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COMMISSION ON NARCOTIC DRUGS

Seventh Session

SUMMARY RECORD OF THE HUNDRED AND SIXTY-SEVENTH MEETING

Held at Headquarters, New York,
on Wednesday, 23 April 1952, at 10.30 a.m.

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E/CN.7/AC.3/2, E/CN.7/AC.3/3/Rev.2, E/CN.7/AC.3/4, E/CN.7/AC.3/5,
E/CN.7/AC.3/L.3) (continued)

Sections 8, 9, 10 and 11

<u>Chairman:</u>	Mr. RABASA	Mexico
<u>Rapporteur:</u>	Mr. NIKOLIC	Yugoslavia
<u>Members:</u>	Mr. SHARMAN	Canada
	Mr. HSIA	China
	Mr. MAHMOUD	Egypt
	Mr. VAILLE	France
	Mr. KRISHNAMCORTHY	India
	Mr. ABDOH	Iran
	Mr. KRUYSSSE	Netherlands
	Mr. AVALOS	Peru

Members: (continued)

Mrs. MELCHIOR	Poland
Mr. OR	Turkey
Mr. ZAKUSOV	Union of Soviet Socialist Republics
Mr. WALKER	United Kingdom of Great Britain and Northern Ireland
Mr. TENNYSON	United States of America

Observers:

Mr. DOSI)	Italy
Mr. TANCREDI)	

Also present:

Mr. MAY	Permanent Central Opium Board
Dr. WOLFF	World Health Organization (WHO)
Mr. MARABUTO	International Criminal Police Commission

Secretariat:

Mr. STEINIG	Director, Division of Narcotic Drugs
Mr. LANDE	Division of Narcotic Drugs
Mr. BOLTON	Secretary of the Commission

THE PROPOSED SINGLE CONVENTION ON NARCOTIC DRUGS (E/CN.7/AC.3/1, E/CN.7/AC.3/2, E/CN.7/AC.3/3/Rev.2, E/CN.7/AC.3/4, E/CN.7/AC.3/5, E/CN.7/AC.3/L.3) (continued)

Sections 8, 9, 10 and 11

Section 8

The CHAIRMAN said that in the light of the discussion at the previous meeting it appeared that the Commission felt that the present text of section 8 was unsatisfactory and should be replaced. The United States had accordingly proposed, following its observations in paragraph 447 of the Annotated Compilation, that: (1) the International Narcotics Commission should be created under the provisions of the United Nations Charter; (2) the functions of the Commission should be enumerated in the manner adopted in section 13 to avoid confusion with the functions of the Board.

The proposed provisions could be incorporated in a single international instrument or in two separate instruments.

He invited members of the Commission to comment on the United States proposal.

Mr. KRUYSSSE (Netherlands) supported the proposal. The International Commission should be a United Nations Commission but the Organization should not be placed under an obligation to establish the Commission if it was not disposed to do so. Some other procedure for its establishment should therefore be devised. In that connexion, the Drafting Committee had prepared a text which he would submit to the Commission at a later stage.

The CHAIRMAN said that in the absence of further comment the United States proposal for the establishment of the International Commission under the provisions of the United Nations Charter, its size and composition to be determined in the same manner as the present Commission on Narcotic Drugs, would be regarded as adopted. The Drafting Committee would submit a new text of section 8 drafted on that basis, taking into account the observations of the representative of the Netherlands.

Mr. KRUYSSSE (Netherlands) said that the Drafting Committee had two new texts for section 8, one submitted by France and the other by the Netherlands. The former provided that the Commission on Narcotic Drugs established by the Economic and Social Council was entrusted, in addition to its present functions, with the functions provided under section 13 and that if the Economic and Social Council should fail to provide for the retention of the Commission, the parties agreed that a Commission established on the same lines as the present Commission would replace the latter in order to fulfil without interruption the duties devolving upon it under the Convention.

The Netherlands text, which was an amendment to the French text, stated the principle that the International Commission, like the present Commission on Narcotic Drugs, would be a Commission of the Economic and Social Council. However, since the Council could not be compelled to agree that its own subsidiary organ should become the Commission established under the convention, the Netherlands

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text provided that if the Economic and Social Council did not establish the Commission or if it felt that it was not in a position to determine its functions, it would decide as to the composition of the International Narcotics Commission. The latter would consist of fifteen members including representatives of producing, manufacturing and importing countries and representatives of countries in which addiction was a particularly serious problem. Finally, the Netherlands text reproduced the present provisions of section 8 of the draft convention.

The CHAIRMAN, before opening the discussion on texts to replace section 8 noted that one point appeared to be established; the International Narcotics Commission, like the present Commission, should be created under the provisions of the United Nations Charter and the question of its establishment should be left entirely to the discretion of the Economic and Social Council. Consequently, the composition of the International Commission should not be laid down in the draft convention which should merely define its functions and powers.

That being the case, he suggested that the present text of section 8 should be replaced by the following: "The Commission shall be created by the Economic and Social Council, which shall determine its composition, under the provisions of the United Nations Charter".

Mr. VAILLE (France) supported the Chairman's proposal. Some provision should nevertheless be made to cover the situation which would arise if the Council did not provide for the retention of the Commission or abolished it. A provision permitting the establishment of the International Commission in any event should therefore be added to the text proposed by the Chairman.

Mr. KRISHNAMOORTHY (India) thought that there might be a contradiction between the fact that section 8 would include a general provision regarding the establishment of a commission under the provisions of the United Nations Charter and the fact that the articles following would determine clearly and in detail the functions, powers and composition of the Commission. He accordingly supported the French proposal to include a provision in section 8 which would ensure the existence of the International Commission in any event.

/Mr. ZAKUSOV

Mr. ZAKUSOV (Union of Soviet Socialist Republics) asked the Chairman why he considered it necessary to lay down the Commission's powers in the convention in view of his earlier statement that the question of the establishment of the Commission would not be dealt with in the convention.

The CHAIRMAN recalled that he had stated earlier that the establishment and existence of the Commission and the question of its functions and powers were two entirely different matters. Normally it would serve no purpose to establish an organ without at the same time determining its powers. In the case in point, however, the powers of the Commission could be determined in the convention while the question of its establishment and continuity of functions could be left subject to the provisions of the Charter.

Speaking as the representative of Mexico, he supported the French proposal which made provision for the situation which would arise if the Economic and Social Council did not take the necessary steps to maintain the present Commission or decided to abolish it. It should be noted, however, that as long as an international instrument establishing an organ remained in force, that organ continued to exist.

He called for comment on the principle underlying the text which he had proposed should be substituted for section 8.

Mr. KRUYSSSE (Netherlands) was not certain that it was necessary to delete the present section 8 and to insert the text proposed by the representative of Mexico.

Mr. VAILLE (France) wondered whether the Commission felt that the convention should, as proposed by the Mexican representative, list all the obligations which would devolve upon the International Narcotics Commission, or merely enumerate the new obligations which would be imposed upon the Commission in virtue of the convention, as suggested by the representative of the United Kingdom. Although the Mexican representative's proposal was clear, it did not solve the juridical problem arising out of the application of the convention. On the one hand, the Economic and Social Council would be bound by a convention to which non-members of the United Nations would be parties and on the other, non-members of the United Nations would assume commitments towards the Economic and Social Council.

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In order to remove any misgivings that might be felt by States called upon to sign the convention, it would be useful to include a special provision, even if only as a formal clause, to cover the situation which would arise, if, as was most unlikely, the Council did not establish the International Narcotics Commission.

The CHAIRMAN, answering a question by Mr. KRISHNAMOORTHY (India) regarding the composition of the International Narcotics Commission, said that the Commission would consider the matter when it took up sections 9 and 10. With regard to the establishment of the International Narcotics Commission, the majority appeared to be in favour of maintaining the status quo. It rested with the Economic and Social Council to establish the Commission and no provision regarding its establishment would be embodied in the convention. Section 8 should merely recognize the fact that the International Narcotics Commission was established by the Council. The Drafting Committee would amend the text of section 8 on that basis and would, in accordance with the wish expressed by the French delegation, add a provision to cover the situation which would arise if the Council did not establish the Commission.

Mr. VAILLE (France) felt that such a provision would justify the heading of section 8, "Continuity of Functions".

Mr. ABDOL (Iran) also supported the Mexican representative's proposal but considered that the Commission might merely recommend that the Economic and Social Council should establish the International Narcotic Commission. In view of the important functions the Commission was to fulfil, the Council would undoubtedly accept the recommendation.

Section 9

Mr. LANDE (Secretariat) explained that the Secretariat had felt that the convention should include a special section defining the privileges and immunities to be enjoyed by members of the International Narcotic Commission. The position was that the privileges and immunities laid down in the Charter referred only to Member States of the United Nations. The Economic and Social Council might, however, elect non-member States to the Commission and the

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Commission might meet in the territory of a State which was a party to the convention but not a member of the United Nations. Section 9 took those two possibilities into account.

Mr. ABDON (Iran) considered that section 9 would be justified only if the International Narcotics Commission were an independent body. It was, however, the view of the majority that the Commission should remain under the authority of the Economic and Social Council and consequently a State that was not a member of the United Nations could not be represented on the Commission. Similarly there was no possibility of the Commission's sitting in the territory of a non-member State, other than Switzerland, which had already concluded a convention on privileges and immunities with the United Nations. Mr. Lande's arguments were therefore not valid and section 9 should, he thought, be deleted. However, he was ready to accept the majority opinion.

Mr. VAILLE (France) favoured the maintenance of section 9 but, like the representative of Iran, he was ready to bow to the majority.

The CHAIRMAN thought that it was necessary to retain section 9, which defined the diplomatic status of representatives of States not members of the United Nations which might be called upon to serve on the International Narcotics Commission.

Mr. WALKER (United Kingdom) said that his Government was giving the question of privileges and immunities their most careful attention; the United Kingdom delegation therefore reserved its position on this section.

Mr. KRUYSSSE (Netherlands) also thought that the privileges and immunities which would be granted to members of the International Narcotics Commission should be enumerated in the body of the convention.

The CHAIRMAN noted that the United Kingdom and the Netherlands had accepted the provisions of the Charter regarding privileges and immunities without reservation. Their objections therefore related solely to the text proposed for section 9.

The meeting was suspended at 12 noon and was resumed at 12.25 p.m.

/The CHAIRMAN

The CHAIRMAN said that the majority appeared to be in favour of the principle of including a section on the privileges and immunities of members of the International Narcotics Commission in the convention. The best course would be to replace the present text of section 9 by a text to be produced by the Drafting Committee adapting Article 105, paragraph 2, of the Charter to the Commission's special needs.

Sections 10 and 11

Mr. ABDON (Iran) recalled that the Commission had just decided that the International Narcotics Commission would be a subsidiary organ of the Economic and Social Council. Accordingly, the Commission's rules of procedure would be those prescribed by the Council for its functional commissions. It was therefore unnecessary, and even illogical, to include provisions intended, like sections 10 and 11, to govern the proceedings of the International Narcotics Commission in the text of the convention. He therefore proposed the deletion of sections 10 and 11.

Mr. VAILLE (France) supported the proposal. Deletion of section 10 would have the further advantage of preventing any confusion between the committees referred to in that section and the International Narcotics Control Board. With regard to section 11, it was true that the rules of procedure of the functional commissions did not provide any special procedure for voting on urgent matters, but votes of that nature could be taken on secondary questions only, as important questions would obviously require a meeting of the Commission. Section 11 should therefore be deleted.

Mr. WALKER (United Kingdom) recognized that the rules of procedure authorized the commissions to set up committees. However, the powers granted to those committees were very limited since the rules of procedure merely indicated that the commissions could refer any questions on the agenda to them "for study and report". The International Narcotics Commission might, however, be called upon, either in the interests of efficiency or for reasons of economy, to which the United Kingdom Government attached great importance, to delegate part of its functions to a committee. He agreed with the representative of Iran that the Commission must not give the impression that it was anxious to amend the rules of

procedure in any way, but thought that it might be wise to include a clause enabling the International Narcotics Commission to set up a committee to which it could delegate part of the functions it exercised under the Convention. The duties and functions of that committee would have to be defined in the Convention.

With regard to section 11, he noted that in certain cases the Commission might not be in a position to hold a session and provision should be made to enable it to meet that eventuality. In any event sections 10 and 11 merited closer study.

Mr. KRUYSSSE (Netherlands) also thought that even if the rules of procedure of the functional commissions were applicable to the International Narcotics Commission, it was none the less necessary to define more precisely what functions the Commission could delegate to a committee. Section 11, on the other hand, seemed to him superfluous; the representatives of States members of the Commission were generally appointed for one session only. It was therefore the Governments themselves which would have to reply to any communication addressed to them between sessions, which might lead to considerable delays and was a further reason for deleting section 11.

Mr. TENNYSON (United States of America) was in favour of deleting sections 10 and 11. As a subsidiary organ of the Council, the Commission could only address recommendations to its parent body. Voting by letter might be admissible for ordinary questions, but it could not be used for more important matters.

Mr. SHARMAN (Canada) entirely shared that view. From his own experience he knew that in some cases members could not state an opinion before consulting their colleagues; the sum of individual votes which would be obtained under the procedure proposed in section 11 would often be different from the collective vote which the various representatives would have given in the Commission after consultation. Use of the procedure suggested might affect the results; he was therefore in favour of the deletion of section 11.

/Mr. ABDON

Mr. ABDON (Iran) noted that the discussion had shown that from some points of view it might be useful to establish special rules of procedure for the International Narcotics Commission. On the other hand, as it was to be a functional commission of the Council, the rules of procedure drawn up for such commissions would automatically apply to it. To meet the difficulty, the Commission could either recommend that the Council should leave it to the International Narcotics Commission to establish its own rules of procedure or could draw up specific provisions which it would recommend the Council to incorporate in the Commission's rules of procedure.

Mr. STEINIG (Director of the Narcotics Division) pointed out that in the case in point, the difficulty arose from the special nature of the International Narcotics Commission and its dual functions; it was often difficult to remember that it had dual functions and to draw a definite line between its Charter obligations as an organ of the Economic and Social Council and its obligations under the conventions on narcotic drugs. Section 10 was thus far from being as purely procedural as it might seem at first glance. On the contrary it was a vital section dealing with the delegation of the functions assumed by the International Narcotics Commission under the Convention.

While it was true that as an organ of the Council the Commission made recommendations to its parent body, it should not be forgotten that, under international treaties, it also took decisions which were binding on the Parties to conventions having binding force. It was in fact a matter of international administration. The rules of procedure of the International Narcotics Commission should therefore be considered in the light of the rights, duties and functions conferred on the Commission by international treaties rather than in the light of the terms of reference which the Council assigned to its functional commissions. In that respect, it was of primary importance that when the Commission was unable to meet it should be able to delegate its functions to a committee. To give the Commission such powers would result in a considerable saving of money, time and labour. He noted that in its comments on the subject, the Canadian Government had accepted the principle, since it had stated

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that "the provision concerning delegation of the powers of the Commission should, in principle, follow the lines of the present draft" (E/CN.7/AC.3/5, page 17).

Section 11 could be deleted. The procedure envisaged for amending the Convention was sufficiently flexible to enable the International Narcotics Commission to reinsert a similar article if that should prove necessary in the light of experience.

Mr. SHARMAN (Canada) pointed out that in the letter explaining the comments to which Mr. Steinig had referred, the Canadian Government had explained that the comments were merely preliminary and that it might subsequently wish to make further comments in the light of the views of other Governments and the discussion which would take place in the Commission (E/CN.7/AC.3/5, page 16). That explanation was the more necessary because the Canadian Government had been the first to submit its comments and it had not been able to consult other Governments on the matter. The Canadian delegation's present position did not therefore represent any reversal of the attitude previously adopted by its Government.

In reply to a question by Mr. VAILLE (France), who pointed out that the difficulties arising out of section 10 might be terminological, Mr. WALKER (United Kingdom) recognized that the rules of procedure of the functional Commissions (rule 66) left the Commissions some latitude in defining the composition and functions of their sub-commissions, although other rules, in particular rule 67, limited the Commissions' freedom in that respect. He would welcome further elucidation, in particular, he would like to know what practical considerations would justify the adoption of a provision such as that contained in section 10.

Mr. NIKOLIC (Yugoslavia) said that in the light of Mr. Steinig's explanations, he was convinced that section 10 must be retained. On the other hand, section 11 served no useful purpose.

/Mr. OR

Mr. OR (Turkey) considered that, for the reasons explained by various delegations, section 10 should be retained and section 11 deleted.

Mr. KRISHNAMOORTHY (India) thought that in view of Mr. Steinig's remarks regarding the dual competence of the International Narcotics Commission, section 10 could not be deleted. Section 11, on the contrary, should be deleted. He recalled the arguments advanced by the Netherlands representative.

The CHAIRMAN invited the Commission to vote on the retention of section 10, in principle, on the understanding that the text itself would be amended by the Drafting Committee.

The Commission decided by 7 votes to 2, with 4 abstentions, to retain section 10, subject to the conditions and reservations indicated by the Chairman.

Mr. SHARMAN (Canada) explained that he had voted in favour of section 10 in principle, but that he fully reserved his position with regard to the final text of the section.

Mr. WALKER (United Kingdom), Mr. KRISHNAMOORTHY (India) and Mr. NIKOLIC (Yugoslavia) made the same reservations.

Mr. HSIA (China) said that he had abstained from voting because he felt that the text of section 10 was not sufficiently clear: there was no indication whether the committee concerned would function during sessions of the Commission (in which case such a provision was out of place in the convention) or whether it would meet between sessions of the Commission.

The meeting rose at 1.05 p.m.