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COMMISSION ON NARCOTIC DRUGS

Eighth Session

SUMMARY RECORD OF THE HUNDRED AND NINETY-NINTH MEETING

Held at Headquarters, New York
on Tuesday, 7 April 1953, at 10.45 a.m.

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Proposed single convention on narcotic drugs (E/CN.7/AC.3/3,
E/CN.7/AC.3/4/Rev.1, E/CN.7/AC.3/5, E/CN.7/AC.3/5/Add.1,
E/CN.7/AC.3/6; E/CN.7/L.31, E/CN.7/L.33, E/CN.7/L.37/Rev.1)
(continued)

PRESENT:

Chairman:

Mr. RABASA

Mexico

Rapporteur:

Mr. NIKOLIC

Yugoslavia

PRESENT: (continued)

Members:

Mr. SHARMAN	Canada
Mr. CHI-KEWI LIANG	China
Mr. EZZAT	Egypt
Mr. VAILLE	France
Mr. KRISHNAMOORTHY	India
Mr. ARDALAN	Iran
Mr. KRUYSSSE	Netherlands
Mrs. KOWALCZYK	Poland
Mr. OR	Turkey
Mr. ZONOV	Union of Soviet Socialist Republics
Mr. WALKER	United Kingdom of Great Britain and Northern Ireland

Also present:

Mr. ANSLINGER	United States of America
Mr. VAN MUYDEN*	Observer from Switzerland
Mr. MAY	Permanent Central Opium Board

Representative of a specialized agency:

Dr. WOLFF	World Health Organization (WHO)
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Secretariat:

Mr. YATES	Director, Division of Narcotic Drugs
Mr. CELINSKI	Secretary of the Commission

* Alternate.

PROPOSED SINGLE CONVENTION ON NARCOTIC DRUGS (E/CN.7/AC.3/3. E/CN.7/AC.3/4/Rev.1
E/CN.7/AC.3/5. E/CN.7/AC.3/5/Add.1, E/CN.7/AC.3/6; E/CN.7/L.31, E/CN.7/L.33,
E/CN.7/L.37/Rev.1) (continued)

Section 26 (continued)

The CHAIRMAN pointed out that in view of the Commission's decisions at the previous meeting, the text of paragraph 144 (E/CN.7/L.37/Rev.1) would become paragraph 2 (d) (i) of section 26. The original paragraph (2) (d) (ii) had been intended to relate to the principle of an international clearing house but as that principle had been deleted from section 24, paragraph 2 (d) (ii) would automatically fall. He suggested that paragraph 2 (d) (iii) should then become paragraph 2 (d) (ii).

Mr. OR (Turkey) wondered whether it might not be better to insert the former paragraph 2 (d) (iii) after the provisions relating to appeal machinery.

The CHAIRMAN proposed that in order to satisfy the Turkish representative the former paragraph 2 (d) (iii) should be amended to read:
"To carry out such embargo when and if it becomes final."

It was so agreed.

The CHAIRMAN then suggested that the French proposal for appeal machinery (E/CN.7/L.33) should become paragraph 2 (d) (iii). He thought that the Commission was agreed on the principle of appeal machinery inasmuch as at its sixth session it had approved the following principle for chapter VII, paragraph 2 (f) of the draft protocol relating to the limitation of the production of opium, (E/1998, annex F): "The Board may... impose an export and/or import 'embargo' for a specified period or until the situation in the country or territory concerned is satisfactory to the Board, provided that within one calendar month the country concerned may appeal to a committee of three independent persons to be appointed as a permanent body for this purpose by (the Economic and Social Council) (the International Court of Justice).

The 'embargo' shall take effect one calendar month after the decision to impose it, but notification, to the Board, of an appeal shall have the effect of suspending the 'embargo' pending the decision of the appeal committee."

Mr. ARDALAN (Iran), speaking on the French proposal, said that he would prefer to provide for appeals to the Economic and Social Council direct and for their discussion in that forum. Under its rules of procedure any country could come before the Economic and Social Council, including States which were not Members of the United Nations.

He also proposed that a time limit of three months or at the very least two months should be provided for the submission of appeals. The proposed one-month period was too short. His Government also favoured the second paragraph of the French proposal which would provide for the automatic suspension of an embargo until the appeals committee had given its decision.

Mr. NIKOLIC (Yugoslavia) objected to the Iranian representative's amendments to the first paragraph of the French proposal. The Economic and Social Council was not in session throughout the year and therefore appeals sent to that organ might be delayed unduly. He also preferred to fix a time limit of one month for the submission of appeals. He thought the International Court of Justice should appoint the three members of the proposed committee pointing out that the Court was constantly in session and there would therefore be little danger of delay.

The CHAIRMAN thought that the Commission should in so far as possible abide by the decisions it had taken in respect of the draft protocol.

Mr. VAILLE (France) also thought that the Commission should adhere to the principles it had accepted for the draft protocol, suggesting, however, that the alternative set forth in the third paragraph of the French proposal - providing for cases where an automatic suspension of the embargo was not desirable - might usefully be inserted in the draft single convention.

Mr. OR (Turkey) agreed that one month was too little time in which to lodge an appeal. The draft protocol related only to raw opium but the proposed single convention would cover many other drugs and as there was consequently more likelihood that appeals would be made, he thought that a time limit of at least two months should be established.

Mr. VAILLE (France) proposed that the time limit within which a country must submit an appeal should be one month but that it should be granted two months to complete its brief.

Mr. NIKOLIC (Yugoslavia) thought the net result of the French amendment would be to provide an actual time limit of two months for lodging an appeal. In that case it would be better to specify a two-month period and not encumber the text with two time limits.

Mr. VAILLE (France) thought that his amendment would expedite action on appeals, for the judges would be notified as soon as an appeal had been lodged with the Board and could begin to work on the case at once.

Mr. KRISHNAMOORTHY (India) accepted the French amendment.

Mr. KRUYSSSE (Netherlands) saw no difference between the original text and the French amendment. A country was always entitled to pursue its original request for an appeal by submitting further documentation in support of its case. If the French amendment satisfied the Commission, however, he too would accept it.

Mr. ARDALAN (Iran) would prefer a two-month time limit for the submission of appeals.

The CHAIRMAN put to the vote the French amendment that a country should be given one month in which to lodge its appeal against the embargo and two months in which to complete its brief.

The French amendment was adopted by 8 votes to 1, with 4 abstentions.

Mr. SHARMAN (Canada) had abstained from voting on the French amendment for the same reasons as he had explained previously in connexion with other clauses of that type.

The CHAIRMAN pointed out that in the draft protocol the Commission had provided two alternative bodies to which an appeal might be made, namely the Economic and Social Council and the International Court of Justice.

Mr. ARDALAN (Iran) pointed out that the Economic and Social Council had two sessions each year and that there was little likelihood that appeals would be delayed if they were dealt with by the Council. He thought the Economic and Social Council was better suited to examine appeals on matters that were not purely legal but that had extremely important economic implications

Mr. VAILLE (France) thought appeals should not be referred to the Council. Economic and political considerations should not be allowed to affect decisions on such appeals. The appeals committee should therefore be appointed by the International Court of Justice.

Mr. ANSLINGER (United States of America) had understood that the Permanent Central Opium Board was opposed to appeal machinery, feeling that it would weaken the Board's action. He had been prepared to accept that viewpoint, but in the light of the Commission's petition in the matter, he was now prepared to accept the principle of an appeal machinery.

He felt, however, that the Council was not the proper body to consider appeals. Under such an arrangement, it would be possible for the Commission to postpone decision on an appeal session after session and that would be undesirable. The appeal should be submitted to an appeals committee composed of members appointed by the International Court of Justice.

The CHAIRMAN invited the Commission to decide whether appeals should be made to the Council or to some other body.

Mr. ARDALAN (Iran) said that in view of the decisions taken by the Commission at its sixth session in connexion with the draft protocol, he would not insist on his amendment proposing that appeals should be made to the Economic and Social Council.

The CHAIRMAN thought it was the sense of the Commission that in accordance with its decisions on the draft protocol, appeals against an embargo should be made to an appeals committee.

It was so agreed.

Mr. NIKOLIC (Yugoslavia) proposed that the three members of the appeals committee should be appointed by the International Court of Justice.

Mr. KRISHNAMOORTHY (India) endorsed that proposal.

Mr. ZONOV (Union of Soviet Socialist Republics), Mr. SHARMAN (Canada) and Mrs. KOWALCZYK (Poland) said that they would abstain from voting on the proposal.

Mr. WALKER (United Kingdom) said that he would also abstain from voting on that proposal for the reasons he had already explained to the Commission.

Mr. YATES (Secretariat) pointed out that if the paragraph were passed in its present form, the Secretary-General would take the matter up with the International Court of Justice. The Court would have to consider and accept the idea before the final stages of drafting the convention were reached.

The CHAIRMAN thought it was the sense of the Commission that the Yugoslav proposal had been approved in principle with the four abstentions recorded.

In answer to requests for explanations from Mr. KRISHNAMOORTHY (India) and Mr. NIKOLIC (Yugoslavia), the CHAIRMAN said that he assumed the Commission's understanding to be that the proposed appeals committee would be a permanent body but that its members would be appointed for specific terms, possibly five years, at the end of which their appointments would be reviewed.

Mr. KRUYSSSE (Netherlands) thought some difficulties might arise if the members of the appeals committee were appointed for a five-year term, as the term of office of the members of the Board was also five years. He thought the periods should not be simultaneous, as that might prejudice the necessary continuity.

Mr. MAY (Permanent Central Opium Board) thought the Netherlands representative's fears unjustified for, although the appointments of the members of the appeals committee were not permanent, the committee as such would be a permanent institution. He thought it unnecessary for the Commission to go into the procedural details.

Mr. VAILLE (France) agreed with the representative of the Permanent Central Opium Board and pointed out that, in any event, the Board and the appeals committee would be entirely independent of each other.

Mr. KRISHNAMOORTHY (India) also agreed with the opinion of the representative of the Permanent Central Opium Board.

Mr. VAILLE (France) suggested that the appeal machinery proposed in the draft protocol should be amended to include the third paragraph of the French proposal (E/CN.7/L.33) which was intended to provide for cases in which, in view of the dangers inherent in a particular situation, the chairman of the appeals committee might feel that immediate action was imperative and that the embargo should not be suspended. He hoped that the paragraph would meet the difficulties raised by the representative of the Permanent Central Opium Board at a previous meeting.

Mr. NIKOLIC (Yugoslavia) was in favour of automatic suspension of the embargo in the event of an appeal. Otherwise a case might arise in which, at the end of an appeal procedure lasting several months, the country in question was cleared of responsibility and would in the meantime have suffered considerable losses through being prevented from exporting during that time.

Mr. ANSLINGER (United States of America) pointed out that the Board would order an embargo only in very serious cases in which suspension of the embargo in the event of an appeal would be dangerous. He thought the appeals committee must be allowed to exercise its own discretion in the matter.

Mr. NIKOLIC (Yugoslavia) realized that an embargo would be ordered in serious cases only. It was equally true, however, that a country would not appeal against the order if it did not have weighty reasons for doing so.

The CHAIRMAN reminded the Commission that the usual procedure in courts of law was that suspension of the penalty was not automatic in the event of an appeal but that the court concerned could grant a stay of execution in specific cases. He thought that a similar procedure could be provided for in the case in point and accordingly suggested the following tentative wording: "The embargo shall take effect one calendar month after the decision to impose it, provided, however, that, on application by the country concerned, in extraordinary circumstances, the committee may grant a temporary suspension of the embargo pending the final decision on the merits of the appeal."

Mr. NIKOLIC (Yugoslavia) pointed out that, although the juridical procedure might be clear, the economic arguments should not be forgotten. It was difficult to define what would constitute exceptional circumstances, for any exporting country would suffer damage if its exports were stopped for a period of several months, and the larger the volume of its exports the more it would suffer. He was therefore in favour of suspension of the embargo in the event of an appeal.

The CHAIRMAN thought that the ideal solution would be to enumerate the cases in which an embargo could be suspended in the event of an appeal, but the text before the Commission was a general one and could not deal with details of implementation. Procedural regulations could perhaps be appended later, at which time governments could discuss the methods of implementation.

Mr. KRUYSSSE (Netherlands) agreed with the Chairman's suggestion that the embargo should take effect within one calendar month of the decision to impose it. He assumed that the country concerned would apply to the appeals committee for suspension of the embargo. He could not agree, however, with the suggestion that the appeals committee as a whole should grant temporary suspension because that would amount to its taking a decision contrary to the Board's decision to impose the embargo, a step which it would be very difficult for such a committee to take. In addition, such procedure might involve considerable delay as the committee might take some time to reach its decision. He therefore preferred the original French proposal which left the decision to suspend the embargo in the hands of the chairman of the committee. It should be remembered that before an embargo was imposed the Board would have gone through the whole procedure indicated in section 26; suspension of the embargo at that late stage might involve considerable dangers, but it was reasonable to grant the chairman of the appeals committee the right to order suspension in exceptional circumstances.

The CHAIRMAN thought it would be unwise to give the chairman of the appeals committee, alone, the power to take a decision on such an important matter. Moreover, suspension of embargo should clearly be solely a measure of temporary relief, subject to two requirements, namely that it should be granted on the application of the interested party and that the decision to do so should be taken by the same body as was responsible for judging the merits of the case.

Mr. VAILLE (France) thought there was no objection to retaining the three suggestions now before the Committee, which could be discussed again when the text of the draft protocol was considered. The three suggestions were: (1) automatic suspension of the embargo in the event of an appeal; (2) the chairman of the appeals committee to be responsible for deciding whether or not the embargo should be suspended; and (3) the appeals committee as a whole to be responsible for that decision.

He agreed with the United States representative's view that economic interests should not be allowed to take precedence over the primary objective of the prevention of illicit traffic. Suspension of the embargo during the period of the appeal, which might last for several months, might permit an exporting country to export even more narcotic substances during that time. Moreover, it was probably an exaggeration to suggest that an embargo would stifle a country's economy. A country would always be able to retain its stocks during the appeal period and, if the appeal were resolved in its favour, it would be able to export them afterwards. Furthermore, the argument that a country would appeal only if it had weighty reasons for doing so was rather an optimistic one, for an appeal might not be very costly to the country concerned.

He did not consider that too great a risk would be involved if the chairman of the appeals committee were empowered to act on his own initiative, for he would be unlikely to act without due consideration. For his part, the French representative saw some advantages in both the second and third proposed alternatives, but would refrain from passing any final judgment upon them at present.

Mr. KRISHNAMOORTHY (India), referring to the Chairman's suggestion, understood that the Commission had already decided that an intention to appeal against an embargo should be lodged within one month of the decision to impose it and that final appeal should be filed within a period of two months. He wondered what would happen between the date of the expiry of the one-month period and the date on which the final appeal was lodged.

The CHAIRMAN said that the country making the appeal would at the same time request a suspension of the embargo. A decision on whether such a request should be granted would be taken by the Board at the expiration of the period of two months allowed for the filing of the appeal.

Mr. OR (Turkey) supported the proposal that the appeals committee as a whole should decide whether an embargo should be suspended.

Mr. ARDALAN (Iran) supported the first suggestion - automatic suspension of the embargo. If that were not approved, he would support the third suggestion.

Mr. NIKOLIC (Yugoslavia) supported the French representative's proposal to retain the three suggested courses of action in the text of section 26, paragraph 2 (d) (iii). He felt, however, that an embargo should be automatically suspended pending the final decision on the merits of an appeal made by the country concerned.

The CHAIRMAN supported the proposal that the three suggested courses of action should be retained in the text.

Mr. WALKER (United Kingdom) pointed out that the suggestion that an embargo should take effect two months after the decision to impose it was not mentioned in the first two suggestions. Under the Conventions at present in force an embargo could automatically be imposed when a country exceeded its estimates and he wondered whether that provision would be included in the draft single convention.

The CHAIRMAN thought that the words "The embargo shall take effect two calendar months after, etc. ... unless otherwise provided for herein" might be included in the text before the three suggested courses of action.

He then put to the vote the proposal that the three suggestions suggested should be retained in section 26, paragraph 2 (d) (iii).

The proposal was adopted by 11 votes to none, with 3 abstentions.

Mr. KRUYSSSE (Netherlands) said that he had abstained from voting because the proposal was contrary to a previous decision taken by the Commission that it would deal with the whole of section 26 at its present session and not leave the Opium Conference to take a decision on it.

The CHAIRMAN pointed out that the Commission was merely pronouncing on the principles to be included in the draft single convention.

Mr. MAY (Permanent Central Opium Board) explained the Permanent Central Opium Board's position as regards appeals. The Board considered that if a mandatory embargo was permitted an appeal was quite proper. It felt, however, that the appeals machinery was so cumbersome that a similar objective could be attained by a mere recommendation for an embargo to be imposed, any party being allowed to express its unwillingness to accept the imposition of embargo and to give its reasons for such action. Apart from the sanctions imposed under the 1931 Convention for exceeding estimates, the Board had taken action under article 24 of the 1925 Convention on three occasions only, and such action had not included a recommendation that an embargo be imposed, as the Board and the Governments concerned had reached an agreement on the remedial measures to be taken. He thought, therefore, that an additional section might be included in the draft single convention leaving it to the discretion of the Board not to use a mandatory embargo but merely to recommend such an embargo. In that case the party concerned would have the right to give its reasons for not accepting the embargo.

Mr. VAILLE (France) could not support the suggestion of the Chairman of the Permanent Central Opium Board as he considered that the Board's powers should be strengthened.

The CHAIRMAN shared the French representative's views and drew attention to the fact that paragraphs 2 (c) (1) and (ii) on embargoes had been adopted at the previous meeting. He felt that the proposals of the Chairman of the Permanent Central Opium Board were met by the fact that the Commission had agreed that the right to announce the intention to impose an embargo and, in exceptional cases, to impose an embargo, would be left to the discretion of the Board.

Mr. MAY (Permanent Central Opium Board) withdrew his suggestion.
The French representative's proposal (E/CN.7/L.33) as amended, was approved in principle.

Mr. KRISHNAMOORTHY (India) suggested the insertion of a new paragraph 3 reading as follows: "The decisions of the Board relative to section 26 shall be taken by an absolute majority of the whole number of the Board."

Mr. VAILLE (France), Mr. KRUYSSSE (Netherlands) and Mr. CHI-KWEI LIANG (China) supported that proposal.

Mr. WALKER (United Kingdom) said that he would abstain from voting on the Indian representative's proposal, but thought that if it were meant to apply to the whole of section 26 its adoption would be inconsistent with a previous decision taken by the Commission. The Commission had already recognized that the measures taken under section 26, paragraph 1 (a) - "Request for explanations", and paragraph 1 (c) - "Calling the attention of a Government to the matter", were to be distinguished from other measures to be taken under that section.

Mr. VAILLE (France) pointed out that article 19 of the 1925 Convention specified that the decisions of the Board relative to articles 24 and 26 of that Convention should be taken by an absolute majority of the whole number of the Board.

Mr. NIKOLIC (Yugoslavia) shared the opinion of the United Kingdom representative.

Mr. MAY (Permanent Central Opium Board) thought that it would be burdensome for the Board to have to take its decisions on every paragraph of section 26 by an absolute majority. The Board had never lacked a quorum in the past, and there had been very few cases in which its decisions had not been unanimous.

The CHAIRMAN put the Indian representative's proposal to the vote.
The proposal was adopted by 8 votes to 2, with 4 abstentions.

The CHAIRMAN pointed out that the present paragraph 3 of section 26 should be renumbered 4.

Paragraph 4, as at present drafted, was approved in principle.

Section 26, as amended, was approved in principle.

The meeting rose at 12.50 p.m.