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

Summary Record of the thirty-seventh meeting  
of Commission "A" held on Tuesday, 12 August  
1947 at 2.30 p.m. in the  
Palais des Nations,  
Geneva.

M. MAX SUETENS (Chairman) (BELGIUM)

The CHAIRMAN introduced Document No. E/PC/T/160, Report of the Sub-Committee on Articles 31,32, and requested the Chairman of the Sub-Committee, Mr. DEUTSCH (Canada) to comment on the Report.

Mr. DEUTSCH (Canada) stated that the Sub-Committee adopted unanimously the Report of the texts of the two Articles and explanatory notes. Reservations listed in the New York Report were withdrawn and no new reservations were made. Some explanatory notes were marked with an asterisk so as to indicate that some Members of the Sub-Committee thought that they should be kept as official explanation of the texts.

The Sub-Committee also considered Article 33 and, in view of its opinion that the newly drafted Article 32 covered also the case of countries whose foreign trade is conducted entirely by state monopolies, recommended the deletion of Article 33. At the same time the Sub-Committee felt that since there was no country present with a system of complete monopolies in foreign trade, it could not finally dispose of this question, and suggested that the Preparatory Committee recommend to the World Conference to

examine whether Article 32 provided an adequate basis for such a country to participate in the rights and obligations of the Charter.

The CHAIRMAN thanked Mr. DEUTSCH (Canada) for his explanation and moved the discussion of:

ARTICLE 31 & Explanatory Notes

In reply to a question of the Belgium Delegate, the CHAIRMAN stated that the Legal Drafting Committee will examine the French text and will make corrections if necessary.

Mr. FORTHOMME (Belgium) wished an explanation of Note 2

Mr. DEUTSCH (Canada) explained that the first part of Note 2 was inserted at the request of the Delegate for Czechoslovakia. The intention was to allow limitations upon exporting enterprises to ensure a certain quality of goods being exported. These limitations did not restrict exports in any way; it was the understanding that some exporters may not be allowed to export because of the necessity to keep up standards of quality.

The second part of Note 2 referred to the exploitation of natural resources. It was customary to grant such exclusive rights, as for instance in Canada to exploit timber in certain territory, such rights may be granted to private firms as well as to state enterprises.

Mr. FORTHOMME (Belgium) wished that the note be drafted so as to include general monopolies of exploitation, such as coal.

Mr. EVANS (U.S.A.) stated that his understanding was that the granting of right to exploit in itself would not be considered a special privilege.

Mr. SHACKLE (United Kingdom) suggested that the criterion of such enterprises being or not being enterprises with 'special privileges' was the fact whether or not the government exercises an influence on the business policy of such enterprise. He suggested, and the Commission agreed to add the words:

"but which do not involve control by  
the government of the business policy  
of the enterprise in question."

Mr. FAIVOVICH (Chile), referring to Note 3, stated that his delegation attached great importance to this note which clarifies the situation of a special case in the Chilean economy.

Mr. SHACKLE (United Kingdom) suggested that the words

"but does not exercise control over the  
business policy of the enterprise"

be inserted after the words "profits of the enterprise".

Mr. EVANS (United States) wished that the Commission should indicate to the Legal Drafting Committee that the sole intention of Note 3 was to indicate that the mere granting of privilege to exploit a particular resource was not in itself necessarily a privilege in the sense that the term is used in this Article.

Mr. SHACKLE (United Kingdom) thought that no instructions were needed for the Legal Drafting Committee because paragraph 1 (c) made it mandatory upon the government not to prevent any enterprise from acting in accordance with the principle of non-discrimination and commercial considerations.

Mr. WEBB (New Zealand) urged the Commission not to turn itself into a drafting committee because this Article deals

with complicated matters and the Commission might end by producing a result which was different from what was intended.

Mr. SHACKLE (United Kingdom) suggested that it might be sufficient to transmit the verbatim report of this discussion to the Legal Drafting Committee as guidance in their considerations of the Report.

Mr. WYNDHAM WHITE (Executive Secretary) asked for clear guidance for the Secretariat and the Legal Drafting Committee; it should be kept in mind that the reason for the insertion of the notes was to avoid the necessity for reservations on the part of some delegations. He raised the question if the decision now was to incorporate not only the notes marked with an asterisk but also all other notes.

Mr. DEUTSCH (Canada) explained that an asterisk was appended to notes which some delegations felt should be included in the official explanation of the text. All other notes are simply part of the Sub-Committee's Report.

The CHAIRMAN suggested, and the Commission approved, that the verbatim report should be transmitted to the Legal Drafting Committee for guidance.

Mr. AUGENTHALER (Czechoslovakia) asked if the delegations would have an opportunity to examine the amended notes before they are discussed in the Plenary Session.

Mr. WYNDHAM WHITE (Executive Secretary) suggested that the most speedy procedure would be to circulate a text prepared by the Legal Drafting Committee to the Delegates and obtain their views before the Report was submitted to the Plenary Session.

Mr. ROYER (France) suggested, and the Commission approved, that a representative of the Sub-Committee should attend the

respective meetings of the Legal Drafting Committee.

Mr. SHACKLE (United Kingdom) suggested that, in view of the contents of Note 7, the Legal Drafting Committee should be requested to consider whether the words "having due regard to the other provisions of this Charter" should be transposed to an earlier place in the text of sub-paragraph 1(b).

Mr. FAIVOVICH (Chile) agreed with the suggestion of Mr. SHACKLE.

Mr. FORTHOMME (Belgium) suggested that instead of Note 5 which dealt with "tied loans" the word "financing" should be added in the text of sub-paragraph (b) of Article 31.

Mr. DEUTSCH (Canada) thought that this addition might raise some questions of substance. The note was drafted at the wish of the Delegate for China.

Mr. WUNSZ KING (China) preferred that Note 5 be maintained as in the Report.

The Delegates for Belgium, United Kingdom, and Czechoslovakia wished that the words "subject to the provisions of the Charter" mentioned in Note 8 should be maintained in the text of the Article.

Mr. FORTHOMME (Belgium) wished that an asterisk be appended to Note 9. He also suggested a new wording of Note 10 as follows:

"The Preparatory Committee agreed that the wording of paragraph 1(b) of Article 31 did not preclude the customary variations in prices between one market and another market."

Mr. FAIVOVICH (Chile) stated that Note 10 was drafted exactly on the lines of the corresponding note on Page 27 of the D.C. Report. If, however, the Legal Drafting Committee

would consider the new text proposed by M. Forthomme and found that it covered exactly the meaning of the old note, he might be able to consider the matter again.

M. ROYER (France) and Mr. SHACKLE (United Kingdom) preferred the old wording of Note 10.

Mr. FORTHOMME (Belgium) stated that lately cases came to the notice of his country in which the conditions of supply and demand were artificially created, thus making for serious discrimination. The present text would allow such practices and therefore he wished to modify it.

Mr. SHACKLE (United Kingdom) thought that the cases mentioned by M. FORTHOMME would fall under Chapter IV.

Mr. FAIVOVICH (Chile) thought that Note 10 was perfectly clear and asked Mr. FORTHOMME not to press his point.

The CHAIRMAN stated that a clear majority of the delegations wished to maintain Note 10 and that it was always possible for the Belgian Delegate to reserve his position.

Mr. FORTHOMME (Belgium) stated that he was compelled to reserve the position of his country on Note 10.

Mr. WEBB (New Zealand) wished that an asterisk be appended to Note 11 which was essential for the clarification of the text.

Mr. FORTHOMME (Belgium) asked for a clarification of Note 11.

Mr. WEBB (New Zealand) explained that a government might purchase goods the use of which might result in the supply of some social services to the community; such services should not come within Article 31. This would also include the case of the government importing machinery for production of electric energy.

Mr. FORTHOMME (Belgium) accepted the explanation.

Dr. HOLLOWAY (South Africa) thought that the note did not make the point very clear and that it required a more definite wording.

Mr. EVANS (U.S.A.) recalled that the Drafting Committee, and now the Sub-Committee, dealt with the question that a government which re-sold, after processing, imported goods in commercial markets could frustrate the purposes of exceptions, which should be limited to the normal use of imported goods by the government itself. He did not wish to reopen this question and thought that Note 11 itself was quite clear and that it did not alter the intent of Article 31. He therefore supported Mr. WEBB's request to append an asterisk to Note 11.

Mr. SHACKLE (United Kingdom) supported the view of the United States Delegate.

Mr. FORTHOMME (Belgium) did not object to appending an asterisk and wished only that the note should be expanded for clarification.

Mr. WUNSZ KING (China) wished to re-affirm what has been said by the Chinese Delegation in the Sub-Committee, with regard to the words "for use in the production of goods for sale". These words appeared also in Article 15, to which the Chinese Delegation had strongly objected. In Article 31 these words had, however, another meaning and therefore, while maintaining the objection to these words in Article 15, the Chinese Delegation has no objection to using them in Article 31.

Mr. WEBB (New Zealand) stated that he had not yet succeeded in clearing the text of Article 31 with his government and that he therefore had formally to reserve his

position until further communication from his government. This also refers to Article 32.

ARTICLE 32 & EXPLANATORY NOTES

Paragraphs 1 & 2 were adopted without debate.

Paragraph 3. Mr. BOGAARDT (Netherlands) agreed to Paragraph 3 subject to the maintenance of Note 14.

Paragraph 4. Mr. SHACKLE (United Kingdom) suggested to replace the words "the countries parties to the negotiation" at the end of this paragraph by the words:

"the Member countries substantially interested".

He referred to Article 13 where such words were used. He suggested the use of these words because the bindings of the results of tariff negotiations will be of a multilateral character, not merely bindings in favour of particular countries.

Mr. AUGENTHALER (Czechoslovakia) stated that he was in favour of the text of the Report and did not wish to make any changes because he thought that if a country was interested in the particular commodity it could state this fact during the present negotiations.

Mr. SHACKLE (United Kingdom) referred to Paragraph 2 of Article 32 and quoted the sentence reading "Any Member entering into negotiations under sub-paragraph (b) of this paragraph shall afford to other interested Members an opportunity for consultation in respect of the proposed arrangements". He thought that these words contained exactly the idea of his amendment.

Mr. AUGENTHALER (Czechoslovakia) stated that if that was the interpretation given in the Commission to this Article he would have to reserve his position on the whole of Articles 31, 32.

Mr. DEUTSCH (Canada), supported by the Delegate of the Netherlands, wished to maintain the text of the Report.

Mr. SHACKLE (United Kingdom) thought that, since it was the definite understanding that tariff reductions were multilaterally bound, the text should not be left as it stood in the Report.

Mr. EVANS (United States) stated that he did not understand the interpretation of Mr. SHACKLE. In actual practice provisions for an adjustment of wide fluctuations of world market prices would be made by the negotiations themselves. Sub-paragraph (b) of Paragraph 2 provides an opportunity for other interested Members to consult, thus ensuring that interested Members would be adequately represented. There was no departure from the principle adhered to in tariff negotiations.

Mr. SHACKLE (United Kingdom) suggested as an alternative to his amendment that his point could be met by deleting the words "sub-paragraph (b) of" in the last four lines of Paragraph 2, since otherwise the interested Members would not be brought into the negotiations and agreement on reasonable adjustment for variations in world prices would not be achieved. He preferred however his original amendment to the second proviso of Paragraph 4.

Mr. DEUTSCH (Canada) thought that Mr. SHACKLE's proposal constituted a change in substance of the agreed text. A situation should be avoided in which a Member would have to make arrangements with five or six Members which might be difficult. In such a case the country would prefer not to bind itself and he did not think it advisable to create a situation which would lead in effect to a smaller reduction in international trade barriers than if such provision did not exist. It was always difficult to succeed in negotiations in which schemes of domestic price stabilization

were concerned. The more impediments were created, the fewer bindings will result. He therefore could not support Mr. SHACKLE's amendment. Mr. SHACKLE (United Kingdom) did not wish to press his point any further, but stated that there was no disagreement in the Commission with the opinion that the method of adjustment should be agreed in the original negotiations. He therefore suggested, and the Commission approved, that a note might be drafted to clarify the position.

Paragraphs 5,6 and 7 were adopted without debate.

#### DELETION OF ARTICLE 33

The CHAIRMAN moved the discussion of Note 19 referring to the deletion of Article 33.

Mr. WHITE (New Zealand) stated that his delegation accepted Note 19 as it stood on the understanding that this was without prejudice to the New Zealand amendment to Article 33. He understood that this amendment would be discussed by the respective Sub-Committee and that the position of the New Zealand Delegation was in no way affected by Note 19.

The CHAIRMAN reassured the New Zealand Delegate that the adoption of Note 19 would be without prejudice to the New Zealand amendment to Article 33.

Note 19 was adopted.

#### ARTICLE 36

At the request of the CHAIRMAN, M. BARADUC (France), as Chairman of the Sub-Committee on Article 36, introduced the report concerning that Article (E/PC/T/157). The Chairman observed that the Sub-Committee had recommended that the Preparatory Committee should transmit all three texts to the World Conference and that, accordingly, the Commission might not wish to discuss the relative merits of the several texts.

The CHAIRMAN indicated that if the Commission were to agree to transmit the texts to the World Conference, those texts would all appear in the Report of the Second Session, in square brackets, and a footnote would be added containing paragraph 5 of the Sub-committee's report. The other comments in the Sub-committee's report would not appear in the Report of the Second Session but, by virtue of their inclusion in the report of the Sub-committee, would, of course, remain part of the documentation of the Preparatory Committee available to the World Conference.

The CHAIRMAN then asked Mr. J.E.S. FAWCETT (United Kingdom), representing the Legal Drafting Committee, to report on the points which had been referred to that Committee by the Sub-committee.

The Commission accepted the recommendation of the Legal Drafting Committee that in paragraph 6, version "B", the words " ... as requiring the withdrawal of any Member from membership in other inter-governmental organizations of the type described in Article 57 of the Charter of the United Nations or ... " might be deleted as unnecessary since this version of the article could not in any event be interpreted as requiring a Member to withdraw from either the Organization or from the other agencies referred to. Similarly, the Commission accepted the view that it would be advisable to retain the reference to the peace treaties since, in the absence of such a reference, there might be some uncertainty in respect of peace treaties not yet concluded.

In like manner the Commission agreed with the recommendation of the Legal Drafting Committee that the whole of paragraph 6 in version "C" should be retained in view of the fact that this version was wide in its scope and that it would not be possible to modify the other provisions of this version in

a manner which would render any part of paragraph 6 unnecessary.

Mr. R. J. SHACKLE questioned the practicability of the course envisaged as a possibility in paragraph 5 of the report since, in his view, the expert opinion which might be required could only be that of the International Court of Justice and he doubted that it was feasible for the Preparatory Committee, the Economic and Social Council or the World Conference to formulate a reference to the International Court in reasonable time. He suggested that the last sentence of the paragraph might be amended to read: "The Sub-committee suggests that countries, Members of the United Nations, proposing to attend the World Conference should give consideration to these questions".

M. BARADUC felt that the course proposed by Mr. SHACKLE would give rise to difficulties inasmuch as governments represented at the World Conference might feel that they would have to accept a majority decision of the Conference without any possibility of having that decision reviewed by a competent organ of the United Nations, such as the Economic and Social Council. If the language in the Sub-committee report were to be retained, governments would know that reservations which they might make at the World Conference would be taken into consideration by any reviewing body and that in the end they would be able to adhere to the eventual solution. Dr. SPEEKENBRINK (Netherlands) agreed with M. BARADUC's remarks. Mr. SHACKLE indicated that he would not object to retaining the original paragraph, if the majority of the Commission so desired. He added that this subject, and the procedure which might have to be followed, would require careful thought before the World Conference.

Mr. J. W. EVANS felt that the World Conference itself would be a body capable of arriving at its own decisions and that, accordingly, Mr. SHACKLE's proposal would have been

satisfactory to him. However, since the matter was regarded as a very delicate one, he felt that the language in the report probably represented the most satisfactory arrangement that could be arrived at.

The Commission agreed to retain paragraph 5 as a footnote to the Article in the Report of the Second Session.

Dr. SPEEKENBRINK raised the question whether in any of the three drafts a Member would be required to withdraw from the Organization in the event that it decided not to accept the decision of the Organization. He remarked that, on his interpretation, the only action which could be taken by the Organization or by other Members against a Member who refused to accept the determination of the Organization concerning some aspect of its relations with a non-Member under this Article, would be the withholding or withdrawing of concessions in accordance with the provisions of paragraph 2 of Article 35. The Member which found itself unwilling or unable to accept the decision of the Organization could not be compelled to withdraw.

M. BARADUC indicated that, as Chairman of the Subcommittee, he would have seen no objection to the inclusion of a remark to this effect in the report.

Mr. SHACKLE observed that the point might be covered in respect of version "B" by modifying paragraph 5 to read "... or if it is unwilling to accept the decision of the Organization, shall give notice in writing ... of its withdrawal".

M. BARADUC felt that there would be difficulty in discussion Mr. SHACKLE's suggestion in view of the fact that it had been decided not to identify the source of the several versions of the draft text. He considered that a discussion of any such change in one of the texts would require the sponsor or supporters of that text to identify themselves in order to avoid any impression that one or another of the three texts

was being discussed as the version sponsored by the full Commission.

Dr. SPEEKENBRINK remarked that for the purpose of avoiding a discussion of the relative merits of the three texts it might be well to regard the discussion which had taken place in the Commission on this point as representing a part of the Subcommittee's report.

The CHAIRMAN agreed that it would be difficult to amend the text of any of the drafts and felt that the matter should be covered in the manner suggested by Dr. SPEEKENBRINK. The Commission agreed.

The meeting rose at 6.40 p.m.