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

COMMISSION B

Summary Record

Second Meeting in Executive Session held on Friday,
30 May 1947 at 3 p.m. at the Palais des Nations,
Geneva.

Chairman: Hon. L. D. WILLGRESS (Canada).

The CHAIRMAN, directing the attention of the Commission to Document E/PC/T/W/130, Corr. 1, invited the Delegate of Belgium to comment on his amendment to Article 39.

The Delegate of BELGIUM explained that in the case of boycotts and the suppression of technological or scientific knowledge, it seemed to him necessary to presume harmfulness unless proof was given to the contrary. He did not, however, insist upon his proposal with regard to the use of patents, trade marks and copyrights, having considered the newly submitted observations of the Netherlands Delegation and in view of a certain obscurity of the text. The Delegate of the NETHERLANDS agreed with the spirit of the Belgian amendment, which wanted to distinguish between practices harmful in themselves and others which required investigation. He thought, however, that it would be better not to raise again the issue of the presumption of harmfulness; certain practices such as boycotts could be expressly termed harmful in the Charter. The Delegate

of BELGIUM agreed with this view.

At the suggestion of the CHAIRMAN, the Committee decided to refer the Belgian amendment as well as the Netherlands observations and drafting amendments of sub-paragraph (f) (W. 136) to Sub-Committee II.

The Delegate of BRAZIL, in commenting upon his amendment (W.54), stated that restrictive practices were considered by the various delegations to have some good and some bad effects. He thought that there should be an authority to determine when the effects were good and when bad. The amendment had three purposes: first, to bring such combinations into the open by previous registration and thus permit their control; secondly, to ensure some degree of publicity; and thirdly, to apply a fair control of such activities. He knew there were juridical objections, but national legislation could be adjusted in this respect the same as it would be for other parts of the Charter. The practical application was a matter for experts, but the principle ought to be adopted.

The Delegate of NORWAY stated that he had come to the conclusion that registration would not work. In Norway, they had such control, but he doubted whether it would be possible on an international scale. It would require an enormous mechanism and far-reaching obligations on the Members and the Organization should not be overburdened with it, certainly not at its start.

The Delegate of CANADA shared the doubts of the previous speaker, based on the extent of the work involved. He also

pointed out that registration would be tantamount to licensing. Only a fraction of the applications filed would be of interest, but the civil service needed to deal with them would be enormous and the task would be too large for the Organization.

The Delegate of CHILE admitted that the difficulties involved were very great, but the first step ought to be taken. He would not accept the presumption of harmfulness for unregistered practices and would support the amendment in its present or a modified form.

The Delegate of the UNITED STATES agreed with the objections of the Delegate of Canada to the principle of the amendment. Registration seemed to him quite impractical because it would require a staff of between one hundred and two hundred experts. The United States had considered similar legislation and the studies undertaken in this respect showed the extreme complexity of the subject. To illustrate this complexity he quoted from a draft law regulating national registration of restrictive business practices.

The Delegate of BRAZIL, asked whether he could reconsider his position, pointed out that for countries in an early stage of development the effects of international combinations were very serious, and that he could not withdraw this amendment.

The Delegate of BELGIUM pointed out that if the Brazilian proposal were considered, then not only international combinations should be taken into account but all restrictive practices as defined in Article 39.

The Delegate of FRANCE stated that although his country had prepared similar legislation, he did realise the practical difficulties on an international scale. The issue of registration might be dealt with under Article 76.

The CHAIRMAN pointed out that any provision for the study of this problem would belong not under Article 76 which dealt with organization but under Article 41.

The Delegate of the UNION of SOUTH AFRICA objected to the amendment because the presumption of guilt was wrong in principle and too great an onus was placed on the organization by this amendment.

The CHAIRMAN interpreted the sense of the Commission as favouring the transfer of the Brazilian amendment to the Sub-Committee. Upon the challenge of the Delegate of South Africa, the CHAIRMAN put the question to a vote and the Commission decided by a vote of 10 to 6 for the rejection of the Brazilian amendment.

The CHAIRMAN announced that Sub-Committee I had concluded its work and called upon its chairman to present it. Dr. LEENDERTZ (Netherlands), chairman of Sub-Committee I, stated that a new draft Article 44a had been unanimously approved by the Sub-Committee, and presented on behalf of the Sub-Committee its report (Document E/PC/T/W/144). The CHAIRMAN proposed to discuss the report after the debate on Article 44 and in the meantime to take up Article 40. He stated that his study of the amendments and reservations to Article 40 had convinced him that there were only three major matters of substance: 1) the

NETHERLANDS and CZECHOSLOVAK reservations on the right of appeal to the International Court of Justice; 2) the AUSTRALIAN revision of Article 40; 3) the UNITED STATES revision of Article 40. He further proposed to confine the debate to the substantive points raised by these three amendments and to refer the rest of Article 40 to the Sub-Committee.

Upon the observation of the Delegate of FRANCE that also the French and UNITED KINGDOM re-wording, mentioned in note 2, page 9 of E/PC/T/W/132, contained a point of substance, the CHAIRMAN ruled to extend the debate also to this point.

The Delegates of the NETHERLANDS and of CZECHOSLOVAKIA withdrew their reservations regarding the right of appeal to the International Court of Justice on the understanding that they were to be entitled to take up this issue in connection with a later debate on Article 36.

The Delegate of AUSTRALIA explained that some of the points raised by the Australian Delegation had been met by other more recent proposals and that consequently Australia would be satisfied to have its amendment merely discussed in the Sub-Committee.

The Delegate of the UNITED STATES explained that his re-arrangement of Article 40 served the purpose to clarify the procedure following upon complaints, by breaking it down into a sequence of essential steps. In his re-arrangement, the primary screening procedure is clearly distinct from the actual investigation.

He directed attention to a number of points of substance

by explaining that paragraph 4 aimed at establishing the right of venue for all affected parties; the change in paragraph 9 is designed to eliminate the possibility of suppressing publication of the report because such suppression might lead to suspicion in the motives and integrity of the Organization and would also be ineffective. Distinction must be exercised in the preparation, not in the publication of the report.

In debating the UNITED STATES amendment,

- the Delegate of the UNITED KINGDOM took objection to the change in paragraph 4 and in paragraph 9, reserving further objections to paragraphs 7 and 8 for a later date;
- The CANADIAN Delegate concurred with the Delegate of the UNITED KINGDOM regarding the too wide scope of paragraph 4 in the new version proposed by the UNITED STATES;
- The Delegate of FRANCE, reserving his right to detail his objections at greater length, objected to paragraph 3, because the second part of this paragraph might lead to a pre-damaging effect on harmless practices; to paragraph 4 for the same reasons as the Delegate of the UNITED KINGDOM, to paragraph 7 because the revision might involve an enlargement of scope, and to paragraph 9 because it is a generally established practice to edit certain parts of reports for confidential distribution and other parts for general publication.

The Delegate of the NETHERLANDS remarked that the main object of the procedure according to Article 40 was for the Organization to get all necessary information to appraise the

harmfulness of specific practices, but not to establish a tribunal in which the Organization were to sit in judgment over the case of two contesting parties; the UNITED STATES re-draft, however, might lead to the latter result.

Upon the suggestion of the CHAIRMAN, the Commission decided to continue the debate of Article 40 in the next meeting and adjourned until Saturday May 30th at 10.30 a.m. The meeting rose at 6.30 p.m.
