

E/PC/T/C.III/PV/9

UNITED NATIONS  
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

NINTH MEETING

of

COMMITTEE III

held at

Church House, Westminster, S.W.1

on

Saturday, 16th November 1946

at

11 a.m.

CHAIRMAN: Senor Gonzalez.

(From the shorthand notes of  
W.B. Gurney, Sons & Furnell,  
58 Victoria St.,  
Westminster, S.W.1.)

THE CHAIRMAN: Gentlemen, to-day's session of our Committee will be concerned with the Final Report of the Committee to the Preparatory Committee of the International Conference on Trade and Employment.

Before I open the debate on the documents before you, namely, the Final Report (document E/PC/T/C.III/17) and the Specific Instructions to the Drafting Committee (document E/PC/T/C.III/W.5), it falls to me as your present Chairman to report to you briefly on the genesis of these documents, and on the work undertaken since our last meeting by the two Sub-committees which you had appointed, namely, the Drafting Sub-Committee and the Liaison Sub-Committee.

As you recall, the last session of our full Committee ended with the approval of the 'Rapporteur's Draft of the Final Report' as contained in document E/PC/T/C.III/W.4. In view of the fact that this arrangement of the Report did not entirely conform to the arrangement envisaged by the Heads of Delegations, you appointed a Sub-Committee to re-draft the Final Report in cooperation with the Secretariat and the Rapporteur, along the lines prescribed by the Heads of Delegations for the final report of the Preparatory Committee as a whole. According to the then prescribed arrangement, Parts I and III of the Rapporteur's Draft were to remain substantially unchanged, while a new text for Part II, entitled "Instructions To The Drafting Committee", was to be produced. Furthermore, it was understood that Parts I and II were to be published, while Part III, containing the text of the proposed Chapter on Restrictive Business Practices, was to be kept out of general circulation.

In compliance with these instructions, some members of the Drafting Sub-Committee, in cooperation with the Secretariat, produced a new draft of the Final Report, which was debated and approved in two sessions of the Drafting Sub-Committee. The second of these sessions took place yesterday, and ended with the complete approval of the Drafting Sub-Committee and of the Rapporteur, for

the text which was to be submitted to you for your final approval.

This was the situation at the noon hour of yesterday. At the same time that our Drafting Sub-Committee approved the final text, a new meeting of the Heads of Delegations took place, at which a new arrangement was designed for the final reports of the Working Committees and the final report of the Preparatory Committee as a whole. The substance of the changes decided upon by the Heads of Delegations may be summarized in this manner. The Report is to consist of two parts only, both of which are destined for publication. There is no change in the contents of the first part, which deals with the history of the work of the Committee. The second part, however, contains a fusion of Parts II and III, in such a manner that under each heading of the Agenda, the general principles which formed the substance of the discussion in the Committee, are to be presented, followed by the agreed draft text, and the amendments, revisions, additions and suggestions submitted by individual delegations; without, however, attributing these reservations to any specific delegation. The attribution of reservations, additions, amendments, etc., to specific delegations will be contained in a separate document, not destined for general publication.

In view of this radical change in the arrangement, since the last session of our Drafting Sub-Committee, we had to consider a postponement of to-day's meeting until Monday, so that the Secretariat might change the arrangement and submit it for final approval to the Drafting Sub-Committee and the Rapporteur. Consultations between the Secretariat, the members of the Drafting Sub-Committee and the Rapporteur took place yesterday in the course of the afternoon, and it was the consensus of opinion that to-day's meeting should not be postponed for reasons of a purely formal arrangement of the Report. The Secretariat took it upon itself to re-arrange the Report as approved by the Drafting Sub-Committee,

without changing one single word of the text which had been approved. By straining all forces of the Secretariat engaged on this task, it was possible to finish the work late last night, and thus to put into your hands this morning the final text as contained in documents E/FC/T/C.III/17 and W.5.

I said before that there has been no change in the text of the draft which formerly was contained in the third part of the Report. This is true with one qualification, namely, Article H, corresponding to the former Article 65 of the United States Draft Charter, which, as the result of the work of our Liaison Sub-Committee, has been added to the text. The Liaison Sub-Committee met yesterday - you can see from this recital that we have been keeping fairly busy these days - with the Chairman and the Secretary of Committee V, and, in cooperation between the two Committees, a new text for the former Article 6 was elaborated, and it was decided to send this new text to Committee V as the one recommended by Committee III, and to incorporate it into our report as well as into the Final Report of Committee V. I may say about this new text that it represents a compromise draft between the text of the United States Draft Charter, a text submitted by the United Kingdom, and a re-draft by the United States, and that all members of our Liaison Sub-Committee, after a debate on the subject, felt that this formulation would enable the International Trade Organization to perform the functions assigned to it in Articles A to G inclusive, in an effective manner.

I now open the debate on the Final Report of this Committee, and may express the hope that the labours of our Sub-Committees and of our Rapporteur will meet with your full approval.

MR TERRILL (U.S.A.): Mr Chairman, I move to adopt the Rapporteur's Report as the Final Report of Committee III with such additions and modifications as may be agreed at this meeting.

THE CHAIRMAN: I would like to know which are these additions and modifications.

MR HOLMES (U.K.): Mr Chairman, I would like if I may to call attention

to one point which I have already explained at a meeting of the Drafting Committee. The point is a very small one, and I do not think it will raise any difficulty. It arises in connection with that part of the Report dealing with obligations of Members, which will be found as Section 4 of Part 2 of the version before us, that is, Paper No. 17. It is felt by the United Kingdom Delegation, and I know by at least one other delegation, that there is a slight inadequacy in the proviso in connection with the supply of information requested by the Organization. It is said that Members should be free to withhold confidential information affecting national security or production technique. I would like the Committee, with your permission, Mr Chairman, to consider the addition of one sentence at that point, which I do not think would involve any alteration in the text of the Draft Charter or the Revised Draft Charter. But it would serve as a guidance to the Drafting Committee to take note of this extra protection and perhaps to find a form of words at leisure which would meet the point.

My proposal, therefore, Mr. Chairman, would be that after the words "production techniques" in Section 4, a sentence on the following lines should be added to the explanatory paragraph before Article D is set out. The sentence would be:-

"It was felt, however, that there should be some provision in this obligation of members to furnish such information whereby the legitimate business interests of particular enterprises should be safeguarded as far as feasible from possible injury which might arise if detailed information were to fall into the hands of their competitors or other private persons."

The point, as will be seen, is that there would be no desire on the part of members to impede inquiries, but that details regarding the operations of commercial enterprises in accordance with their normal and legitimate trade practices commonly confidential to such enterprises might be withheld if they were not essential to the Organization's inquiries.

I hope, Mr. Chairman, that a sentence on the lines I have read out might be added at that point. Whether or not it would be necessary, if so, to make just a small note directing the attention of the Drafting Committee to that sentence in connection with Article D(d) on the following page, would be a matter, I think, entirely for your ruling.

THE CHAIRMAN: I shall have to direct the attention of Mr. Holmes to the fact that his observation actually involves a point of substance which has not been faced during the past proceedings of this Committee. According to the resolution which we passed at the last meeting of this Committee the debate on points of substance is closed, and I am not ready to have any such debate re-opened. However, if it is clearly understood that there is no re-opening of any debate on a matter of substance, and provided there is no objection from any

member of this Committee, I feel that I might suggest a solution satisfactory to Mr Holmes and to the whole Committee. The new recommendation suggested by the United Kingdom delegation is actually a point of principle, and, I think, a principle to which no one on this Committee could take exception. It is understood that truly legitimate business secrets which have no bearing on the question of harmful restrictions should be safeguarded. I therefore propose to add this principle, as formulated by Mr Holmes, to the presentation of principles regarding the obligations of members on page 13 of the Final Report. If this should meet with the unanimous approval of this Committee I shall instruct the Secretariat to insert on page 13 of the Final Report between the words "actions have been taken" and the words "the following text" a new paragraph according to Mr Holmes' recommendation. Will you please tell me if there is any objection to this suggestion?

MR MCGREGOR (Canada): Mr Chairman, I do not believe that the point raised by Mr Holmes is likely to give rise to any debate on the subject. Certainly we would be quite in accord with the proposal that has been made, supplemented by your own proposal as to where it should be included. That is, included not in the text, but in the other memorandum which precedes the text.

THE CHAIRMAN: Since there is no objection, I take it it is the Resolution of this Committee to insert this new paragraph on page 13, and the Secretariat is instructed to provide for such an insertion.

I would like now to ask Mr Terrill if his motion concerns E/PC/T/C.III/17?

MR TERRILL (United States): Would you repeat that question, Mr Chairman? My motion was for the adoption of the Rapporteur's Report, subject to such modifications of form and additions

as may be agreed upon at this meeting. I take it that this particular addition has been agreed upon.

There is one very slight correction I should like to suggest. On page 9 the heading of Section 2 now reads "Procedure with respect to Complaints". I suggest we add "and Conferences", since there are two techniques involved in this present text. The same change would be appropriate in the heading of Article B, which appears on the next page, page 10 - "Procedure with respect to Complaints and Conferences."

THE CHAIRMAN: If there is no objection I think we should approve the suggestion of Mr. Terrill.

MR. TERRILL (United States): I have one more suggestion I should like to make at this time. It arises because I found myself extremely confused when I first inspected the Rapporteur's Report, and I find that other delegates also were confused and I am sure the public would be confused by the present form of the Report. I suggest that Part Two be arranged along the following lines: the text and the notes should appear in one Section, and the commentary or exposition in another separate Section. That, I think, would facilitate the reading of this by the public and also the publicity which we all hope it will receive.

THE CHAIRMAN: We will give instructions to the Secretariat accordingly.

MR. NAUDE (South Africa): Mr. Chairman, I presume we have finished with that point?

THE CHAIRMAN: Yes.

MR. NAUDE (South Africa): I notice that in the specific instructions, and in other places, too, the question of services has been quite forcibly raised again. I do not at this stage suggest any substantive change in the Report. I am merely

wondering - and I will abide by whatever the Committee decides - I am merely wondering, in view of the fact that the American Draft Charter was published and that this is to be published, whether there might not be sound reasons for giving in the explanatory notes a brief statement describing the reasons for which services were excluded from the scope of the Charter.

THE CHAIRMAN: In the last page of our Report, in the General Notes, there is an observation about services.

MR. MAUDE (South Africa): What I had in mind was the explanation given by Mr. Dieterlen one day, that there was doubt as to the interpretation of the instructions of this Preparatory Committee as received from the Economic and Social Council. You may remember there was a question whether seeds were supposed to come in. What I have in mind is merely that members of the public will notice the difference and they will not know the explanation.

MR. QUERESHI (India): Mr. Chairman, what I have to say at this stage is that if the suggestion made by the delegate of South Africa is adopted, and you give the reasons for excluding services, then I think that you should also give the reasons advanced by us as to why services should be included, because if one set of reasons is given, and the reasons on the other side are excluded, it will not make very fair reading. I have no objection if it is left as it is, but if the suggestion of the South African delegate is accepted and reasons for exclusion are given, then I think the reasons should also be given as to why we feel so strongly that it is essential that services should be included.

THE CHAIRMAN: I thank the hon. delegate of India, and I quite agree that if we do not leave it as it is here we should also in his case give an explanation.

MR. GUERRA (Cuba): Mr. Chairman, I think that the proposal made

by the Indian delegate is a fair one, in the sense that both sides should be given the same chance, but as far as my experience goes in Committee IV, and I think in other Committees also, I do not think there has been an explanation given on any point, but they just put in an amendment as a statement of fact. Otherwise, we should have to produce in the Report the whole of the discussion we have had in favour of or against certain points. I suggest, therefore, that we carefully consider this point, or otherwise we may be reproducing in written form all the discussion we have had on every one of the points on which we have not reached agreement.

MR. MCGREGOR (Canada): Mr. Chairman, if the matter of services is going to be dealt with by the Preparatory Committee as a whole, since I understand the reference to services has been eliminated through all the chapters of the Report, might it not be expected that a general reference would be made to the subject, rather than that each Committee should make its own reference? I merely raise the question of whether it is going to be discussed by the Preparatory Committee as a whole.

MR. NAUDE (South Africa): If what the Canadian delegate says is in fact the case, that a general reference will appear somewhere else in the over-all Report of the Preparatory Committee, I of course withdraw my suggestion.

THE CHAIRMAN: Then I think that question is now settled.

THE EXECUTIVE SECRETARY: I have no notion myself, Mr. Chairman, or no information myself of any general reservation of that kind, and I think if the feeling of Committee III is that such a general statement should appear, covering the whole of the work of the Preparatory Committee, and that it is on that assumption that no special mention is made in the Report of Committee III, then I think it should be reported to the

Plenary Committee at the time when the Report of Committee III is presented. It could then be the subject of a general statement in the Plenary Committee when the Reports are considered. A written statement could accompany the Report when it is transmitted to the Plenary Committee.

MR. TERRILL (United States): I recommend that the suggestion Mr. White has given to this Committee be adopted, and that a written statement be given to the Plenary Committee reflecting this view.

THE CHAIRMAN: We are going to instruct the Secretariat to carry that out, and I will ask the Secretariat to have the record show that the final Report has been unanimously approved by this Committee, with the changes made today.

There only remains the question of the French version of this Report. I am asking the representative of France and the delegate of Belgium to provide the Secretariat as promptly as possible with the French version of our final Report, and it is understood that this French text will not be a translation, but an equal original French version of our Report.

Now I would like to ask the whole Committee if Document E/PC/T/C.III/W5 has the approval of the members of this Committee? It is with regard to the specific instructions to the Drafting Committee.

THE EXECUTIVE SECRETARY: Mr. Chairman, I am rather puzzled about the arrangements for the French text. Is there not a danger that if two texts are produced, of equal authority, there may be some question later as to which is the authoritative text, if there are differences between them? I should have thought it was essential that the texts should be identical, in the sense that the one should be an interpretation of an agreed official text of the Report of the Committee.

THE CHAIRMAN: We understand that the French text is going to be an exact translation; we will say, of the meaning of the English text.

THE EXECUTIVE SECRETARY: If that is clear, Mr. Chairman, I think that satisfies my point, but as I heard it explained before it was that an independent French text would be produced, which would reproduce the general agreement, but would not be an exact counterpart in French of the English text, and that would mean there would be two texts of equal authority which might differ in some respects and might therefore lead to misunderstanding and confusion in the future work of the Committee and its interpretation outside the Committee.

D.1.

E/PC/T/C.III/FV/9

However, as I understand your ruling now, it is that steps will be taken to ensure that the texts are, in fact, identical.

THE CHAIRMAN: That is so. We will issue an instruction to the Secretary on this point.

MR. MCGREGOR (Canada): Is it definitely understood that the text of the several articles, A - G plus H, will appear together and not be subject to interruption by other comments, such as are made in the draft report in its present form?

THE CHAIRMAN: Yes, they will be altogether. We have now arrived at the end of our long and sometimes arduous labours. I believe that the final product of our labours is well worth while. In genuine co-operation, and with the will to understand each other, and to view this highly important subject in the light of many widely differing economic environments, we have worked together trying to chart the course for an effective future international control over restrictive business practices. The final result may be far from perfect, but if I may look back for a moment to the wide cleavage of opinion which manifested itself in our first sessions, and if I may now look at our final Report, which has the approval of all of you, then I feel that a very auspicious beginning for true international co-operation against harmful business practices has been achieved by our work.

It remains for me - and I feel I speak for all of us - to express my sincere gratitude to all the members of our Sub-Committees, and especially to our Rapporteur, for their tireless efforts, which have led to this successful termination of our work. I also wish to thank you, once more, on my own behalf and on behalf of the country which I have the honour to represent, for the distinction which you have accorded me in electing me as your Vice-Chairman.

Before we end, I would say that we realise that some editorial work will be required to co-ordinate the work of our Committee with that of the other Committees, and I think

D.2.

E/PC/T/C.III/PV/9

we can agree that this task can be left to the Secretary?

Yes? Then, Gentlemen, permit me to exercise for the last time the authority which you have vested in me, and to declare the closure of this session of Committee III.

The Committee rose at 11.54 a.m.