

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.CHAPTER VII (ORGANIZATION)ANNOTATED AGENDAIntroduction

1. This agenda is to be read in conjunction with the Report of the Drafting Committee which is hereinafter referred to as "D. C. Report."
2. It incorporates the reservations and comments made by delegations and recorded in the D. C. Report and all proposals and other comments presented by delegations up to 1800 hours on Friday, 20 June, 1947 together with comments and suggestions submitted by the Secretariat. Underlining indicates additions to, square brackets deletions from the text of the D. C. Report.
3. The following papers containing the proposals and comments made by delegations which are incorporated in this agenda have already been circulated:-

Australian Delegation	E/PC/T/W/203
Cuban Delegation	E/PC/T/W/172
French Delegation	E/PC/T/W/205
New Zealand Delegation	E/PC/T/W/206
United Kingdom Delegation	E/PC/T/W/161 and W/202
* United States Delegation	E/PC/T/W/204.

Amendments, Comments and SuggestionsArticle 61 - FunctionsSub-paragraph (b)

1. It is suggested by the Secretariat that this function might be made more positive by amending "to facilitate" to "to develop and facilitate."
2. "The Charter" at the conclusion of this sub-paragraph should, if it is submitted by the Secretariat, read "this Charter."

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\* The United States Delegation, apart from the comments and amendments contained in this agenda, intends to submit suggestions with regard to an appropriate arrangement of the Articles now contained in Chapter VIII and certain other material which although not strictly concerned with Chapter VIII, being rather material for insertion in a new Chapter IX, has an effect upon Chapter VIII and may be treated in connection therewith.

Sub-paragraph (c)

The United States Delegation proposes the following amendments which it states are largely consequent upon the amendments already suggested by the United States Delegation in regard to Chapter IV (Document E/PC/T/W/123) and are intended to make the article more general and inclusive.

"(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,<sup>(a)</sup> including measures to facilitate commercial arbitration and the avoidance of double taxation, and to assure just and equitable treatment for foreign nationals and enterprises.<sup>(b)</sup> 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."

- (a) 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.
- (b) 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.

Sub-paragraph (d)

For the reason set out above in the introduction to its amendment to sub-paragraph (c) the United States Delegation proposes the following amendment to the last phrase of this sub-paragraph:-

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

Sub-paragraph (e)

1. The Australian Delegation proposes to make this sub-paragraph read as follows, the existing wording becoming a new sub-paragraph (f):-

"(e) In exceptional circumstances to waive obligations of Members undertaken pursuant to this Charter;"

2. This suggestion is linked up with the Australian Delegation's proposal to amend paragraph 3 of Article 66 to read "The Conference may [by the affirmative votes of two-thirds of the Members of the Organization,] determine criteria and [set up] establish procedures, including voting procedures, for [waiving, in exceptional circumstances, obligations of Members undertaken pursuant to this Charter] for the making of decisions under sub-paragraph (e) of Article 61."

3. The explanation given for these two amendments is as follows:-

The effect of paragraph 3 of Article 66 is that, apart from the cases provided for elsewhere in the Charter, no waiver of obligations is possible unless the Conference determines criteria and sets up procedures. Moreover, these acts require a two-thirds affirmative vote of all the Members of the Organization.

It is the view of the Australian Delegation that there may be cases where special procedures with a special majority vote are not required, and that in such cases, the ordinary rules of procedure of the respective organs of the Organization would suffice. It is therefore suggested that the Conference should be free to determine whether or not particular classes of questions relating to release from obligation do or do not require the determination of criteria and the establishment of special procedures. Moreover, the Australian Delegation believes it unwise to require that two-thirds of the whole membership should be required to give their affirmative vote in a decision of this kind. The voting

requirement in paragraph 3 of Article 66 removes the right of Members to adopt a neutral position by abstaining from voting, because a failure to vote for a proposal automatically becomes a vote against it.

The Australian Delegation proposes that the substantial power to release Members from obligations in exceptional circumstances should be stated as a general power of the Organization (not of the Conference) and placed in Article 61.

The question as to which organ of the Organization shall exercise the power may then be covered in Article 66, paragraph 3. It is suggested that it should be left permissive for the Conference to determine criteria and procedures, including voting procedures. This method of presentation has the following effects:-

- (a) the Conference can study the categories of cases which it may expect to come before it and decide whether or not special criteria and procedures are necessary;
- (b) elasticity in respect of voting is retained. The revised Article 61(e) permits release from obligations by simple majority, but the Conference could decide (again by simple majority) that a particular category of issues should require decision by a different kind of majority. There is an analogy in the United Nations Charter in Article 18(3) where the General Assembly may decide by simple majority what additional categories of questions should be decided by two-thirds majority;
- (c) the Conference is left free to decide whether or not decisions to release Members from particular obligations may be taken by organs other than the Conference. It might be argued that the present drafting of Article 66(3) does not permit this because of the language of Article 66(2).

4. The Secretariat doubts whether the present sub-paragraph (c) is necessary. Article 61 should deal only with functions not provided for elsewhere in the Charter and Article 8 when read with Article 1 would seem to cover adequately the function of co-operation with the United Nations and other inter-governmental organizations for the attainment of the purposes stated. In any event it would appear that the last phrase of the sub-paragraph should be amended to read "and the restoration and maintenance of international peace and security" to conform with the wording of the purposes of the United Nations.

Article 62 -- Structure

The United Kingdom Delegation, in view of the fact that the Tariff Committee has been converted from an interim to a permanent organ, suggests the following amendment:-

"The Organization shall have as its principal organs a Conference, an Executive Board, a Tariff Committee, Commission as established under Article 72 and a Secretariat."

Article 63 -- Membership of  
the Conference

Paragraph 1

It is submitted by the Secretariat that this paragraph might possibly follow the Charter of the United Nations and be amended as follows:- "The Conference shall consist of all the representatives of the Members of the Organization."

Paragraph 2

The matter of alternates and advisers being thought rather one to be covered by rules of procedure and following the Charter of the United Nations, the Secretariat suggests that this paragraph might be amended to read "Each Member shall have be represented in the Conference by one representative. and may appoint alternates and advisers to its representative to the Conference."

Article 64 -- Voting

General Comments

1. The Drafting Committee was instructed to formulate alternative schemes as regards voting taking account of suggestions concerning weighted voting and permanent membership of the Executive Board. The Drafting Committee did not reach any final conclusions on weighted voting. Attention is drawn to the Report of the Administrative Sub-Committee commencing on page 53 of the D.C. Report.
2. The delegate who submitted a formula on weighted voting and a note on two-thirds majority (General Comment (c) to Article 64 in D.C. Report) was the United Kingdom Delegate.
3. The delegate who directed attention to the discrepancy in voting procedure that whereas the Charter calls for a two-thirds vote on procedural questions such as in paragraph 2 of Article 66 the most important decisions on substance are the subject of a simple majority vote and reserved his position on this question (General Comment (d) in D.C. Report) was the French Delegate.
4. The United States Delegation suggests that consideration of this article, together with the related Articles 66(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 Drafting Committee.

Specific Comments and Amendments

1. The United Kingdom Delegation maintaining the proposal for weighted voting made at the Drafting Committee and the formula it then proposed for this purpose (see Appendix I, Page 55 of D.C. Report -- a specimen working-out of the results appears in Appendix II, Page 56) suggests the following amendments. The annex referred to in the amended article would contain the formula mentioned.

"1. Each Member shall have one vote in the Conference the number of votes allocated to it in pursuance of the provisions of Annex ... to this Charter.

"2. Except as may be otherwise provided for in this Charter, decisions of the Conference shall be taken by a simple majority of the Members present and voting votes cast."

2. The United Kingdom Delegation considers that the question whether two-thirds majorities should be provided for in the case of certain specific questions arising under the Charter, additional to those for which such provision is already made, will need to be considered. The United Kingdom Delegation's interim proposals and comments on this subject appear in Appendix XII, page 65 of D.C. Report.

3. The United Kingdom Delegation comments that it will be necessary in making the Rules of Procedure for the Conference to decide how abstentions are to be treated in relation to voting.

#### Article 66 -- Powers and Duties of the Conference

##### General Comments

1. The two delegates who suggested that paragraph 2 of this article include a catalogue of those powers which may not be delegated by the Conference to the Executive Board (comment upon paragraph 2 in D.C. Report) were the Australian and French Delegates.

2. The delegate who suggested that the sentence "No one Member shall be required to pay more than one third of the total expenses of the Organization for any given budgetary period" should be added to paragraph 7 (comment upon paragraph 7 in D.C. Report) was the United States Delegate. The delegates who agreed with the principle of this amendment were those of Canada, South Africa and the United Kingdom while the delegates who considered that no rigid maximum should be laid down in the Charter for the contribution of any Member were those of Australia, China and Cuba.

Specific Comments and Amendments

Paragraph 2

1. The Secretariat suggests that paragraph 2 be amended as follows:-  
"The Conference may delegate to the Executive Board authority to exercise any of the powers or perform any of the duties of the Organization except such [specific] powers and duties as are expressly conferred or imposed [upon the Conference under] by this Charter."

2. The reason for this suggestion can be seen by examining the history of paragraph 2 of Article 66 in the draft produced at the First Session. The Conference was therein authorized to delegate to the Executive Board any of the powers, etc. of the Conference, not of the Organization, except such powers, etc. expressly conferred upon the Conference. This, however, did not make sense for the only powers, etc. of the Conference were those expressly conferred. Hence the Drafting Committee changed the phrase to refer to the delegation of the powers, etc. of the Organization. But this would appear to go too far for the Conference is only one of the principal organs each of which is given by the Charter functions to be exercised in behalf of the Organization. The Conference should not be empowered in Article 66, it would seem, to transfer such functions, etc. from, for example, the Tariff Committee to the Executive Board. The only proper way to do this would be by Article 85 (Amendments to the Charter).

Paragraph 3

1. For the reason previously set out in paragraph 3 of the comments upon Article 61(e) the Australian Delegation proposes to amend this paragraph as follows:-

"The Conference may [ by the affirmative votes of two-thirds of the Members of the Organization,] determine criteria and [set up] establish procedures, including voting procedures, for [wai-ving, in exceptional circumstances, obligations of Members undertaken pursuant to this Charter] for the making of decisions under sub-paragraph (e) of Article 61."

2. The United States Delegation, in order to make it clear that voting requirements as well as other procedures are covered, proposes the following amendment:-

"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."

Paragraph 4

The United States Delegation, in view of the fact that it has already suggested amendments to Article 50 and 52 covering the substance of this paragraph, suggests that it be omitted.

Paragraph 5

1. The United States Delegation suggests that consideration of this paragraph be deferred -- see General Comment 4 on Article 64.
2. The Secretariat points out that "paragraph 2 of Article 34" at the conclusion of this paragraph should read "paragraph 5 of Article 34."

Paragraph 6

In view of the fact that as this paragraph is at present draft the time-limit specified by the Conference might be interpreted as not applying to the forwarding of a statement of the reasons for non-acceptance, the Secretariat suggests the following redraft of the second sentence:-

"Each Member shall, within a period specified by the Conference, notify the Director-General of the acceptance or [ ] in the case of [ ] non-acceptance [ ] shall furnish [ ]. In the case of non-acceptance a statement of the reasons therefor shall be forwarded with the notification."

Paragraph 7

The United States Delegation suggests the following amendment:-

"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."

Article 67 -- Tariff Committee

Paragraph 2

The Secretariat suggests that the use of the phrase "which have made effective" might be reconsidered. It might possibly be argued that such Members comprise only those whose acceptances to the Agreement were deposited when it came into force and not those who accepted it subsequently but before the establishment of the Organization. If this interpretation is thought possible the phrase might be reworded to read "which were parties to."

Paragraph 3

The United Kingdom Delegation proposes the following amendment:-

"3. Each member of the Committee shall have one vote in the Committee the number of votes allocated in accordance with Article 64, paragraph 1, to the Member of the Organization which he represents."

Paragraph 4

1. The United Kingdom Delegation proposes the following amendment:-

"4. Decisions of the Committee pursuant to paragraphs 1 and 2 of this Article shall be taken by a two-thirds majority of its members the votes cast, and other decisions by a simple majority of such votes."

2. The Secretariat points out that if the United Kingdom amendment is not adopted, it will be necessary to add the words "present and voting" to the end of the present text.

Article 68 -- Membership of the Executive Board

General Comments

1. Attention is drawn to the Report of the Administrative Sub-Committee of the Drafting Committee which begins upon page 53 of the D.C. Report

and which the Drafting Committee recommended to the Second Session as a working document.

2. The United States Delegation suggests that consideration of this article be deferred -- see General Comment 4 on Article 64.

Specific Comments and Amendments

1. The United Kingdom Delegation proposes that the present text of Article 68 be replaced by the following:-

"1. The Executive Board shall consist of 17 Members, including the 8 Members of chief economic importance. The Conference, excluding these 8 Members, shall elect the 9 additional Members of the Board for terms of three years, subject to the provisions of paragraph 4. Elective Members of the Board shall not be eligible for immediate re-election.

"2. The Conference shall annually determine which are the Members of chief economic importance on the basis of a system of rating according to the following schedule:-

1 point per 50 million U.S. dollars of external trade;

1 point per 500 million U.S. dollars of national income;

1 point per 10 million of population;

1 point per 10 per cent of external trade expressed as a percentage of national income.

"3. For the purposes of paragraph 2, points shall be based on the relevant statistics for the average of the three full calendar years immediately preceding each annual determination. The first determination of ratings shall be based upon the average of the statistics for 1937 and the calendar year immediately preceding the entry into force of the Charter.

"4. At the first election of the Board, 3 of the Members shall be elected for a term of one year, and 3 others for a term of two years.

"5. The status of all Members on the Board shall be equal in all respects.

"6. Each Member of the Executive Board shall have one representative and may appoint alternates and advisers to its representative."

2. As regards paragraph 2 of its new text, the United Kingdom Delegation points out that the basis proposed for the determination of rating of economic importance is the same as that it proposed under Article 64, for the weighting of votes in the Conference, except that the 'basic vote' is for this purpose omitted as motiveless.

Paragraph 1

1. The Australian Delegation points out that the text of Article 68 provides for fifteen members of the Executive Board while alternative B in Part II of the Report of the Administrative Sub-Committee envisages up to eighteen members on certain assumptions about the number of Members of the Organization, and assuming a particular method of selecting members of the Board. The Australian Delegation suggests that the Preparatory Committee might consider whether the Executive Board should contain a larger number than fifteen members in the event that a system of simple election for all members is agreed upon for incorporation in the Charter. As a basis for discussion, the Australian Delegation would propose eighteen. The Australian Delegation suggests also that the type of majority vote required for the election of members of the Board should be examined.

2. The New Zealand Delegation suggests the following amendment:-

"1. "The Executive Board shall consist of not more than fifteen Members of the Organization elected by the Conference."

Paragraph 4

Similarly as with paragraph 2 of Article 63 the Secretariat suggests the following amendment: "Each member of the Executive Board shall have one representative and may appoint alternates and advisers to its representative<sup>7</sup>."

Article 69 -- Voting in the  
Executive Board

The United States Delegation suggests that consideration of this article be deferred -- see General Comment 4 to Article 64.

Article 70 -- Sessions, Procedure and Officers of the  
Executive Board

General Comments

The Drafting Committee drew the attention of the Second Session to the possible desirability of providing for the manner in which the functions of the Executive Board will be exercised while it is not in session.

Specific Comments

Paragraph 2

The Secretariat points out that whereas "immediate re-election" appears in paragraph 2 of Article 68, "re-election" only appears in this paragraph.

Paragraph 4

The Secretariat suggests that it might be advisable to expand the text of the first sentence to show that it is the Board which determines whether a matter is of particular and substantial concern, should that be the intention.

Article 71 -- Powers and Duties of the Executive Board

General Comments

The United Kingdom Delegation considers that the Executive Board should be given power to delegate its authority to a limited number of its members including its Chairman.

Specific Comments and  
Amendments

Paragraph 1

The Drafting Committee was of the opinion that the last sentence will be redundant if the Preparatory Committee decides to include provision for a commission for industrial development in the Charter.

Paragraph 2

The Secretariat suggests that "provisional agenda" be substituted for "preliminary agenda."

Paragraph 3

The Secretariat suggests the following amendment designed to make this paragraph more positive:-

"3. The Executive Board may shall examine and recommend make recommendations to the Conference upon applications for the admission of new Members to the Organization."

Article 72 -- Establishment of Commissions

1. The Australian Delegation makes the following comment:-

The structure of the International Trade Organization includes expert Commissions which are to advise and perform other functions on behalf of the Executive Board. It is proposed that there should be a Commission for each of the fields covered respectively by Chapter IV, V, VI and VII.

No Commission has been proposed to embrace the subjects of Chapter III. The subjects are important among the purposes of the Organization. Moreover, the Australian Delegation believes that the practicability of abiding by the rules laid down in the rest of the Charter will depend to an important degree on the implementation of Chapter III. It is therefore felt that the Organization requires regular advice on the general economic questions that will arise under Chapter III. The Economic and Social Council and other organizations have machinery to review and report upon developments in this field upon which the International Trade Organization can depend for assistance. The Australian Delegation believes, however, that presentation to the Executive Board and Conference of information and advice on issues arising out of Chapter III which are relevant to decisions which have to be made

in the wide field of commercial and commodity policy calls for technically equipped personnel within the International Trade Organization. It is essential, for practical purposes, that information and advice should be related to the specific issues which are before the Organization at any given time.

It is therefore suggested that the Preparatory Committee consider whether this need should be met by the creation of a Commission on questions of employment and economic activity or by some other form of machinery.

2. The French Delegation proposes the following amendment and states that if it is adopted, an additional article defining the functions of the Commission on Economic Development and Co-Ordination should be drawn up and inserted between Articles 74 and 75.

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

3. The United States Delegation proposes the following amendment which it has already put forward on page 8 of Document E/PC/T/W/123:-

"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.

4. The Secretariat points out that perhaps the commencing words "The Conference shall establish" should be changed to "There shall be" to conform with Article 57.

Article 73 -- Composition and Procedure of Commissions

Paragraph 1

The United States Delegation comments 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. The United States Delegation therefore proposes the following amendment:-

"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."

Paragraph 4

The Secretariat suggests the following amendment:-

"The Chairman of [each] a commission shall be entitled to participate, without the right to vote, in such of the deliberations of the Executive Board and of the Conference as are of concern to the commission."

Paragraph 5

The delegates who thought that this provision was redundant in view of the provisions of Article 81 (comment in D.C. Report) were those of Australia and South Africa. The Secretariat agrees with this view.

Article 74 -- General Functions of Commissions

1. The United Kingdom Delegation comments upon Articles 74-77 that it is not clear whether the Commission can institute studies, advice and recommendations or whether then can only act on the instructions and within the terms of reference assigned to them by the Conference or the Executive Board. It is assumed that the former is intended, and that this will be clarified during the discussion that will be necessary on the subject of the Commissions and particularly of the Commission on Restrictive Business Practices.

2. The Secretariat points out that

(a) as commissions are responsible to the Executive Board it may

be as well to delete the reference to assignment of functions to them by the Conference;

(b) the reference to functions in connection with the settlement of disputes may need to be reviewed after Article 86 has been examined; and

(c) as a matter of drafting, the second sentence may be deleted and the first sentence redrafted as follows:- "In addition to the functions conferred upon them elsewhere in this Charter the Commissions shall perform, etc."

Article 75 -- Functions of the Commission on Commercial Policy

1. The Secretariat suggests that the introductory words should be redrafted to read "The functions of the Commission on Commercial Policy shall include:

(a) Advising, etc."

Similar alterations are suggested for Article 76 and 77.

2. To conform with the order of Articles 76 and 77 the Secretariat suggests that sub-paragraph (b) should precede sub-paragraph (a).

3. The Secretariat suggests that sub-paragraph (a) might be better worded as follows:-

"(a) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter V;

"(b) similarly to advise and make recommendations regarding the commercial policy aspects involved in the exercise by the Organization of its functions under this Charter;

"(c) to develop . . . . etc."

Sub-paragraph (b) of Article 76 might be similarly reworded.

Article 77 -- Functions of the Commodity Commission

The Secretariat points out that sub-paragraph (b) of Article 77 is not as wide as the corresponding sub-paragraph of Articles 75 and 76 in that no such phrase as "and regarding the commercial policy aspects of proposals involving the exercise by the Organization of its

functions under this Charter" as is used in the latter articles appears in the former. It may be desirable to make the three articles uniform in this respect.

Article 79 -- The Director-General

Paragraph 2

1. The United States Delegation comments that unless the responsibility for budget preparations 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.
2. For these reasons the United States Delegation proposes the following amendment of the last sentence:-

"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."

Article 81 -- Relations with Other Organizations

Paragraph 1

1. The delegates who wished to delete the words "by the Director-General" (comment in D.C. Report) were those of Australia and South Africa. The delegate who opposed this proposal was the French delegate.
2. The United Kingdom Delegation comments that the words "concluded by the Director-General" are unnecessary since the relationship agreement will be negotiated by a committee appointed by the Conference and it will be signed by the negotiators and brought into force upon approval by the Conference and by the General Assembly of the United Nations.
3. The Secretariat suggests that the words "This relationship shall be effected through agreement with the United Nations under Article 63 of

the Charter of the United Nations" should be deleted as unnecessary.

Paragraph 3

The United States Delegation suggests that the words "and may invite them to undertake specific tasks" is redundant and proposes that it be omitted.

Paragraph 4

The United States Delegation proposes that "international organization(s)" wherever used in this paragraph should be changed to "inter-governmental organization(s)" since the Organization should be concerned only with the absorption of public organizations.

Article 82 -- International Responsibilities of Personnel

The Secretariat suggests that this article might be transferred to Section F -- Secretariat to conform with the arrangement of the Charter of the United Nations.

Article 84 -- Status of the Organization

Paragraph 3

The Secretariat suggests that in view of the fact that negotiations aimed at the preparation of a uniform convention regarding the privileges and immunities of the United Nations and the specialized agencies are proceeding between the Secretary-General and such agencies, this paragraph should be amended to read as follows:-

"3. Such legal capacity, privileges and immunities shall be defined in an agreement to be prepared by the Organization in consultation with the Secretary-General of the United Nations and concluded between the Members."

The paragraph would then be in conformity with Article 68 of the Constitution of the World Health Organization.

Article 85 -- Amendments to the Charter

1. The delegate who reserved his position regarding the phrasing of the first paragraph (comment in D.C. Report) was the French Delegate.

2. The United States Delegation proposes the following amendments to paragraphs 1 and 2:-

"1. Any amendment to this Charter which does not involve a change in the obligations assumed by Members <sup>(a)</sup> 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, <sup>(b)</sup> 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. <sup>(c)</sup> 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.

Notes:

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

(b) 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.

(c) 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.

3. The Cuban Delegation proposes to insert a new Article 85 A reading as follows:-

"1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding such representations as may be made by any other Member with respect to matters affecting the operation of the Charter, and shall in the course of such consultation provide the other Member with such information as will enable a full and fair appraisal of the situation which is the subject of such representations."

"2. The same wording as the present Article 35, paragraph 2, substituting in the third sentence of this paragraph the word "Chapter" by the word Charter."

Article 86 -- Interpretation and Settlement of Disputes

1. The delegate who opposed the text of paragraphs 2, 3 and 4 as produced at the First Session on the ground that the distinction between justiciable and other issues was untenable and that nullification and impairment and interpretation and settlement of disputes belonged together (General Comment in D.C. Report) was the United Kingdom Delegate.
2. The Cuban Delegation suggests that in the third line of paragraph 2 the word "shall" should be altered to "may" and that the following sentence should be added at the conclusion of that paragraph:- "The application of the procedure in Article 85 A does not exclude the initiation of the

procedure set forth in this paragraph, as far as it is applicable to the case, provided the first mentioned procedure has been terminated." The Cuban Delegation also suggests that paragraphs 3 and 4 should be made into a new Article 86A. These proposals of the Cuban Delegation are designed to regroup the remedies created by the Charter for settling, either amicably or by a legal procedure, questions or disputes arising out of the wording or the application of the Charter, or which may develop by actions directed against the purposes of the Charter or situations having the effect of nullifying or impairing its objects.

3. The United Kingdom Delegation suggests that the following text be substituted for the present text of Article 86:-

"Article 86

"Nullification, Impairment and Disputes

"1. Nothing in this Article shall be construed to limit or exclude other procedures established in this Charter for consultation over and settlement of complaints or difficulties arising out of its operation.

"2. If any Member considers that another Member has adopted any measure, whether or not it constitutes a breach of an obligation under this Charter, or that any situation has arisen, which has the effect of nullifying or impairing any object of this Charter, it may invite the Members concerned to consult thereon and they shall endeavour to reach a satisfactory settlement.

"3. If no such settlement can be reached, the matter may be referred by an interested Member to the Executive Board, which shall give a ruling thereon.

"4. Any ruling of the Executive Board shall be reviewed by the Conference at the request of any interested Member. Upon such request the Conference shall by resolution of the majority confirm or amend or reverse the ruling, provided that

(1) it may, as appropriate, consult with the Economic and Social Council of the United Nations and with any other

interested inter-governmental organizations; and  
(ii) if the matter involves a dispute as to the interpretation of the Charter, it shall at the instance of not less than one-third of the Members request from the International Court of Justice an advisory opinion thereon and any proceedings for the review by the Conference of such a ruling of the Board shall thereupon be stayed until the opinion of the Court is delivered, and the Conference, when it finally reviews such ruling, shall adopt and be bound by the advisory opinion delivered by the Court. The Conference after reviewing the ruling may make such further recommendations to the Members concerned as it thinks fit.

"5. If it considers, in any case brought before it in pursuance of this Article, that a breach of obligations under this Charter or that nullification or impairment of any object of this Charter has taken place of a character serious enough to justify such action, the Conference may authorize any Member or Members to suspend the application to any other Member or Members of such obligations or concessions under the Charter as it may specify. If such obligations or concessions are, in fact, suspended, any affected Member shall then be free to give notice of withdrawal from the Organization. Such notice must be given to the Organization in writing and within 60 days after such action is taken, and the Member's withdrawal shall become effective 60 days after the receipt by the Organization of the said notice.

"6. The Executive Board and the Conference shall respectively make rules of procedure for giving effect to this Article.

#### Article 83 -- Entry into Force

##### Paragraph 1

1. The United Kingdom Delegation proposes to transfer this paragraph to the very end of the Charter and to amend it as follows:-

"The original English and French texts of this Charter, as set forth in the Final Act of the United Nations Conference on Trade and Employment shall be deposited with the Secretary-General of the United Nations who shall will furnish certified copies thereof of both texts to all interested Governments.

"Done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 194 in the English and French languages, both texts having equal force. In witness whereof the undersigned duly authorized to that effect, have signed the present Charter, and have affixed hereto their seals."

2. The United Kingdom Delegation makes the following comments upon these amendments:-

(a) The provision of paragraph 1 of the Drafting Committee text of this Article as to deposit of the original text with the United Nations is out of place and should be transferred to the very end of the Charter, immediately before the signature formula.

(b) It is proposed to include the provision for signature which was regular in pre-war conventions and treaties. Such signatures will not, of course, bind any signatory Government pending its acceptance, but are necessary for the purpose of authenticating the agreed text.

3. The United Kingdom Delegation suggests that the following paragraph should be substituted for paragraph 1:- "This Charter shall remain open for signature until \_\_\_\_\_ 194\_ and shall be subject to acceptance."

Paragraph 2

1. The United Kingdom Delegation suggests the following re-draft of this paragraph:-

"2. Each Government accepting this Charter shall deposit an instrument of acceptance with the Secretary-General of the United Nations who will shall inform all Governments represented at the United Nations Conference on Trade and Employment

and all other Members of the United Nations which were not so represented at that Conference of the day date of deposit of each instrument of acceptance and of the day date on which this Charter enters into force under paragraph 3 4 of this Article. After this Charter has entered into force, each Government which has deposited an instrument of acceptance shall thereupon become a Member of the Organization.

2. The United Kingdom Delegation proposes to insert the following new paragraph between the present paragraphs 2 and 3:-

"The Government of any country whose proposed Membership of the Organization has been approved by the Conference under paragraph ..... of Article 2 shall deposit an instrument of acceptance with the Secretary-General of the United Nations, and shall thereupon become a Member of the Organization."

Paragraph 3

1. The delegate who proposed to re-insert the original text of paragraph 3 of Article 78 of the United States Draft Charter (comment in D.C. Report) was the United Kingdom Delegate.

2. The United Kingdom Delegation proposes the following redraft of this paragraph:-

"3. This Charter shall enter into force on the sixtieth day following the day on which the number of Governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance pursuant to paragraph 2 of this Article shall reach twenty, and the instrument of acceptance of each other accepting Government shall take effect on the sixtieth day following the day on which the instrument of such acceptance it is deposited, Provided that, if this Charter shall not have entered into force by \_\_\_\_\_ 194\_, any of the Governments which have made effective brought into force the

General Agreement on Tariffs and Trade dated \_\_\_\_\_ 194\_, together with any other Government represented at the United Nations Conference on Trade and Employment, may agree to bring this Charter into force among themselves in accordance with arrangements which they may agree upon. Any instrument of acceptance deposited with the Secretary-General of the United Nations shall be taken as covering both procedures for bringing this Charter into force, unless it expressly provides to the contrary or is withdrawn."

Paragraph 4

1. The French Delegation proposes the following amendment:

"4. Each Government accepting this Charter does so in respect of its metropolitan territory, and such other territories for which it has international responsibility ∩, with the exception of those territories which are self-governing in respect of matters provided for by the Charter~~∩~~. In respect of those territories which are self-governing in matters provided for by the Charter, each Member shall notify the Secretary-General of the United Nations of its acceptance of this Charter on behalf of any such self-governing territory, and the provisions of this Charter shall become applicable to that territory on the sixtieth day following the day of the receipt of such notification."

2. The New Zealand Delegation proposes the following amendment to the second sentence:- "Each Member shall, on behalf of any such self-governing territories, notify the Secretary-General of the United Nations of ∩its the acceptance of this Charter ∩on behalf of any by such self-governing territory, and the provisions of this Charter shall become applicable to that territory on the sixtieth day following the day of the receipt of such notification."

3. The United Kingdom Delegation proposes that the following two paragraphs should replace paragraph 4:-

"Each Government accepting this charter does so in respect of its metropolitan territory and of any other territories for which it has international responsibility: Provided that it may at the time of acceptance declare that any separate customs territory for which it has international responsibility possesses full autonomy in the conduct of its external commercial relations and other matters provided for by the Charter, and that acceptance does not relate to such territory.

"Each Member may, at any time, accept this Charter in accordance with paragraph 2 of this Article on behalf of any such separate customs territory willing to undertake the obligations of the Charter. Acceptance on behalf of such territory shall take effect on the sixtieth day following the deposit of the instrument of acceptance."

4. The United Kingdom Delegation explains its amendment of paragraph 4 as follows:-

(a) These paragraphs follow from the draft Recommendation of the Preparatory Committee proposed in paragraph 6 of the Executive Secretary's note E/PC/T/Del.39, of which the last paragraph contemplates that invitations to the Trade and Employment Conference would be sent to those customs territories which are not responsible for the full conduct of their international relations but in respect of which the Government of the metropolitan country, being a state which is a Member of the United Nations, or, if not, receives an invitation, declares that they possess full autonomy in the conduct of their external commercial relations and other matters provided for by the Charter. The United Kingdom Delegation favours this proposed recommendation and will in due course propose a redraft of Article 2 (Membership) to take account of it.

(b) The words "willing to undertake the obligations of the Charter" have been re-inserted from the London text. They were

omitted by the Drafting Committee on the assumption, which the United Kingdom Delegation considers mistaken, that they were unnecessary.

Article 89 -- Withdrawal and Termination

Paragraph 1

1. The United Kingdom Delegation proposes to add the phrase "or paragraph 2 of Article 85" after "Article 35" and comments that the contingency contemplated in the last sentence of Article 85 (2) namely, that a Member which does not accept an amendment of the Charter involving new obligations may withdraw from the Organization clearly needs to be provided for in this paragraph.

2. Consequential upon its proposal to redraft paragraph 4 of Article 88, the United Kingdom Delegation proposes the following amendment:-

"1. Without prejudice to the provisions . . . . any Member may withdraw from the Organization either on its own behalf or on behalf of a separate customs territory which is at the time self-governing in respect of matters provided for by this Charter in respect of which it has accepted the Charter under paragraph 6 of Article 88 at any time . . . . Director-General."

Paragraph 3

The United States Delegation suggests that this paragraph should be replaced by the following paragraph, the present text becoming a new paragraph 4:-

"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."

New Article 90 -- Registration

Article 102 of the Charter of the United Nations reads:

"1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

"2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations."

2. Paragraph 2 of Article 3 of the Regulations regarding Registration of Treaties reads:

"2. Registration effected in accordance with article 4 of these regulations relieves all parties of the obligation to register."

3. Paragraph 1 of Article 4 of the Regulations reads:

"1. Every treaty or international agreement subject to article 1 of these regulations shall be registered ex officio by the United Nations in the following cases:

"(a) Where the United Nations is a party to the treaty or agreement;

"(b) Where the United Nations has been authorized by the treaty or agreement to effect registration."

4. To relieve governments of the obligation of registration the following article is suggested by the Secretariat:-

"Article 90

"Registration

"The United Nations is authorized to effect registration of this Charter as soon as it comes into force."