United Nations
CONFERENCE ON TRADE AND EMPLOYMENT

Nations Unies
CONFERENCE DU COMMERCE ET DE L'EMPLOI

UNRESTRICTED
E/CONF.2/C.6/SR.19
3 January 1948
ORIGINAL: ENGLISH

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at the Capitol, Havana, Cuba, Saturday 3 January 1948 at 10 a.m.

Chairman: Mr. Eric COLBAN

Mr. ALAYZA (Peru), speaking on Article 93, said that its provisions were particularly important in view of the absence of various European countries from the Conference. Formulae regulating relationships between Members and non-Members should reconcile their economic and social needs with the Charter obligations on the basis of the following considerations: (1) ensuring the freedom of Members to develop their commercial and economic policy by entering into, or maintaining formal or de facto relationships with non-Members; and (2) the obligation of Members not to injure the interests of other Members in the exercise of their freedom. While Charter obligations were compensated by the advantages of the most favoured nation clause in Articles 16 and 17, advantages of relationships with non-Members depended on what the Members could offer. Consequently, freedom of action should not be limited by rules providing for essentially different situations, in particular in the case of those countries which might not be granted the right to establish preferential systems. Nor could there be equal provisions for situations arising from the enforcement of the Charter and vital existing situations which should only be modified if they caused injury to another Member. In that case, an equitable solution to both parties should be found. During the transition period short-term changes would aggravate the existing circumstances.

1. DISCUSSION OF THE REPORT OF THE SUB-COMMITTEE ON PARAGRAPH 1 OF ARTICLE 92 (document E/CONF.2/C.6/34)

Mr. de GAIFFIER (Belgium) Chairman of the sub-committee on Article 92, paragraph 1, explained that the report contained a compromise suggestion by the representative of France. Upon an examination of the Peruvian and Argentine amendment the sub-committee had agreed that the question of interpretation of the Charter had two aspects: (1) External relations of the Organization and (2) relations among its Members. With regard to the first aspect it had been decided that the Charter provisions could not be in contradiction with the Statute of the International Court of Justice and the provisions relating to

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other organs of the United Nations and other governmental organizations. Consequently, when consulting those bodies with regard to the Charter's interpretation, the Organization should furnish a text in a language authoritative for the former as well as for itself. On the second aspect unanimity had not been reached. The question arose as to which text would be authoritative for a pronouncement on controversial points by the Organization. The representatives of Peru and Argentina had maintained the official Spanish text should be considered, other representatives had held different views and the representative of China had pointed to the equal rights of the Chinese and Spanish languages. The French compromise proposal implied that unless otherwise provided, the five official languages would be equally authentic. The representative of the United Kingdom could not accept such an implication. In reply to an argument brought forward during the discussion in the sub-committee, he pointed out that parliamentary ratification in one of the official languages did not confer any greater authenticity to that text.

Mr. HOLMES (United Kingdom) could not accept the sub-committee's report. The implication that for other purposes other languages should be considered authoritative, had been rejected by many representatives. The Committee had to decide whether a large number of authoritative texts would facilitate work. There should be no more than two authoritative languages. In order to meet the view of some representatives he had proposed that other languages could be authoritative in cases where the Organization had to deal with specialized agencies whose basic instruments were neither in English nor French. His proposal, however, was not accepted.

Mr. LORETO (Venezuela) said that in re-examining the problem he had found that there had been some misunderstanding. It was really a question of authoritative, i.e. legally valid texts, which was not related to the question of the five official languages. According to Article 111 the United Nations Charter was authentic in five languages; there was no reason to change that provision with regard to the Organization. He pointed out that a similar provision was contained in Article 17 of the Constitution of the International Refugee Organization.

On the basis of legal considerations, therefore, he would not accept the drafting amendment, and in the light of Article 111 of the United Nations Charter, he proposed that paragraph 1 should be omitted from Article 92 and the phrase "all the languages which are authoritative" should be inserted into Article 100, after the words "United Nations".

Mr. TINOCO (Costa Rica) and Mr. AMADOR (Mexico) supported the opinion of the representative of Venezuela.

Mr. KING (China) agreed with the representative of Venezuela with regard to the use of five authoritative languages. In the Sub-Committee he had

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accepted the French formula as a compromise. He did not recall a discussion in the sub-committee on the points mentioned in the corrigendum to the report (document E/CONF.2/C.6/23/Corr.1).

Mr. ALAYZA (Peru), pointed out that his position had been based on Article 111 of the United Nations Charter.

Mr. HOLMES (United Kingdom) protested against such an interpretation of Article 111. The fact that the Charter text was authentic in five languages had no bearing on the practice to be followed with regard to other conventions.

Messrs. MORALES (Guatemala), MULLER (Chile), GOMEZ (Colombia), JIJON (Ecuador), SERRATO (Uruguay) and FEDRANO (Argentina) supported the representatives of Venezuela and Costa Rica.

Mr. MELANDER (Norway) agreed with the representative of the United Kingdom that the compromise text would lead to practical difficulties and that Article 111 of the United Nations' Charter was not relevant to the point under discussion. As the representative of a country where neither one of the five languages was spoken, he felt the simplest provision would lead to the best results.

Mr. de GAIFFIER (Belgium) said that if the legal view of the matter were accepted, then it would be proper to consult the International Court of Justice. The example taken from the Charter of the Refugee Organization was not applicable in view of the complexity of the Trade Charter. The question of languages should be studied from a practical point of view, if not then the United Nations Secretariat should be consulted on the proposal for five authoritative languages. There were also budgetary considerations involved.

Mr. LORETO (Venezuela) was not convinced by the arguments put forward by the representative of Belgium in view of the number of international acts which had been signed in five languages.

Mr. RUAZ (Afghanistan) was in favour of the provision adopted by the United Nations.

Mr. COREA (Ceylon) said that he would have preferred one language only. Since more than one was to be accepted, he would favour the inclusion of Spanish.

Messrs. TANGE (Australia), SCHMITT (New Zealand), SMEDSLUND (Finland), ROWE (Southern Rhodesia) and AUGENTHALER (Czechoslovakia) preferred the Geneva text of Article 92.

The CHAIRMAN concluded that twenty-seven representatives supported the Geneva draft of Article 92, paragraph 1, thirteen favoured the inclusion of the Spanish language, and two were abstained. He declared the Geneva text accepted on first reading.

/ARTICLE 94

ARTICLE 94

The CHAIRMAN announced that the amendment presented by Iraq had been circulated (document E/CONF.2/C.6/12/Add.9). He appointed the following countries to the sub-committee on Article 94: Australia, Iraq, India, Costa Rica, Czechoslovakia, Pakistan, Guatemala, United Kingdom, United States and Union of South Africa. The terms of reference included an examination of Article 94 and of all relevant amendments and the consideration of the United Kingdom and the United States proposal to Article 67 relating to natural security. The Fifth Committee would be informed of the establishment of the sub-committee which could be enlarged by additional members of that Committee if it so desired.

Mr. BLUSZTAJN (Poland), explaining his country's position on Article 94, stated that it opposed provisions in the Charter for unilateral measures for political reasons in the commercial field.

Mr. MONDELLO (Italy) observed that the Czechoslovak amendment might more suitably be dealt with by Committee III in its discussion of Article 16. He also stated that he concurred with the last lines of that amendment concerning the special regimes for separate territories, but not with the first three lines referring to former enemy countries of the Allied and Associated powers.

DISCUSSION OF ARTICLE 95

Paragraph 1

After a short discussion as to the proper meaning of the term "Members", it was agreed to pass paragraph 1 in first reading and to direct the Drafting Committee to see to it that throughout the text of the Charter the term "Members" was always to be interpreted as meaning "Members of the Organization".

Paragraph 2

Mr. AMADOR (Mexico) in explaining the reasons for his delegation's amendment, said that an international organization should not force a member to withdraw against its will. Sovereign states were conscious of their rights and duties, and should not have to face expulsion. The right given to the Conference of determining when a Member may be required to withdraw from the Organization, and when such requirement could be waived, would be an invasion of sovereignty. Certain periods of time were needed for Member states to comply with the domestic or internal constitutional prerequisites and if the domestic constitution did not permit ratification of an amendment involving a change in obligations, the Member should not be penalized for its inability to accept the amendment; it would withdraw voluntarily.

Mr. FAWCETT (United Kingdom) said, Members should not be permitted to refuse accepting new obligations while remaining Members and enjoying

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other rights. A very complicated situation, approaching chaos, would arise if one group of Members were to be bound by a different set of obligations than another group.

Mr. AMADOR (Mexico) replied that he was certain, a Member who felt it was unable to accept such an important amendment, would not wish to remain within the Organization. He could not conceive of a situation arising such as envisaged by the United Kingdom representative.

Mr. KOJEVE (France) noted a discrepancy in the timing of the provisions for withdrawal. When a Member withdrew voluntarily, the period was fixed at six months; when the Member was required to withdraw, "a specified period" was provided for. If it was the intention of the draft to have the Member dismissed almost immediately, he felt that, on the contrary, a time limit should be granted; but on the other hand, if it was contemplated to allow a period of six months or more, a complicated situation might obtain during the period when the Member would still have to observe all the other obligations under the Charter except the new amendment. His delegation had no concrete proposals to make but felt that the subject deserved further study.

Mr. STINEBOWER (United States) opposed the Mexican amendment and agreed with the United Kingdom representative in that an anomalous situation would be created if one Member refused to abide by obligations which two-thirds of the Members had agreed to adopt. He felt that the draft text of paragraph 2 was far from invading states' sovereignty, but that its elimination would open the door to an abuse of sovereignty, namely, to accept rights without the corresponding obligations. The right of voluntary withdrawal was in order, but the words "shall be free to withdraw" implied that the Member might also elect not to withdraw in which case complications and difficulties would arise. He felt that the procedure involved in paragraph 2 was lengthy and provided ample safeguards for fair administration so that no abuses needed to be feared.

He further remarked that the Constitution of the International Civil Aviation Organization provided in Article 94 B for any state to cease being a Member, if it did not ratify an amendment after a certain period of time. Mexico had ratified that document.

Mr. TINOCO (Costa Rica) felt that Article 95 was anomalous and should more closely resemble Article 108 of the United Nations Charter. In the first place, the present text did not state how the Conference was to determine whether or not an amendment was substantial and involved a change in obligations. Unless special provisions were made, Articles 72 and 73 would apply, meaning that a simple majority could decide the issue; a Member could thus be forced to resign by a small minority of the membership. He felt that paragraph 2 should expressly state that a two-thirds majority of all Members (or at least of all

Members present and voting) was necessary to make such decisions.

Secondly, he proposed a change in the wording of paragraph 2 where it spoke of "required to withdraw". The term "asked" should be used instead, or some other phrase suitable adapted to the dignity of states.

Finally, he felt that the last sentence of paragraph 2 was superfluous, inasmuch as the identical phrase was used in Article 97 and covered the same subject of withdrawal.

Mr. de CAIFFIER (Belgium) approved of the present text, feeling that it was wise to foresee all possiblities. However, the Mexican representative's remarks were valid, in his opinion, as regarded the provisions for "a specified period", and a clearer wording should be adopted. He also suggested that it might be better if the Conference instead of requiring a Member to withdraw, only suspended its rights and obligations for a specified period during which the Member could think matters over and decide later whether to withdraw voluntarily or to accept the new amendment's obligations.

Mr. AUGENTHALER (Czechoslovakia) thought that the exclusion of a Member was too serious a matter to be left to the decision of a simple majority "at any time". Furthermore, if a new amendment radically changed obligations to a point tantamount to a new agreement or a new Charter, a country might well be unable to accept it in view of its constitution. In that case, however, it should be permitted to withdraw from the Organization immediately, inasmuch as it could not honestly feel bound by anything contrary to its own constitution. He supported, on the whole, the Mexican amendment but wished the insertion of a clause permitting short-term or immediate withdrawal.

Mr. DUNAWAY (Liberia) pointed to the inconsistency of paragraph 2 when a two-thirds majority was required for the passage of an amendment, but not for its other provisions.

Mr. de VRIES (Netherlands) observed that, while he would have preferred a text similar to that of Article 108 of the United Nations Charter, the present draft text was as lenient as could be desired. The Organization needed greater flexibility in dealing with trade relations than the United Nations in its sphere of activities. Chaos would result if that minimum of safeguarding the Charter was not retained.

Mr. MACHADO (Cuba) expressed the view that the whole matter was clearly one of international law without any political inference, and suggested that a small sub-committee of legal experts be appointed to study paragraph 2 in the light of what had been said, and to report its findings in time for the second reading.

He thought that the words "within a reasonable or specified period" should be used in connection with the withdrawal of members who had not accepted the

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amendment. The required majority should be clearly stated. He suggested that the time for a Member's period of grace be counted as from the date of approval and ratification of the amendment by two-thirds of the Members.

Mr. STINEBOWER (United States) in reply to the Czechoslovak representative, said that there was no basis for his apprehension inasmuch as no amendment could be binding upon a Member until accepted and ratified by it, as the pertinent phrases from paragraph 2 clearly showed.

Mr. KOJEVE (France) approved of the logic of the Costa Rican representative and agreed that the same two-thirds majority applicable for adopting an amendment should also be the rule at the determination which amendment was of "such a nature that...". He also concurred with the Cuban representative's suggestion to insert the word "reasonable" between "within a period specified", in that he felt that the period should not be too short, so as to give countries time to study the implications of the matter. Finally, he agreed with the Belgian representative's apprehension regarding the wording "required to withdraw" and said that he would welcome a more subtle phrasing.

The problems raised by the delegations of Czechoslovakia and the United States were complex; if a Member wanted to withdraw and had to stay with the Organization for another six months, he would not be bound by the new amendment for that period, but would have to observe all other obligations under the Charter. A very complicated situation would then arise.

The CHAIRMAN appointed a sub-committee to study Article 95, paragraph 2, and to report an improved version, with the following members:

Belgium
Czechoslovakia
France
Mexico
United States

Mr. AMADOR (Mexico), in reply to the United States representative, said that while his country had signed the constitution of the Civil Aviation Organization, that did not mean that his delegation would not attempt to strive for healthier and more constructive provisions elsewhere.

Mr. LORETO (Venezuela) urged, for the benefit of the sub-committee, that greater clarity be achieved in the text under discussion. He thought that the Trade Charter should follow the provision of Article 108 of the United Nations Charter that the amendment should be ratified in accordance with the constitutional processes by two-thirds of Members.

The CHAIRMAN explained that paragraph 1 of Article 95 provided for the approval of the Conference by the affirmative votes of two-thirds of its Members, and every Member participating in the vote would have to define

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its attitude in accordance with the constitutional rules of his own country. After the approval of two-thirds of the Members, however, the amendment became final.

Paragraph 2, on the other hand, presupposed the ratification by the different countries after a decision had been taken by the Conference, before the amendment came into force. That was a fundamental difference between the procedures in the two paragraphs, and the reason why it was felt to be important that the affected governments accepted an amendment of a far-reaching nature before it became finally binding. He hoped the sub-committee would have that consideration in mind.