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COMMISSION ON NARCOTIC DRUGS

Eighth Session

SUMMARY RECORD OF THE HUNDRED AND NINETY-SECOND MEETING

Held at Headquarters, New York
on Tuesday, 31 March 1953, at 2.30 p.m.

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4/Rev.1, 5, 5/Corr.1, 5/Add.1, 6; E/CN.7/L.25, 26, 27, 28)
(continued)

PRESENT:

<u>Chairman:</u>	Mr. RABASA	Mexico
<u>Rapporteur:</u>	Mr. NIKOLIC	Yugoslavia

PRESENT: (continued)

<u>Members:</u>	Mr. SHARMAN	Canada
	Mr. CHI-KWEI LIANG	China
	Mr. EZZAT	Egypt
	Mr. VAILLE	France
	Mr. KRISHNAMOORTHY	India
	Mr. ARDAIAN	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
	Mr. ANSLINGER	United States of America
<u>Observers:</u>	Mr. GIRETTI	Italy
	Mr. VAN MUYDEN	Switzerland
<u>Also present:</u>	Mr. MAY	Permanent Central Opium Board
<u>Representative of a specialized agency:</u>		
	Mr. WOLFF	World Health Organization (WHO)
<u>Secretariat:</u>	Mr. YATES	Acting Director, Division of Narcotic Drugs
	Mr. COX	Legal Department
	Mr. CELINSKI	Secretary of the Commission

THE PROPOSED SINGLE CONVENTION ON NARCOTIC DRUGS (E/CN.7/AC.3/3, 4/Rev.1, 5, 5/Corr.1, 5/Add.1, 6; E/CN.7/L.25, 26, 27, 28) (continued)

The Board: Organizational Provisions

Section 14 - Composition

The CHAIRMAN, in accordance with rule 60 of the rules of procedure, proposed that the Commission should vote first upon the joint proposal of the Indian and Netherlands representatives (E/CN.7/L.28). It was true that the Yugoslav proposal (E/CN.7/L.26) had been submitted earlier, but there was little substantive difference between the two and the joint proposal in fact completed the Yugoslav proposal.

Mr. VAILLE (France) explained that he would have to vote against the joint proposal, as it did not take the wishes of the WHO representative into account.

Mr. WALKER (United Kingdom) said that he would be obliged to vote against the proposal for the same reason and also because he could not agree that the Commission should nominate a member.

Mr. KRISHNAMURTHY (India) explained that the purpose of the suggestion in the joint proposal that two members should be selected from a list of four persons nominated by WHO, had been to give the Economic and Social Council a certain freedom of choice; a panel of six persons, however, had been considered too large.

Mr. ZONOV (Union of Soviet Socialist Republics) wished to know whether acceptance of the text proposed in the joint Indian and Netherlands proposal would mean that it would replace the present text of section 14 (2) of the draft single convention.

The CHAIRMAN, in reply, reminded the Commission that any decisions taken at the present stage related to policy and principle and the resulting texts would not necessarily be final. The drafting sub-committee would take them into account and submit a text for the Commission's further consideration.

He invited the Commission to vote on the joint proposal of the Indian and Netherlands representatives (E/CN.7/L.28).

The joint proposal was rejected by 8 votes to 4, with 2 abstentions.

The CHAIRMAN invited the Commission to vote on the French proposal (E/CN.7/L.27).

Mr. WALKER (United Kingdom) proposed the following amendments to the French proposal: (1) to add the words "in addition to the nine members mentioned", at the end of the proposed paragraph 2. He thought that text would to some extent meet the desire for a more flexible system; and (2) to delete the words "from a list of at least six persons nominated by the World Health Organization" at the end of the proposed paragraph 3.

That would relieve WHO of the obligation to produce a list of nominees, some of whom would be rejected, a procedure that seemed likely to deter some persons from allowing their names to be put forward.

Mr. VAILLE (France) accepted the United Kingdom amendments.

Mr. ANSLINGER (United States) said that he would be able to support the French proposal if paragraph 3 were amended to read as follows: "The Council shall select one of its members to act as observer at the meetings of the Board".

Mr. SHARMAN (Canada) supported the United States suggestion. He thought the election procedure should be left as it was. The main need was for close liaison between the Commission on Narcotic Drugs and the Board, which an observer, appointed for five years to provide continuity, would ensure.

Mr. ZONOV (Union of Soviet Socialist Republics) understood that the original draft text of paragraph 2, as contained in document E/CN.7/AC.3/3, was still before the Commission and proposed an amendment to it, the amended text to read as follows:

"The Council shall elect all the members from a list of persons nominated by the Members of the United Nations and by Parties which are not members of the United Nations."

The CHAIRMAN put the USSR proposal to the vote first.

The USSR proposal was rejected by 11 votes to 2, with 1 abstention.

After further drafting suggestions, the CHAIRMAN put to the vote the French proposal (E/CN.7/L.24) amended to read as follows:

"1. The Board shall consist of nine members and one observer. The observer shall be elected by the Commission from among the representatives of its members and shall sit without a vote.

"2. The Council shall elect seven members from a list of persons nominated by the Members of the United Nations and by Parties which are not members of the United Nations and two members from a list of at least three persons nominated by the World Health Organization."

Mr. VAILLE (France) asked that his amendment should be voted on in two parts.

The CHAIRMAN put paragraph 1 of the French proposal to the vote.

Paragraph 1 of the French proposal was adopted by 8 votes to 2, with 4 abstentions.

Mr. NIKOLIC (Yugoslavia) thought it was understood that an observer did not, in any case, have the right to vote.

Mr. WALKER (United Kingdom) reserved the right to comment on the drafting of the proposed text later. He agreed with the Yugoslav representative but pointed out, that, as the Chairman had stated, the Commission was at present only taking decisions of principle and not voting on a final text.

Mr. VAILLE (France) said that he was fully aware that the Commission was at present concerned with the principles of the draft single convention and that the texts it was considering were not final.

Mr. KRUYSSSE (Netherlands), explaining his vote, said that, as he understood the position, it was not possible for the Commission to elect a person from among its members, as the members of the Commission were representatives of States and not persons in their own right.

Mr. WOLFF (World Health Organization) stressed the fact that it would be difficult for WHO to ask expert pharmacologists, with special experience in narcotic drugs, to allow their names to be submitted to the Council in order that that body might select several from among them to sit on the International Drug Board, the others being rejected.

Mr. EZZAT (Egypt) agreed.

Mr. VAILLE (France) also understood the difficulty of WHO's position, but thought that reduction of the list to three names largely solved the problem. After further discussion, the CHAIRMAN put paragraph 2 of the French proposal to the vote.

Paragraph 2 of the French proposal was adopted by 10 votes to 2, with 1 abstention.

Mr. KRUYSSSE (Netherlands) thought that the procedure by which Members of the United Nations would make nominations to the Board might raise some difficulties and noted that no mention of any method of procedure was made in the text of the draft convention.

Mr. YATES (Secretariat) explained that it had not been thought necessary to mention procedural arrangements in the text. He outlined the procedure followed by the United Nations in similar cases arising out of other conventions.

Mr. MAY (Permanent Central Opium Board) said that, in referring to Section 14 (3) at the previous meeting, he had not intended to suggest a change in wording, but had merely thought that the attention of the Economic and Social Council should be called to the qualifications required by members of the International Drug Board.

Mrs. KOWALCZYK (Poland) proposed that paragraph 4 should be amended to include a phrase stating that there should not be more than one representative from any one country on the Board, and that members should be chosen from important producing and consuming countries.

Mr. VAILLE (France) said that paragraph 4 as drafted might be too liberally interpreted by the Economic and Social Council and therefore thought that the "equitable proportion" mentioned in the first line might be more clearly defined.

Mr. YATES (Secretariat), replying to a question by Mr. EZZAT (Egypt), said that the wording of paragraph 4 had been taken from the 1925 Convention and was presumably designed to be a little more flexible than the statement that members of the Board should be nationals of certain States. It would exclude expatriates who did not represent their country and would allow the appointment of persons who had strong connexions with a country although they were not nationals of it.

Mr. NIKOLIC (Yugoslavia) supported the proposal regarding the importance of including on the Board a definite proportion of properly qualified persons from producing, manufacturing and consuming countries. At present only one producing country was represented on the Permanent Central Opium Board and the Supervisory Body.

Mr. ARDALAN (Iran) thought that the persons mentioned in paragraph 4 should be nationals of the country they represented and not merely "connected with such countries."

Mr. VAILLE (France) could not support the Polish amendment because it would make it impossible for two highly competent persons of the same nationality to become members of the International Drug Board.

Mr. ZONOV (Union of Soviet Socialist Republics) said that as the Board would have only nine members, to be chosen from Member and non-member States, he did not feel there was any ground for the fear that more than one representative from a given country would be appointed to the Board.

Mr. YATES (Secretariat), replying to a question from Mr. KRISHNAMOORTHY (India), explained the procedure followed in the past in the election of members of the Permanent Central Opium Board. Following the submission, at the request of the Secretariat, of names by Member and non-member States, the Economic and Social Council usually appointed a small committee to examine the list of candidates and to make recommendations to the Council.

Mr. SHARMAN (Canada) said that, so far as he was aware, during the twenty-eight years of the Permanent Central Opium Board's existence, two nationals of the same State had never been represented on it.

Mr. WALKER (United Kingdom) agreed with the representative of the USSR that it was extremely unlikely that in practice more than one person of any one nationality would be elected to the Board but he did not think that the possibility should be formally excluded since as the representative of France had indicated that course might be desirable in exceptional circumstances. He therefore opposed the Polish amendment.

The CHAIRMAN put the Polish amendment to the vote.

The Polish amendment was rejected by 6 votes to 6, with 1 abstention.

Mr. ZONOV (Union of Soviet Socialist Republics) asked that section 14 as a whole should be put to the vote.

Mr. WALKER (United Kingdom) explained that the Commission would vote on the various sections of the draft Single Convention when the sub-committee had submitted the revised text.

Section 14 was approved in principle.

Section 15 - Terms of office

Mr. VAILLE (France) suggested that section 15 should be redrafted to agree with the wording of article 8 in the Partial Redraft of the Convention prepared by the Secretariat (E/CN.7/AC.3/6).

Section 15 was approved in principle.

Section 16 - Dismissal of members

Mr. SHARMAN (Canada) thought that section 16 should specifically refer to the dismissal of members for absence from sessions of the Board. The phrase "not to fulfil the conditions required for membership" was very vague.

Mr. MAY (Permanent Central Opium Board) drew the attention of the Commission to the comments referring to section 16 on page 90 of document E/CN.7/AC.3/5.

Mr. VAILLE (France) suggested that section 16 of the draft single convention might be redrafted to state that every member of the Board who, for a reason not recognized as valid by the Board, failed to attend at least one of its sessions in the course of a year, should be considered as having resigned and should be replaced in the shortest possible time in accordance with the conditions mentioned.

Mr. KRISHNAMOORTHY (India) wished to know how often the Board would be required to meet each year, and suggested that, if a member was absent from three successive sessions, he should be required to resign.

Mr. MAY (Permanent Central Opium Board) said that the Permanent Central Opium Board originally held four sessions a year, but had recently reduced that number to two a year. It would be somewhat embarrassing for the International Drug Board to have to decide from how many sessions a member could be absent before being asked to resign. If the Board were to meet twice a year, then perhaps a member might be asked to resign if he did not attend two consecutive sessions or a total of three sessions.

Mr. VAILLE (France), supporting the Indian representative's suggestion, pointed out that the work of the International Drug Board would be particularly heavy.

Replying to a question by Mr. KRISHNAMOORTHY (India), Mr. MAY (Permanent Central Opium Board) said that a member of the Board might very well be absent from several sessions on good grounds, such as illness, and might be perfectly willing and able to resume his work when he had recovered. However, if a member were absent from too many sessions his usefulness would be impaired regardless of whether or not he had good grounds for such absence.

Mr. WALKER (United Kingdom) thought that it would be unwise to draft section 16 in such a way that members of the Board would be encouraged to put in a minimum number of meetings in order to retain their membership. He suggested that the section should specify that a member would be asked to resign if he was absent from two successive sessions or a total of four sessions in all. If that provision was thought to be too severe, he suggested that the time-limit to be specified should be complete absence for one calendar year or absence from four sessions during the member's tenure of office.

In reply to Mr. NIKOLIC (Yugoslavia), Mr. MAY (Permanent Central Opium Board) said that in his years on the Board there had been only one case of prolonged absence of a member.

Mr. NIKOLIC (Yugoslavia) asked whether the United Kingdom proposal was intended to bring about the automatic dismissal of a member. If so, the last part of section 16, referring to a decision by the Council, would have to be re-drafted. He also wondered whether absence was to be the only ground for dismissal.

Mr. MAY (Permanent Central Opium Board) thought that section 16 should permit the Council automatically to fill vacancies caused by the absence of a member. While it was true that in the one case of prolonged absence he had mentioned the member had been prevented from attending, nevertheless the fact remained that the Board should be able to function properly.

The CHAIRMAN thought that the proposals before the Commission were designed to relate solely to absence of a member. The purpose of section 16 of the draft, however, was to provide for other contingencies where the final decision in respect of dismissal lay with the Economic and Social Council, the Board being entitled merely to make recommendations in such cases.

Mr. VAILLE (France) endorsed the Chairman's remarks, adding that section 16, containing the phrase "on the recommendation of the Board", would permit the Board to act if the need arose.

The other proposals before the Commission represented an attempt to formulate the new principle that a member should be automatically dismissed for prolonged absence from the Board.

Mr. KRUYSSSE (Netherlands) supported the United Kingdom proposal. He felt that the draft single convention should provide for dismissal in such cases.

Mr. EZZAT (Egypt) wondered whether in fact the Board had any administrative powers in respect of its members. If powers had been expressly given to the Board under the existing conventions - particularly in regard to dismissal - the Commission should not attempt to alter them in any way.

Mr. YATES (Secretariat) said that under the various conventions certain functions were definitely entrusted to the Board, but the power of appointment of members clearly lay with the Economic and Social Council. As the existing conventions contained no provisions similar to the United Kingdom

proposal, however, in the event of a prolonged absence of a member, the Board would have to refer the matter to the Economic and Social Council.

Mr. WALKER (United Kingdom) thought the answer to the question lay in the fact that the Board had requested powers in regard to dismissal.

The CHAIRMAN put to the vote the United Kingdom proposal that absence of a member from all sessions of the Board for one consecutive year or for four sessions during a single term of office should automatically result in dismissal.

The United Kingdom proposal was approved in principle.

Mr. KRUYSSSE (Netherlands) said that provision should also be made for the replacement of any members dismissed from the Board.

Mr. WALKER (United Kingdom) agreed and added that provision should be made for the rapid filling of all vacancies whatever their cause.

The CHAIRMAN proposed that in any case of the dismissal or prolonged absence of a member, the Economic and Social Council should be able immediately to fill the vacancy.

The proposal was approved in principle.

Section 17. Privileges, immunities, and remuneration

Mr. YATES (Secretariat) pointed out that section 9 was closely related to section 17 (1). Comments on the question of privileges and immunities, which was largely a legal matter, appeared in the partial Re-draft of the Single Convention (E/CN.7/AC.3/6), paragraph 51.

Mr. KRUYSSSE (Netherlands) drew attention to the footnote to paragraph 51 (E/CN.7/AC.3/6), in which the Legal Department advised that a list of privileges and immunities should be included in the draft single convention. That would seem to be the simplest and best solution. If the list formed an integral part of the proposed single convention, governments would know to precisely what the members of the Board were entitled and parties to the convention could not refuse to grant the Board any privilege or immunity enumerated therein. He therefore proposed that a list of privileges and immunities of the members of the Board should be included in the draft single convention.

Mr. WALKER (United Kingdom) thought it would be useful to hear the views of the Legal Department. There was a general Convention on Privileges and Immunities of the United Nations which was held to extend to organs with an affinity with the United Nations. Accordingly many countries had agreed that the benefits of the Convention extended to the members of the Board. The Convention had been in force for some time and legislation implementing it had been enacted in many countries. In view of the delicate nature of the question, he doubted whether Governments would be prepared to enact further legislation to deal with the proposed single convention unless they could be convinced that the specific case was not already covered by the Convention on Privileges and Immunities. The footnote to paragraph 51 of the Partial Re-draft of the Single Convention (E/CN.7/AC.3/6) implied that the Convention on Privileges and Immunities did in fact cover the Board.

The CHAIRMAN agreed with the United Kingdom representative's remarks.

Mr. COX (Secretariat) said there were two main points to be considered. The Legal Department had already expressed the view that a specific reference to the Convention on Privileges and Immunities would be preferable (E/CN.7/AC.3/6, page 18) but that it would also be useful to include a list of privileges and immunities in the proposed single convention. The question whether adequate conventional and legislative provision had already been made for members of the Board was a separate issue.

The wording "such privileges and immunities as are necessary for the exercise of their functions" (E/CN.7/AC.3/6, paragraph 51) was taken from the Charter and was therefore binding on members. As that provision had not been considered sufficient, Article 105 of the Charter had been drafted to provide further guidance. A mere repetition of the phrase "such privileges and immunities as are necessary for the exercise of their functions" might likewise prove inadequate for the purposes of the draft single convention. It might be better to go into detail in order to avoid difficulties and possible legal disputes.

The Convention on Privileges and Immunities could not be relied on fully to protect the members of the Board. First, all Members of the United Nations had not as yet acceded to the Convention. Secondly, non-Member States could not adhere to the Convention and accordingly were not bound by it. Thirdly, there was the question of the precise status of members of the Board. Some provision should perhaps be made for their status vis-à-vis their own governments, inasmuch as they were not necessarily representatives of their governments nor experts within the meaning of the Convention.

The difficulties could be overcome largely through drafting changes. For example, a reference could be made to the Convention on Privileges and Immunities and an additional clause could be inserted covering the status of members of the Board if they were not representatives of their governments.

Mr. WALKER (United Kingdom) thought the issue of such delicacy that it might be better for it to be discussed at a diplomatic conference. Unquestionably, the Board should be given proper protection and the only problem was how that should be done.

The matter should be settled in such a way as to permit governments to take advantage of existing legislation on privileges and immunities.

Mr. MAY (Permanent Central Opium Board) said that the Board and the Supervisory Body were very desirous of securing certain privileges and immunities. Under the League of Nations the Board had been in the invidious position of not having the same privileges and immunities granted to its Secretariat because technically it had not been an organ of the League nor its members officers of that organization. Under the United Nations it found itself in the same position. He had no objection to the Commission postponing the discussion of the text of section 17, but he urged that a decision in principle should be taken.

The CHAIRMAN pointed out that the Board was an international body exercising certain powers under international instruments and that accordingly its status was similar to that of other organs functioning under the United Nations. He too thought that the Commission should take a decision in principle on the

matter. At its previous session the members had recognized the principle that the Commission should have privileges and immunities similar to those granted to members of the diplomatic corps, although it had not gone into details. The Commission could appropriately deal with the question of privileges and immunities of the Board in the same manner. He proposed that section 17 should not be amended and that the Commission should accept the text in principle, leaving the details to be settled later.

The proposal was approved in principle.

Section 17 (2)

There were no comments on section 17.

Section 13 - Rules of Procedure

Mr. ARDALAN (Iran) proposed that provision should be made for the Board to meet at least twice a year.

Mr. MAY (Permanent Central Opium Board) said that the Board had been discussing the question of how many sessions a year were required for some time. The conventions put certain duties on the Board, including the untiring surveillance of the narcotics trade. In the beginning the Board had met four times a year, but later, for reasons of economy and other reasons, the number of sessions had been reduced to two or three a year. Two sessions represented an absolute minimum.

Mr. VAILLE (France) endorsed the Iranian proposal. The members of the Board were the best judges of how many sessions they required and should not be limited in their work by efforts to achieve economy.

Mr. MAY (Permanent Central Opium Board) pointed out that under the 1943 Protocol the Board's work had increased considerably. If the Protocol were to be discussed at the Opium Conference in May and June, that might further increase its workload.

The CHAIRMAN put the Iranian proposal to the vote.

The Iranian proposal was approved in principle.

Section 19 - Delegation of Authority

Mr. NIKOLIC (Yugoslavia) thought that, if the Board could adopt its own rules of procedure, it could unquestionably exercise the powers laid down in section 19. Moreover, as section 19 was presented as a separate text, it might convey the impression that it contained provision for powers other than those set out in section 18. The section served no useful purpose.

Mr. MAY (Permanent Central Opium Board) said that in practice the Board had had no difficulty in making procedural arrangements. Section 19 was redundant.

Mr. WALKER (United Kingdom) proposed that the section should be deleted.

Mr. VAILLE (France) thought section 19 served a useful purpose. A broad provision had been approved for section 10 and he thought the Commission should likewise make express provision in section 19 for maximum flexibility of action in the Board.

Mr. KRUYSSSE (Netherlands) pointed out that comparison of section 19 with section 10 might be misleading, as section 10 referred to the Commission and not to the Board. Save in a few cases, it would be dangerous to allow the Board to delegate some of its powers to a committee or its secretariat. Certain powers would have to be given to committees, but that could be provided for in the Board's rules of procedure. Section 19 should be deleted.

Mr. NIKOLIC (Yugoslavia) also felt that a comparison of section 19 with section 10 was inappropriate. The Board had been granted wide powers and should not be permitted to delegate them further. He asked that section 19 should be put to the vote.

Mr. VAILLE (France) saw no objection to section 19. There were unquestionably certain cases in which the Board should be permitted to delegate its powers.

Mr. WALKER (United Kingdom) thought that fundamentally the Commission was agreed that the Board should have the utmost freedom to carry out its work, but that the difficulty arose out of variations in national practice. In the United Kingdom after full powers were granted to a body there was usually very little said about how they should be exercised. The United Kingdom therefore would tend to interpret section 19 as restricting rather than enlarging the Board's powers. In his Government's view the Board would bear full responsibility for the actions of its duly authorized representatives or servants as well as for its own.

The meeting rose at 5.35 p.m.