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ORIGINAL: ENGLISH

DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE UNITED NATIONS
CONFERENCE ON TRADE AND EMPLOYMENT

SUMMARY RECORD OF THE FIFTH MEETING

Held at Lake Success, New York, at 10:30 a.m., on Friday, 24 January 1947

The CHAIRMAN suggested that the Legal and Drafting Sub-Committee be composed of members of the Belgian, Cuban, French, United Kingdom and United States Delegations.

Mr. PHILLIPS (AUSTRALIA) suggested that the Sub-Committee should be entitled "Legal Drafting Sub-Committee" rather than "Legal and Drafting Sub-Committee". He explained that he wished this change to be made in order to stress that the function of the Sub-Committee would be to put agreed ideas into appropriate words. Where any disagreement as to principle is left, the matter should not be referred to the Legal Drafting Sub-Committee, but rather to an ad hoc drafting sub-committee. This was agreed.

The CHAIRMAN drew the Committee's attention to documents E/PC/T/C.6/W.9 and 12 which embodied the texts of the Articles of the Charter which had already been accepted tentatively. He asked the Committee whether there was any further comment upon these texts.

Mr. MA (CHINA) pointed out that the new text of sub-paragraphs (a) and (b) of paragraph (3) of Article 13 did not take into account the suggestion he had made to delete the phrase "subject to such limitations and conditions". Accordingly, he could only accept these sub-paragraphs on the understanding that the word "limitations" referred to no other limitation than the release of applicant Members from their obligations under the Charter as was stipulated in Article 13.

/Mr. PHILLIPS

Mr. PHILLIPS (AUSTRALIA) suggested that in the new text of Article 6 the concluding word "maladjustment" should be changed to "disequilibrium".

Mr. SHACKLE (UNITED KINGDOM) stated that he would prefer to leave the text as it stood as he understood "disequilibrium" to refer to a state of affairs confined to one country, whereas maladjustment referred to a state of affairs which extended beyond the boundaries of one country.

Mr. LEEDY (UNITED STATES) agreed with Mr. Shackle and Mr. Phillips said that he would not press the point.

Mr. JUSSIANT (BELGIUM-LUXEMBOURG) referred to the reservations he had made at a previous meeting regarding the transfer of Article 5 from Chapter III to Chapter IV. In view of this transfer he suggested that the title of Chapter III be amended to "Employment, Effective Demand and Economic Activity." This was agreed. Subject to this amendment, the texts set out in the two documents under examination were accepted provisionally.

Examination of Article 25 - General Elimination of Quantitative Restrictions.

Mr. ADARKAR (INDIA) referred to the amendments he had proposed to Article 25, which were embodied in document E/PC/T/C.6/W.5. He explained that he moved these amendments because he considered that each Member should be left free to choose the measures which it thought most appropriate for its economic development. Any measure which was essential to the economic development of a particular Member should not be prohibited as set out in the Charter, but the use of such a measure should be permitted, subject substantially to the same procedure as was provided in Article 26 for quantitative restrictions to safeguard the balance of payments.

The CHAIRMAN stated that Mr. Adarkar's amendments raised questions of substance which he thought could only be passed on by the Drafting Committee to the Second Session of the Preparatory Committee as an alternative text suggested by the Indian Delegation.

Mr. GUERRA (CUBA) asked Mr. Adarkar whether he would be prepared to drop his reservation to Article 25 if the idea behind his amendment was covered by

/a redrafting

a redrafting of Article 13. Mr. ADARKAR replied that if this were done there would be no reason for any amendment to Article 25. It was decided that the text in question should be included in the report of the Committee, as an alternative to Article 13 suggested by India.

In the event of no support being forthcoming for the Indian Delegate's proposal, the Committee commenced a detailed examination of the text of Article 25 as presented in the Report of the First Session. It was agreed that the word "Member" in the last two lines of paragraph (1) should be expanded to "Member country".

In connection with paragraph (2), Mr. SMITH (CANADA) pointed out that it was essential to the whole economic development of Canada that the export of electric power should be strictly regulated. If electric power were regarded as a good or a commodity, he wished to reserve the position of his Delegation regarding its export except under licence.

Mr. PHILLIPS (AUSTRALIA) queried whether the restrictions mentioned in the first proviso to sub-paragraph (a) (iii) of paragraph (2) referred to new restrictions or also to restrictions in force when the Charter came into operation.

Mr. LEDDY (UNITED STATES) replied that he considered the correct principle to be that if when the Charter comes into force a Member wishes to maintain a restriction, he should consult with other Members which are interested.

It was agreed that the United States and Australian Delegates might confer with a view to producing a text which better embodied this principle.

Mr. GUERRA (CUBA) asked what would follow after the Organization made a request under sub-paragraph (c) of paragraph (2) to a Member to revise standards.

Mr. LEDDY (UNITED STATES) stated that if a Member declined to act upon the Organization's request, the case might fall within paragraph (2) of

/Article 35.

Article 35. However, it would be impracticable for the Organization to order any Member to revise its standards.

Mr. SHACKLE (UNITED KINGDOM) suggested that the words "or of a directly competitive product which may be marketed or produced" should be added to the end of sub-paragraph (a) (i) of paragraph (2).

Mr. GUERRA (CUBA) remarked that Mr. Shackle's suggestion involved a question of substance which had been discussed at length at the First Session. He went on to point out that products may be competing for the same market and yet may be entirely different in form.

Mr. SHACKLE (UNITED KINGDOM) asked that his suggestion be either noted in the Drafting Committee's report or placed in the text in square brackets. This was agreed.

Mr. ADARKAR (INDIA) referred to his suggested amendments of sub-paragraph (a) (i) and (ii) which were embodied in document E/PC/T/C.6/W.16 and pointed out that there was nothing in the Charter to prevent governments from adopting schemes to regulate agricultural production. To make these schemes effective, a government should necessarily have the power to control imports.

Messrs. GUERRA (CUBA) and BRENNER (NEW ZEALAND) opposed the Indian Delegate's suggestions as providing too wide a loophole in the Charter. The CHAIRMAN, speaking as Delegate for Norway, stated that, as on some other points in the Charter, he had not received any instructions from his Government regarding Article 25 and therefore he could not express an opinion at this stage on the subject of the reservation which the Norwegian Delegation had made at the First Session of the Preparatory Committee.

/It was agreed

It was agreed that as no support was forthcoming for the Indian delegate's proposal, the text of the Charter should be maintained and the Indian delegate's proposal forwarded as an alternative.

Mr. LEDDY (UNITED STATES) suggested that as paragraph (4) of Article 27 covered the last sentence of sub-paragraph (f) of paragraph (2), he thought that that sentence might be deleted. However, after Mr. SWIRE (CANADA) queried the advisability of deleting this sentence, Mr. Leddy withdrew his proposal.

Mr. MA (CHINA) pointed out that like Mr. Colban he had not received instructions from his government on many of the points raised in the Charter. He did not wish the Drafting Committee to think that his silence on any particular point necessarily implied approval.

Mr. LEDDY (UNITED STATES) suggested that as sub-paragraph (g) of paragraph (2) was covered by the general exceptions in Article 37, this sub-paragraph might be deleted. However, it was agreed not to delete sub-paragraph (g) at the present time, but to consider the matter further after the Technical Sub-Committee had dealt with Article 37.

THE CHAIRMAN asked the Drafting Committee whether those delegations which had entered reservations to Article 25 at the First Session of the Preparatory Committee wished to maintain them. Mr. ALVAREZ (CHILE) said that he had not received instructions from his government and therefore must ask that the Chilean delegation's reservation be regarded as maintained. The CHAIRMAN directed Mr. TORRES' (BRAZIL) attention to the suggestion which the Brazilian delegation had made at the First Session in London to use quantitative restrictions for the preservation of scarce natural resources.

Mr. TORRES stated that he might be able to present the Drafting Committee with a paper on this point at a later stage. MR. JUSSIANT (BELGIUM-LUXEMBOURG) stated that he might also present the Drafting Committee with a paper regarding the non-imposition of restrictions upon seasonal commodities.

/Subject to the

Subject to the amendments mentioned above the Drafting Committee provisionally accepted the text of Article 25 as drafted in the Charter.

Examination of Article 26 - Restrictions to Safeguard the Balance of Payments

The Drafting Committee examined the United States redraft of Article 26 set out in document E/PC/T/C.6/W.11. In paragraph (1) of this redraft it was agreed that the word "and" in lines two and nine should be provisionally altered to "or". In paragraph (2) of the same redraft it was agreed also to restore the word "to" before "forestall" in line ten and to alter "its level of monetary reserves" to "the level of its monetary reserves" in line eleven. It was also agreed to insert in line fourteen after the word "made" the phrase "in each case".

Mr. PHILLIPS (AUSTRALIA) raised the question whether the redraft of sub-paragraph (b) of paragraph (2) really expressed what it was desired to say. The intention was that a Member in considering whether it should eliminate restrictions should consider whether the conditions which obliged it to impose the restrictions in the past existed any longer. It was agreed that this sub-paragraph should be referred to the Legal Drafting Sub-Committee which might endeavour to find more appropriate words.

In reply to a query by one delegate Mr. LEDDY (UNITED STATES) explained that in sub-paragraph (c) of paragraph (2) the word "apply" covered "impose, maintain or intensify".

As regards sub-paragraph (c) of paragraph (2) Messrs. BENDA (CZECHOSLOVAKIA) and ALVAREZ (CHILE) expressed preference for the text produced at the First Session of the Preparatory Committee as they considered the United States redraft was more rigid.

Messrs. GUERRA (CUBA) and SMITH (CANADA) supported the United States redraft of this sub-paragraph as better expressing the intention of the First Session of the Preparatory Committee. Mr. GUERRA also stated that if the Cuban delegation had not understood that the sub-paragraph had the meaning which was embodied in the United States redraft, it would have made

/reservations in London.

reservations in London. Mr. LUXFORD (INTERNATIONAL BANK) pointed out that it had never been the understanding at the First Session of the Preparatory Committee that there was any difference between new and existing restrictions.

The United States draft of sub-paragraph C of paragraph 2 was adopted with the understanding that the report should indicate that the delegates for two countries preferred the London draft.

Mr. SHACKLE (UNITED KINGDOM) stated that he preferred the words "as soon as possible" in sub-paragraph (a) of paragraph (3) as in the text produced in London to the word "immediately" as in the United States redraft.

After Messrs. GUERRA (CUBA) and SMITH (CANADA) had supported the use of the word "immediately" in this sub-paragraph and Mr. PHILLIPS (AUSTRALIA) had adopted the opposite position, it was agreed that the substitution of "immediately" for "as soon as possible" should be accepted provisionally.

Subject to the amendment above mentioned, the United States redraft of paragraphs (1) and (2) and sub-paragraph (a) of paragraph (iii) of Article 26 was accepted tentatively.

It was agreed that the next meeting of the Drafting Committee should be held at 10.30 a.m. on 27 January 1947.