

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Capitol, Havana, Cuba

Monday, 22 December 1947 at 10.30 a.m.

Chairmen: Mr. Erik COLBAN (Norway)

Mr. KARMARKAR (India) pointed to an error in the summary record of his statement at the Committee's thirteenth meeting (document E/CONF.2/C.6/SR.13, page 4). What he actually had said, was: "The question of the designation of India as one of the states entitled to reserved seats on the Executive Board in Alternative A of the Draft Charter had been decided after partition." He had not made the second sentence of the statement attributed to him.

CONTINUATION OF DISCUSSION OF ARTICLE 81

Mr. COUILLARD (Canada) stated his country's position with regard to Article 81 and more specifically its relation to Articles 90 and 91. He had always understood that under Article 17, paragraph 1, tariff negotiations were mandatory. The fears of some countries, however, that under Article 17, paragraph 2, powerful countries might force substantial tariff reductions on weaker ones, and that in the case of refusal, the latter would be kept from participation in the Organization, were not justified in the light of the experience at Geneva. Under Article 81 as drafted by the Preparatory Committee, during the first few years the Tariff Committee composed of members that had complied with the provisions of Article 17, would act independently of the Conference. He suggested that a provision might be inserted in Article 81 saying that the Tariff Committee would be superseded when its membership became equal to that of the Organization.

Mr. KING (China) explained that two important issues were involved: (1) the composition of the Tariff Committee, and (2) its status, functions and powers. It was reasonable to confine membership at present to the contracting parties to the General Agreement. In case, however, the Tariff Committee's decisions affected the interests of a member which was not a member of the Tariff Committee, the latter should either have an opportunity to be heard by the Tariff Committee or the decisions of the Committee should be subject to review. It would be most undesirable to include, in the Charter,

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an article connoting permanent exclusiveness of the Tariff Committee since that would be a constant reminder that some Members of the Organization were not prepared to carry out their obligations under Article 17. He therefore suggested that the Committee might revert to the draft contained in the Report of the First Session of the Preparatory Committee, which established an interim Tariff Committee. The first paragraph of Article 81 would then read: "There shall be an Interim Tariff Committee which shall act temporarily on behalf of the Organization in initiating the negotiations provided for under paragraph 1 of Article 17 and in the making of recommendations and determinations pursuant to paragraph 2 of Article 17".

As regards the question of membership of the Tariff Committee, he agreed that membership should be confined to the contracting parties to the General Agreement, but felt that a link was necessary between the Tariff Committee and the Conference. He proposed the following text for paragraph 2: "The Members of the Tariff Committee shall consist of those contracting parties to the General Agreement on Tariffs and Trade referred to in Article 17, paragraph 1 (a) which are Members of the Organization. The membership shall be confirmed by the Conference. When the number of Members of the Tariff Committee shall constitute two-thirds of the total number of Members of the Organization, the Tariff Committee shall terminate, and its functions shall be conferred on the Conference." Thus, at first, only the contracting parties to the General Agreement would be members of the Tariff Committee, and then gradually the membership of the Tariff Committee would increase and eventually merge with that of the Conference. If his proposal were accepted, the phrase in Article 74, paragraph 1: "Subject to the provisions of Article 81" might be deleted in Article 90, paragraph 3, the following clause inserted: "Any decision or determination of the Interim Tariff Committee may likewise be reviewed by the Conference."

Referring to the statement by the representative of the Netherlands at the fourteenth meeting, document (E/CONF.2/C.6/SR.14, page 5, sentence 2) he explained that paragraph 4 of Article 91 solved the problem.

Mr. PARANAGUA (Brazil) thought that the discussion of the question of the Tariff Committee needed further clarification. Article 74, paragraph 1, gave to the Conference sovereign authority to determine the policies of the Organization. A small sentence of the same Article, on the other hand, assigned independent functions to the Tariff Committee. All questions falling within the scope of the Tariff Committee were excluded from the competence of the Conference. That meant that the Conference could not intervene in the recommendations and decisions of the Tariff Committee. As regards membership of the Tariff Committee, Article 81, paragraph 2, provided  
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that the Tariff Committee should consist of all Members of the Organization which pursuant to paragraph 1 (d) of Article 17 became contracting parties to the General Agreement. Since Article 17 of the Draft Charter obliged Members of the Organization to negotiate agreements, the membership of the Tariff Committee would eventually be equal to that of the Organization. Thus a new and unique inter-governmental organization would develop, theoretically subordinate to the Trade Organization, but practically independent, since no organ of the Trade Organization could change its recommendations or decisions. The United States State Department Bulletin of 26 October 1947, contained the same conclusion.

The autonomous Tariff Committee was the legitimate successor of the "Interim Trade Committee" of the London Report (Article 67) and of the nameless committee frequently referred to as the CONTRACTING PARTIES in the General Agreement on Tariffs and Trade of Geneva (Article II, paragraph 6 (a), Article XXV and Article XXIX, paragraph 2 (b)). That body had the precise function of supervising the implementation of the General Agreements on Tariffs and Trade. Although in principle no weighted vote was provided, Article XXV, paragraph 5 (a) of the General Agreement determined that the contracting parties might define by a two-thirds vote certain categories of exceptional circumstances to which other voting requirements should apply for the waiver of obligations. In reply to the argument that the United States delegation and other supporters of the weighted vote in the Conference had agreed to the "one country-one vote" formula, he raised the question whether there would ever be enough votes at the Havana Conference to adopt weighted voting in the Tariff Committee which, after all, according to the Draft Charter, would be similar to an inter-governmental agency of a special autonomous character.

If Article 74, paragraph 1 and Article 81 of the Draft Charter were modified in Havana, then according to the proviso of Article XXIX, paragraph 2 of the General Agreement giving the contracting parties the power to consider such modifications, it would be impossible to bring the General Agreement into force. Article XXIX of the General Agreement gave to each contracting party the right of veto regarding any modification of the Draft Charter incorporated in the General Agreement, which might be made in Havana. Thus the question of modification, in Havana, of the Draft Charter, as set forth in the General Agreement, might lead to the extraordinary situation that the Charter, adopted by sixty nations in Havana could not prevail over the Geneva Draft if one of the contracting parties of the General Agreement had exercised its right of veto. Thus, countries negotiating agreements under Article 17, and adhering to the General Agreement, would get the provisions  
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of the Geneva Charter and not of the Havana Charter which they had adopted.

Mr. FORTHOMME (Belgium) reserved the right to make certain observations later. Having participated in the drafting of the General Agreement he felt that the discussion showed a misinterpretation of the text of the Agreement and of the intentions of the authors of the Report of the First Session of the Preparatory Committee. As regards the Chinese proposal to revert to the expression "Interim Tariff Committee", he pointed out that the Report, page 26, specified that the Interim Tariff Committee, would exist and start operations long before the coming into being of the Organization. Therefore the Tariff Committee was called an interim body; it was provided, that once the Organization was constituted, the Interim Committee would transfer its functions to the Organization. That did not exclude the possibility of the creation of a Tariff Committee at the constituent, or some later session of the Conference.

In reply to the representative of Brazil with regard to the question of voting, he remarked that Article XXV, paragraph 5 (a) of the General Agreement on Tariffs and Trade was based on Article 74, paragraph 3 of the Draft Charter. He referred to the recent examination in this Committee of Article 74, paragraph 3 and recalled that the question of weighted voting was not involved in that connection; on the contrary, what was considered was the establishment of certain categories of exceptions to which simple majority vote would apply. Article XXV, paragraph 5 (a) of the General Agreement pursued the same purpose as the provisions of Article 74, paragraph 3 (a) of the Draft Charter. In connection with the question of veto, raised by the representative of Brazil, he noted that he had taken active part in the discussion in Geneva which had been based on the assumption that there would be no automatic substitution of General Agreement clauses by the Charter. But finally, in order to avoid the impression that the Geneva text was to be imposed on the Havana Conference, provision was made for automatic substitution of the Geneva Text by the Havana text. It should be considered, however, that the contracting parties to the General Agreement had made tariff concessions on the assumption that the Geneva text would be accepted in Havana. Changes in the Geneva Charter might make these concessions impossible. Therefore, it had been necessary to make provision that with automatic substitution of the Charter for the Agreement, countries should have an opportunity to lodge complaints. A question of negotiation, not of veto, was involved. In case of disagreement - since a few countries could not prevent the adoption of the Havana Charter - the only remaining possibility would be for those countries to withdraw from the General Agreement and the Charter.

/Mr. STINEBOWER

Mr. STINEBOWER (United States) agreed with the representative of Belgium. There was no question of blocking decisions at Havana, but if certain members agreed to apply certain provisions among themselves in addition to the provisions of the Charter, such agreement had no binding effect on the rest of the Members.

Mr. FAWCETT (United Kingdom) agreed with the Belgian and United States representatives. His delegation's former stand on weighted voting did not extend to the Tariff Committee.

Mr. SCHMITT (New Zealand) supported the Geneva text of paragraphs 1 and 2 of Article 81.

The CHAIRMAN closed the discussion of the question and referred to a sub-committee consisting of Brazil, Canada, China, Cuba, Czechoslovakia, Egypt, France, Italy, Mexico, Netherlands, Peru, Philippines, United Kingdom, United States of America.

The sub-committee should establish liaison with the Chairman of the Third Committee in view of the connection between Articles 17 and 81; the sub-committee might form a small legal group if necessary.

#### DISCUSSION OF ARTICLE 82

##### Paragraph 1

Mr. MACHADO (Cuba), suggested that in order to avoid rivalry between the Director-General and the Executive Board, the Director-General might be appointed by the Executive Board with the approval of the Conference. In case of vacancy, the Executive Board could appoint a substitute whose appointment would be confirmed by mail by the Members.

Mr. PARANAGUA (Brazil) did not see much difference between the original text and the Cuban proposal. He preferred the present draft.

Mr. ENIEZAM (Iran) agreed that the paragraph should be maintained since it might be embarrassing should a candidate appointed by the Executive Board, be rejected by the Conference.

Mr. GAZDER (Pakistan) thought it might be desirable to require the Executive Board to submit more than one name so that the Conference would not be placed in a position where it might have to approve its only choice; and Mr. MacCARTHY (Ireland) supported the draft text of paragraph 1 which was then approved on first reading.

##### Paragraphs 2 and 3

Approved on first reading.

#### DISCUSSION OF ARTICLE 83

At the suggestion of the Chairman, Mr. FEDRANO (Argentina) and Mr. ALAYZA (Peru) agreed to combine their amendments to Article 83.

/Mr. MACHADO

Mr. MACHADO (Cuba) supported the Argentine-Peru amendment. It was necessary to be careful not to create a "dictator-general" instead of a Director-General.

Mr. FEDRANO (Argentina) believed that the appointment of the Deputy Directors-General and determination of their duties and responsibilities should be left to the Executive Board, rather than to the decision of one single man.

Mr. STINEBOWER (United States) thought that the provision in the present text, that the Deputy Directors-General would be appointed in accordance with regulations approved by the Conference, left sufficient control to the Conference. Since the Deputy Directors-General were members of the staff responsible to the Director-General, the appointment should depend on him.

Otherwise, owing their position to the Executive Board or the Conference they would, in the case of a difference of opinion, regard themselves responsible to the body which had appointed them and an intolerable situation would arise. He called attention to the fact that no provisions had been made in the United Nations Charter, or in that of the Food and Agriculture Organization for the appointment of Deputy Director-General who had assumed to be part of the staff appointed by the Director-General.

The CHAIRMAN recalled that in the League of Nations' long existence he had never noted any difficulties or complaints regarding the Secretary-General's appointment of his staff, including the Under-Secretaries; he had had, of course, to submit their names to the Council and his budget to the Assembly which thus had retained ample control.

Mr. FAWCETT (United Kingdom) opposed the amendment for the same reasons as those given by the United States representative. He quoted Article 101 of the United Nations Charter, which spoke only of the Secretary-General appointing his staff under regulations established by the General Assembly.

Mr. COUILLARD (Canada) felt that if a man could be sufficiently trusted as the chief administrative officer of the Organization, then he should also be trusted with the appointment of his entire staff. A clash of personalities might develop if the Board or the Conference appointed his deputies.

Mr. PALTHEY (France) supported the present text and the Article 78 sufficiently clarified the Board's functions. The Board as well as the Director-General had more or less permanent functions. He felt that the Director-General should have the right to select his principal collaborators  
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but he felt sure that he would not appoint his Deputies without first consulting with the Conference or the Board in view of the political importance of their positions.

Mr. MacCARTHY (Ireland) was of the opinion that the power to appoint the Deputy Directors-General should rest with the Conference in the same manner as the appointment of the Director-General himself, upon the recommendation of the Executive Board.

Mr. TANGE (Australia) strongly opposed the amendment. There was no difference of principle between the appointment of the Deputy Directors-General and other members of the staff. The danger of dual allegiance was grave, and the Charter included sufficient checks in the regulations to be approved by the Conference in the budgetary provisions of the Organization and in the principle of geographic distribution of the staff. The Conference had these controls; the Director-General should have control, on the other hand, over the individuals who assisted him in carrying out the obligations and duties he had assumed towards the Conference. Undesirable influences and anomalous situations would otherwise result.

Mr. FEDRANO (Argentina) referred to the International Civil Aviation Organization where the Deputy Directors-General were responsible to the Executive Board. It was more important to avoid the dangers of misunderstandings or friction between the Board and the Director-General than between the latter and his Deputies.

Mr. HOLLOWAY (South Africa) said that the problem was threefold: (1) The principle of who would have the power of appointment, (2) the procedure in carrying out that principle, and (3) the determination of responsibility under that procedure. As to the first, he thought that the final authority should rest with the Conference which might, of course, delegate its powers. As to the other two points, he thought that the Conference would in due course decide on the proper procedures without their necessarily being incorporated in the Charter. The staff had to work under the Director-General, and the responsibilities could be laid down in the regulations.

The CHAIRMAN recalled the earlier discussions in Geneva when it was decided to omit reference to Deputy Director-General from the text in order not to prejudice the issue and warned against the dangers of divided authority. He agreed that the final word must remain with the Conference but thought that the draft text and in particular the regulations safeguarded that. The best solution was to have a trusted person in the position of Director-General and then let him make the decisions under the regulations. The Conference could exercise the control by budgetary allotments as well.

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His personal opinion was that the draft text was adequate and he asked whether the Argentine and Peru delegations would pass it in first reading, if that was the feeling of the Committee.

Mr. FEDRANO (Argentina) reserved his position and wished his delegation's amendment to be recorded if the Committee adopted the text without amendments.

Mr. ALAYZA (Peru) said that he would abide by the general feeling in the Committee.

Mr. ENTEZAM (Iran) moved the closure of the debate, and was seconded by Mr. PACHACHI (Iraq). Mr. MACHADO (Cuba) thought that a motion for closure could not be presented as a point of order, and Mr. AMADOR (Mexico) also opposed the closure.

The CHAIRMAN asked for an informal show of hands to determine the Committee's feelings regarding closure and noted seventeen for closure and eleven for continuation of the discussion. The total being less than one-half of the number of delegations, the Chairman ruled the debate to be continued.

Mr. KARMARKAR (India) suggested the formation of a small sub-committee.

Mr. MACHADO (Cuba) said that vice-presidents were elected or cabinet members in governments appointed by their parliaments because of their importance in politics and policy formulation. The Director-General should freely appoint all the members of his staff except the five or six next most important posts. The reference to the Deputy Directors-General in Article 83, paragraph 1, should be deleted, and the Executive Board should be given the right to appoint, with the concurrence of all Members and the Director-General.

Mr. MacGARTHY (Ireland) suggested the insertion in the second line of the text of the words: "...to appoint Deputy Directors-General subject to the approval of the Executive Board and in accordance..."

Mr. GAZDER (Pakistan) appealed for the retention of the present text to assure the efficient working of the Organization. Article 82, already approved in the first reading, conferred onerous responsibilities on the Director-General who would not be able to discharge them properly unless he had the authority to appoint his whole staff.

Mr. AMADOR (Mexico) noted that the amendments clearly provided for the appointment of the Deputies "upon the recommendation of the Director-General" and "at the proposal of the Director-General" respectively. The Director-General would select and propose only persons who enjoyed his full confidence and who were qualified for such an important position. Their position was, however, only of an administrative character. The Executive  
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Board should have the right to appoint the Deputy Directors-General, selected and recommended by the Director-General.

The CHAIRMAN announced the following sub-committee to consider

Article 83 further:

Argentina

Ireland (Chairman)

New Zealand

Peru

United Kingdom

Paragraphs 2 and 3

Agreed in first reading.

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