

ECONOMIC  
AND  
SOCIAL COUNCIL

CONSEIL  
ECONOMIQUE  
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RESTRICTED  
E/PC/T/W/308  
20 August 1947  
ORIGINAL: ENGLISH

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

REPORT ON "RELATIONS WITH NON-MEMBERS"  
(Article 26): paper E/PC/T/157

Note by the United Kingdom Delegation

(Submitted for Consideration by the Members of the  
Preparatory Committee and for Discussion at an  
Executive Session Prior to the Public Plenary Meetings)

1. Notwithstanding the points that were made by other Delegations when this matter was debated in Commission A on the 12th August (Verbatim Report of the Thirty-Seventh Meeting, pages 49 to 54), the United Kingdom Delegation feels that it must maintain its objection to the last part of paragraph 5 on page 2 of the Report. This passage reads:-

"Some question was raised in the Committee as to the status of a Member of the United Nations if it should fail to become a Member of the Organization and to the status of a country not eligible for membership in the Organization. The Sub-Committee suggests that the World Conference may wish to seek expert opinion as to whether, under these circumstances, any of the drafts would be in conflict with the obligations of Members of the United Nations".

2. While not seeking to minimise the importance of these questions, the United Kingdom Delegation feels that it is unnecessary to make recommendations regarding them to the World Conference, which will be fully competent to judge for itself the best way of dealing with them.

3. As regards the suggestion in the Sub-Committee's Report that "expert advice" should be sought, it is necessary to ask what kind of expert advice is contemplated. To answer this, the nature of the suggested questions must be considered.

(i) The first question, as to the status of a Member of the United Nations if it should fail to become a Member of the Organization, is largely a legal matter of interpretation of the Charter of the United Nations. The only means by which the World Conference or the Preparatory Committee could obtain authoritative advice on this question would be by seeking an advisory opinion of the International Court of Justice. But neither the World Conference nor the Preparatory Committee have, it appears, the necessary status to make a direct approach to the Court for an advisory opinion. For this purpose, it seems that the Economic and Social Council could be asked to submit an appropriate reference to the Court.

The procedure involved would be elaborate, and it is not clear that the timetable of sessions of the Economic and Social Council and the World Conference would permit it to be completed in time to enable the Court's opinion to be studied by the Conference. If, however, any Government Member of the United Nations desires to seek an advisory opinion of the International Court, it is clearly competent for it to do so at any time. Further, if a number of such Governments desire to associate themselves in submitting a joint reference to the Court, there would be nothing to prevent this. If such an approach were made to the Court in the near future, a reply might be received in time for the World Conference, which would, as was pointed out above, be extremely improbable if Governments waited until the next session of the Economic and Social Council, in order to request the latter to approach the Court.

(ii) The second question, as to the status of a country not eligible for membership of the Organization, is a political rather than a legal question, on which no "expert advice" can be obtained from any international authority.

4. Moreover, it appears to the United Kingdom Delegation that the question involved, i.e., whether any provision of the United Nations Charter forbids Members of the United Nations to discriminate in their commercial relations against other Members of the United Nations, is by no means so difficult as to require reference to the International Court. Accordingly, the United Kingdom Delegation remains of the opinion that it would be inappropriate for the Preparatory Committee to make the proposed suggestion to the World Conference. Indeed, this is essentially a matter on which it is for the Governments which are Members of the United Nations to interpret their own obligations under the Charter of the United Nations. The United Kingdom Delegation therefore holds that the proper course would be for each national Government which proposes to be represented at the Conference to give careful consideration to these questions before the Conference meets, in order that the Conference may be in a position to come to informed decisions as to the best way to deal with them.

5. The United Kingdom Delegation therefore re-submits, for consideration at the concluding Executive Sessions of the Preparatory Committee, the amendment which its representative proposed in Commission A, namely to amend the last sentence of paragraph 5 of the Report of the Sub-Committee so as to read:-

"The Preparatory Committee suggests that Governments Members of the United Nations which propose to be represented at the World Conference should give careful consideration to these questions before the Conference meets".