

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

Chapter VIII (Organisation)

The Delegation of the United States of America submits the following proposals for the amendment of Chapter VIII.

Section A - Functions and Structure of the Organization

Article 61 Functions

Sub-paragraph c.

(c) To make studies and recommendations for, and promote international agreement on, measures designed to expand the volume and improve the bases of international trade and generally to accomplish any of the purposes of the Charter;⁽¹⁾ including measures to facilitate commercial arbitration and the avoidance of double taxation, and to assure just and equitable treatment for foreign nationals and enterprises.⁽²⁾ and to assure just and equitable treatment for the enterprises, skills, capital, arts and technology brought from one country to another, including agreement on the treatment of foreign nationals and enterprises, on the treatment of commercial travellers, of commercial arbitration and on the avoidance of double taxation;⁷

Sub-Paragraph d.

It is suggested that the last clause of the paragraph be amended to read:

"... , and to perform any other function necessary and proper to carrying out the appropriate to the purposes and⁷ provisions of this Charter."

COMMENTS:

Generally, these amendments are largely consequent upon the amendments already suggested by the U.S. Delegation in regard to Chapter IV, (E/PC/T/W/123). They are also intended to make the Article more general and inclusive.

- (1) There does not seem to be any reason to confine the work of the Organization in developing international conventions to any scope less than the full field of the Charter.
- (2) This broad provision is intended to cover many types of questions such as the treatment of commercial travellers, discrimination against foreign creditors in bankruptcy, insolvency or reorganization, etc.

Section B--- The Conference

Article 64 Voting

The U.S. Delegation suggests that consideration of this Article, together with the related Articles 66, paragraph 5, 68 and 69, be postponed until work on the substantive questions of the Charter has been substantially completed. At that time, it will be appropriate to consider the Report of the Administrative Sub-Committee of the New York Committee on Voting and Board Membership.

Article 66 Powers and Duties (of the Conference)

Paragraph 3.

"3. The Conference may, by the affirmative votes of two-thirds of the Members of the Organization, determine criteria and set up requirements and procedures [] including voting procedures,] for waiving, in exceptional circumstances, obligations of Members undertaken pursuant to this Charter."

COMMENT:

This change is designed to make it clear that voting requirements as well as other procedures are covered.

Paragraph 4.

It is suggested that this paragraph be omitted.

COMMENT:

The U.S. Delegation has already suggested amendments to Articles 30 and 52 under which the substance of this paragraph is covered.

Paragraph 7.

"7. The Conference shall approve the budget of the Organization, and shall apportion the expenditure of the Organization among the Members, provided that no Member shall be required to contribute more than one-third of the total of such expenditure without its consent."

Section E - Commissions

Article 72

The Conference shall establish a Commission on Commercial Policy, a Commission on Business Practices, and a Commodity Commission, a Commission on Economic Development and International Investment, and may establish such other Commissions as may be required. The Commissions shall be responsible to the Executive Board.

COMMENT:

This amendment has already been proposed by the U.S. Delegation in E/PC/T/W/123, page 8.

As indicated by the footnote to Article 71 in the New York Report, the acceptance of the change here suggested would make

the last section of paragraph 1 of Article 71 redundant.

Article 73 Composition and Procedure (of Commissions)

Paragraph 1.

"1. Commissions shall be composed of not more than seven persons chosen by the Executive Board and qualified by training and experience to carry out the functions of the Commissions in accordance with the purposes of the Charter."

COMMENT:

Experience has shown that unless ceilings are provided on the size of international commissions of this nature, there is a strong likelihood that they will become too large to be workable and may thus involve unnecessary expense. On the other hand, if the Commissions are kept to moderate size, the tendency for Commission members to regard themselves as representatives rather than experts might be lessened.

Section F - The Secretariat

Article 79 The Director-General

Paragraph 2.

It is suggested that the last sentence be amended so as to read:

"He shall present through the Executive Board an annual report to the Conference on the work of the Organization and shall [In consultation with the Executive Board] prepare the budget of the Organization for submission to the Conference."

COMMENT:

Unless the responsibility for budget preparation is clearly

upon the Director-General, experience has shown that this matter "may fall between two stools." The regulations to be approved by the Conference under paragraph 1, which are more flexible in their nature, can contain whatever provisions may be necessary in this respect. It is pointed out that the Director-General is, in any case, under the supervision of the Board.

Section G - Miscellaneous Provisions

Article 81 Relations with other Organizations

Paragraph 3.

It is suggested that the last clause be deleted so that the paragraph will read:

"3. The Organization may make suitable arrangements for consultation and cooperation with non-governmental organizations concerned with matters within its competence [and may invite them to undertake specific tasks]."

COMMENT:

The last clause seems to be redundant as it is clearly covered by the first part of the paragraph.

Paragraph 4.

It is suggested that the words "international organization(s)" used in this paragraph be changed to read "intergovernmental organization(s)".

COMMENT:

This change means that the ITO will be concerned with the possible absorption only of public rather than private organizations. This would appear to be a proper limitation.

Article 85 Amendments to the Charter

1. Any amendment to this Charter which does not involve a change in the obligations assumed by Members ⁽¹⁾ [new obligations on the part of Members] shall become effective upon receiving the approval of the Conference by the affirmative votes of two-thirds of the Members.

2. Any amendment to this Charter which involves a change in the obligations assumed by Members [new obligations on the part of Members], shall, after receiving the approval of the Conference, ⁽²⁾ become effective for each Member accepting the amendment, upon acceptance on the part of two-thirds of the Members, and thereafter for each remaining Member on acceptance by it. The Conference may determine that any amendment under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Conference shall be required to withdraw from the Organization; provided that the Conference may, by the affirmative votes of two-thirds of the Members of the Organization, determine the conditions under which this requirement may be waived with respect to any such Member. ⁽³⁾ [The Conference may determine that any Member which has not accepted an amendment under this paragraph within a period specified by the Conference, shall cease to be a Member of the Organization. In the absence of such determination,] A Member not accepting an amendment shall, notwithstanding the provisions of paragraph 1 of Article 89, be free to withdraw from the Organization upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General.

COMMENT:

(1) This change covers cases where amendments change existing obligations as well as when they add new obligations.

(2) This change will require that amendments which change the obligations of Members must be approved by the Conference before they are submitted to the Members. This is not covered under the New York draft.

(3) This amendment does not change the substance of the existing text to any important extent, except that it gives to the Conference more flexibility in dealing with Members which fail to accept amendments. This power is very similar to that already contained in paragraph 3 of Article 66.

Article 89 Withdrawal and Termination

It is suggested that a new paragraph between present paragraphs 2 and 3 be added as follows:

"3. Without prejudice to any other provision of this Charter, and subject to such conditions as it may deem appropriate, the Conference may require any Member which has persistently violated provisions of this Charter to withdraw from the Organization."

x x x

The United States Delegation intends, at the appropriate time, to submit suggestions with regard to an appropriate arrangement of the Articles now contained in Chapter VIII and certain other material which might be treated in connection therewith.