficulty in accepting the Chinese proposal.

Mr. HOLMES (United Kingdom) suggested that after the words "from a change" in line 4 of the Chinese proposal "which is" should be inserted.

On the proposal of the Chairman it was decided to consider the Chinese proposal later in the meeting when the International Monetary Fund representative should be present.

ARTICLE 23

The CHAIRMAN recalled that at the last meeting it had been suggested that Article 23 might be deleted.

Mr. LEDDY (United States) proposed the deletion of Article 23. As originally drafted, the Article had an economic purpose and was designed to counter a form of indirect protectionism. As a result of re-drafting in London and New York, it had become a political Article and appeared even to sanction forms of indirect protectionism. He believed that the problem was best covered by the general provisions of the Charter. The economic aspect was dealt with by the provisions of the Charter relating to nullification and impairment and the political aspect by those relating to consultation. He proposed that a note (E/PC/T/W/294) should be included in the Report of the Preparatory Committee explaining why Article 23 had been deleted.

Mr. BENES (Czechoslovakia) said that he could not accept the deletion of Article 23. Boycotts had very grave consequences for international trade relations and the Charter should include at least general condemnation of their use. Provision could be made for exceptions.

Mr. LEDDY (United States) said that the United States objection to Article 23 was that it afforded no real safeguard against the worst kind of boycott. It appeared to permit those not specifically mentioned. In his opinion the provisions regarding nullification and impairment were a better safeguard than the present draft of Article 23.

Mr. NASSIF (Lebanon) said he must reserve his position. He agreed to the deletion of Article 23, subject to the adoption of an amendment to Article 25 proposed by the Lebanese Delegation relating to "import prohibitions or restrictions instituted by a Member prior to 10 April, 1947, for the protection of a vital national interest".

Mr. RANGANATHAN (India) felt there was no place for Article 23 in the Charter, and was in favour of its deletion. He did not believe that a decision taken by the Commission regarding Article 23 would prejudice the Lebanese amendment to Article 25 which would be discussed elsewhere.

Mr. HOLMES (United Kingdom) said that the proposed Lebanese amendment appeared to re-introduce the idea of inserting references in the Charter authorising Members to take exceptional action to protect vital national interests. Difficult situations were likely to arise, and the Lebanese proposal might lead to many insertions elsewhere in the Charter. Without committing the United Kingdom Delegation, he said that he believed that Article 23 could be considered by the Commission on the basis of the United States statement.

The CHAIRMAN said that it was his personal opinion that Article 23 was largely valueless and possibly harmful.

Mr. LEDDY (United States) drew attention to the New York Drafting Committee's note on Article 23, the implications of which, he said, opened the way to indirect protectionism.

Mr. JOHNSTON (New Zealand) favoured the retention of Article 23 on the grounds of general principles. He was supported by the delegates of Chile, Cuba and the Netherlands.

Mr. RANGANATHAN (India) said that his Delegation had not pressed for the deletion of Article 23 earlier because they had been advised informally that its omission might give rise to misunderstanding. He believed that the Article should be deleted and that no general principles were involved even if it were deleted at this late stage.

Mr. LEDDY (United States) proposed that an additional explanatory note be inserted, stating that the Commission, in omitting Article 23, did not wish to imply any condonation of boycotts.

A vote was then taken. Belgium, Chile, Cuba, Czechoslovakia, the Netherlands, New Zealand, and the Union of South Africa were in favour of retaining Article 23. Australia, China, India, the Lebanon, the United Kingdom and the United States of America were in favour of its deletion.

Article 23 was therefore retained.

Mr. NASSIF (Lebanon) reserved the position of the Lebanese Delegation as regards the principle of Article 23.

ARTICLE 18, Paragraph 5

The CHAIRMAN asked the representative of the International Monetary Fund to give his views on the explanatory note to paragraph 5 of Article 18 proposed by the Delegate of China.

Mr. LEDDY (United States of America) wished it to be noted that that action was without prejudice to the full application of the principal clauses of the Charter relating to nullification or impairment.

Mr. HEXNER (International Monetary Fund) said the explanatory note in question contained two statements. First, it stated that an alteration in the rate of exchange which resulted from a change in the established par value of currency would not constitute a change in the method of conversion. That was a truism, the statement of which had no explanatory value. The second statement related to changes reflected in the current value of a currency in commercial transactions when there was no change in par value owing to the fact that no par value was established. It was very difficult to state whether or not such a change was the result of a change in method. Problems relating to exchange rates where no par value was established were rather different. The fact that no par value was

established was in itself an extraordinary situation, and, where the conversion value was changed in such a situation, it might or might not be the result of a change in conversion methods. For example, if there was no par value established but there was an official exchange rate proclaimed by the government, that official value might or might not reflect the commercial rate as required in paragraph 5(b). The second statement might be right but there was a question as to whether method was or was not involved. From the note itself it was not apparent whether the change in the current value was the result of change of method or not. The word "method" might be ambiguous.

Mr. LEDDY (United States of America) pointed out that it was stated in sub-paragraph (b) that "where no par value had been established, the conversion rate shall reflect effectively the current value of such currency in commercial transactions". Was it the opinion of the Representative of the IMF that fluctuations in the commercial rate would, in and of itself, be considered a change in the method of converting currencies?

Mr. HEXNER (International Monetary Fund) said that fluctuations of a currency, say, between 25 units and 23 units was a question of substance and a change in methods might result in a change of substance too. He could not emphasize too strongly that the monetary systems of countries without par values were very complex and different from each other. It was shown that negotiations were in progress to formulate a monetary system or to establish a regular mechanism in a country where no par value was at present established but which was a member of the International Monetary Fund. In reply to the point raised by the United States delegate he

stated that a change of the method of conversion might in reality result in a change in the commercial rate. A change in the official or in the "black market" rates need not necessarily but might be the result of the method of conversion.

Mr. WUNSZ KING (China), with regard to the second part of his amendment, said there was no mystery attached to it. The first part dealt with the aspect contained in paragraph 5(a) and the second part with that in paragraph 5(b). The explanatory note was worded in almost exact conformity with paragraph 5(b). The whole trouble had arisen from the insertion of paragraph 5(d) on page 24. He agreed it was unnecessary to insert an explanatory note to cover the aspect in paragraph 5(a) but the one in 5(b) had not been taken care of. The omission of an explanatory note on that point seemed to him to make the second aspect more conspicuous. To bring the wording into exact conformity with paragraph 5(b) he suggested that the word "effected" be added after the words "from a change" in line 2 of his amendment.

Mr. HOLMES (United Kingdom), in an effort to find a solution acceptable to the delegates of France and China and also one which would pass the scrutiny of the Representative of the International Monetary Fund, suggested the following alternative wording for the note:

"The Preparatory Committee considers that the alteration of an official rate of exchange in cases where there is no established par value in such a way that the relationship between that official rate and the current value of such currency in commercial transactions was not changed would not constitute a change in the method of converting currencies under sub-paragraph (a) of paragraph 5."

Mr. HOLLOWAY (Union of South Africa) asked the Representative of the International Monetary Fund whether an

initial par value for Chinese currency had been fixed by the Fund in terms of Section 20. He also noted that under Section 4 D (1) the Fund might give a member whose metropolitan territory had been occupied by the enemy an extension of time, by agreement with that member. Had that extension been given to China? If not, the Fund had not carried out that Section.

Mr. HEXNER (International Monetary Fund) replied that an extension had been given but to no fixed period.

Mr. de GAIFFIER (Belgium) thought they were trying to fit in clauses to quite exceptional circumstances. The question should be considered on its merits and the principle examined first.

The CHAIRMAN suggested that further discussion be postponed until the text proposed by the United Kingdom delegate had been copied and distributed, and it was agreed to do so.

ARTICLE 37.

The CHAIRMAN stated there were four amendments to Article 37 to be considered: the Australian amendment (document E/PC/T/W/264), the New Zealand amendment (document E/PC/T/W/269), the United States amendment proposed after consultation with the United Kingdom and French delegates (document E/PC/T/W/293), and the amendment proposed by the Sub-Committee on Article 33 (document E/PC/T/168, page 2).

He proposed their consideration in that order and recalled that at a previous meeting the delegates of the United States, Canada and Belgium had spoken against the Australian amendment.

Mr. MORTON (Australia) stated that his amendment had been proposed because his Government did not want a situation to recur in which it was possible for exports of iron ore to be returned to them in an undesirable fashion. The delegate

of the United States had expressed his opinion at a previous meeting, and no one had countered it, that the Australian position was fully protected by Article 91, II(b). Unfortunately that Article was being dealt with by Commission B. It stated: "A member may take any action 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". If the Commission was of opinion that restrictions in regard to the export of arms was covered by that clause, he would like that opinion expressed in the report. He also proposed the recommendation to Commission B that the words "directly or indirectly" be added after the words "carried on" in the third last line of paragraph II(b). He assumed that the words "for the purpose of supplying a military establishment" covered all army, navy and air force purposes, but would prefer to clarify that point by amendment. If the Commission agreed that the prohibition in the export of iron ore was covered by Article 91, II(b), and it would recommend the foregoing alteration in paragraph II(b), he was prepared to withdraw his amendment. However, it would be necessary to maintain a reservation on this paragraph pending consideration of this view by the Australian Government.

Mr. MUÑOZ (Chile) pointed out that the heading of Article 37 should be "General Exceptions to Chapter 4", not to Chapter 5, as appeared in document E/PC/T/154.

Mr. LEDDY (United States) said that the interpretation of Article 91, II(b), had been that it did cover both direct and indirect traffic. He was therefore prepared to accept the Australian proposal to insert those words.

Decision: It was decided to request Commission "B" to insert in sub-paragraph (b) (ii) of Article 91 (cf. document E/PC/T/159, page 42) the words "directly or indirectly" after the words "carried on".

The CHAIRMAN said the New Zealand amendment should be read in conjunction with the amendment to paragraph I submitted by the Sub-Committee on Article 33, and the New Zealand delegate agreed that his proposal was superseded by that amendment.

The CHAIRMAN therefore proposed the immediate consideration of the Sub-Committee's proposal.

Mr. KORTEWEG (Netherlands) felt that the proviso in the proposal was not sufficient and that a second one should perhaps be added to ensure that the restrictions did not operate to increase a member's share of world trade.

Mr. WEBB (New Zealand) stated that so far as his Government was concerned those restrictions had nothing to do with export industries. As the text implied, they were purely part of a domestic stabilization programme. While he did not think it was necessary, he proposed the following addition in order to meet the wishes of the Netherlands delegate: -
"and Provided that such restrictions shall not operate or be used to increase the member's share of world trade".

The CHAIRMAN thought the point raised by the Netherlands delegate was already covered by the text as it stood and it was unnecessary to say the same thing again.

Mr. HOLMES (United Kingdom) was in agreement with the Chairman's views.

Mr. KORTEWEG (Netherlands) thought it was unnecessary to add the proviso to the Article itself and that a footnote would be sufficient.

The CHAIRMAN asked the Netherlands delegate if it would not be sufficient to include their discussion in the record.

Mr. KORTEWEG (Netherlands) said he preferred a footnote in accordance with the text proposed by the New Zealand delegate. There was a possibility that the world trade of a member might be increased in processed articles. There might be a diminution in the exportation of materials and an increase in the exportation of the finished article.

Mr. LEDDY (United States) could see no necessity for further footnotes on the subject and preferred the proposal as it stood.

The CHAIRMAN felt that the content of the footnote suggested by the Netherlands delegate was entirely covered by the present wording and that such an addition would not aid the understanding of the Charter in any way. A correction of the text as it stood was, in his opinion, preferable to a footnote.

Mr. KORTEWEG (Netherlands) could not agree with the Chairman's views and would, therefore, like an addition to the text.

Mr. LEDDY (United States) proposed the following amendment to the text of the Article: "Provided that such restrictions shall not operate to increase the exports of, or the protection afforded to such domestic industry."

Mr. KORTEWEG (Netherlands) thanked the United States delegate and accepted the text proposed.

Mr. MORTON (Australia) was not certain that the Netherlands delegate had entirely understood the purpose of the provision. It was to enable a member to restrict exports of raw material at a time when exportation might prevent adequate supplies from reaching domestic industries.

He doubted whether there should be any restriction to prevent the export of finished articles.

Mr. BENES (Czechoslovakia) wondered if they were not approaching the question from the opposite sides. It seemed to him it was not the expansion of exports they were fighting against but the protection afforded by the provision to domestic industry.

Mr. KORTEWEG (Netherlands) did not agree with the interpretation of the Australian delegate. He felt it would not be right to use that particular measure to exchange the export of raw materials for the export of finished goods.

Mr. MORTON (Australia) thought a slight alteration might satisfy all parties and proposed the following addition: "Provided that such restrictions are not designed to increase exports".

Mr. WEBB (New Zealand) agreed to accept that text.

Mr. KORTEWEG (Netherlands) did not like the change. One could see the purpose of the government but not the method used.

Mr. HOLLOWAY (South Africa) pointed out that the provision only applied in cases where a general scheme of internal price stabilization was in operation, and it could not be used to afford protection to national industry by a country which had no such plan.

Mr. LEDDY (United States) preferred the original wording to that of the Australian amendment. He thought the discussion had brought out very clearly the content of the word "protection", and he wondered if the Netherlands delegate would withdraw his objection.

Mr. KORTEWEG (Netherlands) was unable to agree.

The CHAIRMAN felt that the text proposed by the United States delegate entirely covered the wishes of the Netherlands delegate and that there was no strong objection to the addition of the words "export of, or the".

Mr. MORTON (Australia) cited the example of hides in New Zealand. Say the price of hides there was fixed at 1/- per lb. while the world price was 1/6d. A rush to export hides followed and the tanning industry in New Zealand was in danger of collapse. The Government restricted the exportation of hides until a sufficient number were made available. Exports of leather must then increase as there had previously been none to export.

Mr. KORTEWEG (Netherlands) said the example cited was quite clear, but such a situation did not result in an increase of exports. It resulted only in the maintenance of exports at the normal level.

Mr. URQUHART (Canada) supported the text proposed by the New Zealand delegate with the addition of the words "exports of, or the".

Decision: The amendment proposed by the Sub-Committee on Article 33 (cf. E/PC/T/168, page 2) which superseded the New Zealand amendment as contained in document E/PC/T/W/269 was adopted with the following wording of the proviso: "Provided that such restrictions shall not operate to increase the exports of, or the protection afforded to such domestic industry"

The CHAIRMAN said the last amendment to be considered had been proposed by the United States delegate after consultation with the United Kingdom and French delegates (document E/PC/T/W/293).

Mr. LEDDY (United States) explained the meaning of the phrase "in general or local short supply" as used in the text of his amendment. Local short supply was understood

to include cases where a product, although in international short supply, was not necessarily in short supply in all markets throughout the world. It was not used in the sense that every country importing a commodity was in short supply otherwise it would not be importing it.

Mr. ROYER (France) proposed to replace the word "l'achat" in the first line of the French text by the word "l'acquisition".

Decision: The amendment presented by the United States delegation and supported by the delegations for France and the United Kingdom was adopted (document E/PC/T/W/293).

The word "l'achat" in the first line of the French text was replaced by the word "l'acquisition".

Mr. RANGANATHAN (India) stated that, before leaving Article 37, he would reluctantly withdraw his reservation, as discussion of the Australian amendment to paragraph I(g) had shown that part of the difficulties anticipated might not in fact arise.

ARTICLE 18, Paragraph 5.

Mr. WUNSZ KING (China) stated that, after careful consideration, he was unable to accept the United Kingdom proposal. He thought it might have the effect of impairing or nullifying the usefulness of paragraph 5(b), and for that reason he preferred his own formula. His wording reproduced almost exactly that of paragraph 5(b). If the Commission could not accept his formula did it mean also that it could not accept paragraph 5(b)?

Mr. ROUX (France) said he had listened with interest to the views of the representative of the International Monetary Fund on the point. As the first part of the amendment was an obvious fact, it was unnecessary to maintain it. The

representative of the IMF thought that the interpretation given to the second part by the Chinese delegate might be reached in certain cases and not in others. In his opinion, it should not therefore be included in the Charter. A note might be taken of the interpretation given by the Chinese delegate. It seemed to him that paragraph 5(d) was not very necessary as it contained no compulsion whatever. As the matter was a very technical one he felt it would be better left until further expert advice could be obtained.

Mr. MORTON (Australia) recalled that the note to paragraph 5 on page 25 of document E/PC/T/154 had been originated by the Australian delegation. He had no objection to its withdrawal, if that would meet the requirements of the Chinese position.

The CHAIRMAN asked the Chinese delegate if he would be prepared to withdraw his amendment, should the note proposed by the Preparatory Committee be deleted.

Mr. WUNSZ KING (China) stated he had no objection to the deletion of the note in its entirety provided that the Chinese position had been adequately covered in the provisions of paragraphs 5(a) and (b).

Mr. JOHNSTON (New Zealand) said he had collaborated with the Australian delegate to produce the aforesaid note, and he also had no objection to its withdrawal.

Decision: The note on page 25 to sub-paragraph 5 to be deleted on the understanding that cases in which an alteration in the rate of exchange, with or without par value, is introduced are adequately covered by paragraph 5(a) and (b).

The meeting rose at 1.30 p.m.