

United Nations

**ECONOMIC
AND
SOCIAL COUNCIL**

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**CONSEIL
ECONOMIQUE
ET SOCIAL**

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11 November 1946
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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE V

Ninth Meeting
Held on 7 November 1946 at 10.30 a.m.

Chairman: Mr. L. R. EDMINSTER (United States)

REPORT OF AD HOC SUB-COMMITTEE ON
ARTICLES 52, 54, 55, 59, 60 and 62

The report, which had been unanimously agreed upon by the Sub-Committee, was discussed paragraph by paragraph.

Article 54

That this Article be approved without change.

Note: It was agreed that the Committee's report might recommend that consideration be given, when the rules of procedure of the Conference are being drafted, to the possibility of including some appropriate provision which would enable a special session of the Conference to be called at the request of less than a majority of the members e.g. for the purpose of appealing against decisions of the Executive Board.

Dr. ALAMILLA (Cuba) observed that the Sub-Committee on Articles 75 (Amendments to Charter) and 79 (Withdrawal and Termination) had considered that a minority of about ten percent might be empowered to call a meeting if new obligations were imposed on members.

Agreed.

Article 55

Paragraph 1

That this paragraph be approved without change.

Agreed.

Paragraph 2

That this paragraph be approved without change.

Note: With reference to the matter of voting in this and other Articles, it was agreed to recommend that, where it is desired to provide for a two-thirds vote of all the Members of the organization (including those abstaining or absent), the following formula should be used:

"by a vote of two-thirds of the Members",

and that in the cases where only two-thirds of the actual votes cast is deemed sufficient, the appropriate formula should be:

"by a vote of two-thirds of the Members present and voting".

Mr. PALTHEY (France) proposed to delete the words "Chapter IV of" - ("The Conference may.....determine criteria and set up procedures for waiving.....obligations of Members undertaken pursuant to Chapter IV of this Charter"). For greater flexibility he thought that the power of the Conference to suspend certain obligations, if necessary, might be extended to cover obligations provided for elsewhere in the Charter - e.g. Chapter V (Restrictive Business Practices) and Chapter VI (Inter-governmental Commodity Arrangements).

Mr. HOUTMAN (Belgium) doubted whether the power should be so wide as to exempt Members from all obligations as soon as these were shown to be exceptional. This might lead to exemption from obligations based on the general principles of the Charter such as the maintenance of full employment.

Baron van TUYLL (Netherlands) supported the French proposal which he understood to involve the deletion of the words "Chapter IV".

Mr. KELLOGG (United States) reserved the position of his Delegation.

It was agreed that the Committee should return to this paragraph at a later meeting.

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Mr. LAURENCE (New Zealand) wanted the record to show the precise meaning attached to the words "by a vote of two-thirds of its Members". Did they mean that, if two-thirds of the Members voted, a proposition could be carried by a simple majority? Or did they mean that a proposition, to be carried, must be supported by two-thirds of the Members?

The CHAIRMAN presumed that the words meant that, if two-thirds of the total Membership approved a proposition, it would be carried.

Mr. LAURENCE (New Zealand) doubted whether a court of law would interpret the words in that way. It should not be necessary to look beyond the words themselves. He suggested that a skilled legal opinion be obtained.

Mr. BURY (Australia) said that in all cases where the vote was not to go by total membership, the Charter used specific words, such as "by a two-thirds majority of the votes cast" or "of Members present and voting".

Mr. MARTEN (United Kingdom) proposed to amend the words to read:

"by a vote of two-thirds of the Members of the Conference".

The CHAIRMAN undertook to ask the Secretariat to take legal advice.

Mr. COUILLARD (Canada) asked whether the United States Delegate could confirm his impression that the power of the Conference under paragraph 2 to determine criteria and set up procedures was limited to cases in which escape clauses were specifically provided in the Charter.

Mr. KELLOGG (United States) said that this particular provision was intended to cover cases of an exceptional nature involving hardship to a particular Member and which were not covered by specific escape clauses provided elsewhere in the Charter.

Dr. ALAMILLA (Cuba) stressed the fact that the power to waive of obligations rested in the Conference, and was not to be given to any Members.

Mr. PALTHEY (France) did not agree that his proposed wording might convey the impression that a Member could take the initiative in waiving obligations. The Conference would not always vote by a two-thirds majority. It might empower the Executive Board to grant exemptions in accordance with rules which it had laid down, and even indicate to the Board the nature of the exemptions that should be granted. His words would not therefore have the wide scope attributed to them by the Belgian Delegate. If the principle were accepted that countries could in exceptional circumstances appeal to the Conference to waive their obligations under Chapter IV, there could be no objection to giving them the same right in regard to other parts of the Charter, should particular obligations impose some temporary economic hardship on certain countries.

The CHAIRMAN suggested that Delegates might like to give further consideration to the French Amendment, and perhaps refer it later to a Sub-Committee.

Paragraph 3

That the words "under the provisions of Chapter II and VII" be deleted.

Agreed.

Paragraph 4

That this paragraph be approved without change.

Note: The Sub-Committee was not able to give final consideration to this paragraph, as it had not had the benefit of hearing the views of the Delegate of Cuba with respect to the amendment which his Delegation had submitted in writing (Document E/PC/T/C.V/9).

It was also suggested that the Preparatory Committee might recommend in its report to the Economic and Social Council that the expenses of the organization should be apportioned among Members on the same principles as applied to their contributions to the United Nations

Dr. ALAMILLA (Cuba) said that his Delegation desired to know how much their Government's membership would cost. He asked the Delegate of Norway to explain the method of apportionment in the United Nations.

H.E. Mr. COLBAN (Norway) replied that as far as he knew the Special Committee on Contributions set up by the Assembly in February 1946 had not yet reported.

Dr. ALAMILLA (Cuba) called attention to the fact that his Delegation had suggested two alternatives, though decision between them would at present be very difficult. The first was that apportionment should be based on the ordinary budget of each Member; the second was that it should be based on the foreign trade of each Member - an equitable basis, for each Member would pay according to the benefit he received, but also a difficult one to operate. He hoped that the Sub-Committee's suggestion would be interpreted, not as a strict rule, but as a recommendation that the United Nations system should be followed. The circumstances of the ITO would be very different from those of the United Nations.

Mr. BURY (Australia) said that nothing in the suggestion took final decision away from the Conference. The Sub-Committee merely pointed out the advantage of adopting the same relative scale of contributions as the United Nations. The object of the suggestion was to avoid the difficulties and disputes inevitably attendant upon the working out of new scales of contributions. The fact that there may be a difference in membership between the ITO and the United Nations did not affect the principle; the relative contributions of Members should be the same. If the scale recommended by the Special Committee of the United Nations should not prove suitable, the Conference would be at liberty to introduce any other system.

Mr. ERASMUS (South Africa) suggested that the question should be left open until the decision of the United Nations was known.

Mr. QURESHI (India) concurred. He suggested that the Committee should now merely agree to the principle, leaving the formulation of more definite views to a later meeting.

Mr. DAO (China) assumed that the words "the same principles" did not mean "the same scale". The principles recommended by the Preparatory Commission of the United Nations were capacity to pay with due consideration to be given to temporary dislocation of economies resulting from the war, and the foreign exchange reserves of each Member. His Delegation had no objection to the recommendation provided it was assumed that each Member was to have a single vote and that no Member was to be given a preferential position or a permanent seat on the Executive Board.

Dr. ALAMILLA (Cuba) desired that a specific recommendation should be made by the Preparatory Committee, in the terms of the Sub-Committee's report.

H.E. Mr. COLBAN (Norway) agreed, adding that a decision to fall back upon the principles of the United Nations apportionment, if no other more satisfactory solution could be agreed upon, should satisfy everybody that the ITO would not be launching into the unknown. On the other hand, a special scale of contributions should not be excluded.

The Delegates of Cuba, South Africa and the United States supported this suggestion; and the Committee agreed that a recommendation should be made to the Economic and Social Council that, in the absence of any other agreed arrangement, apportionment of expenses should follow the principles adopted by the United Nations.

Paragraph 5

That this paragraph be deleted.

Note: It was decided, after full discussion, that no useful purpose would be served by retaining this paragraph in Article 55 in view of the fact that its provisions were already covered by Articles 57 (1) and 68 (1).

Mr. LAURENCE (New Zealand) maintained that an equally strong case could be made out for deleting paragraphs 6 and 7 and possibly also paragraph 8. He asked for consistency and conciseness in drafting. The suggestion raised the question of principle whether these obligations specifically imposed on the Conference should be recited in the present Article dealing with the Conference's powers and duties, or whether they should be left out because they had been imposed in other Articles. Paragraph 6 could, on this principle, be made unnecessary by slight drafting alterations to Article 25 (4) and Article 45 (2b).

Mr. BURY (Australia) thought there was a better case for deleting paragraphs repeating provisions made elsewhere in the same chapter, than for deleting paragraphs with the same purport as paragraphs in other chapters of the Charter.

Mr. KELLOGG (United States) agreed. In drafting the Charter, he said, the United States Government had tried to group together in Chapter VII all the provisions concerning the various functions and duties delegated to organs of the ITO with the sole exception of those which for the sake of convenience were placed in Chapter II (Membership). Hence, in the interests of consistency, paragraphs 6, 7, and 8 were included in Article 55. The Membership provisions might, in conformity with the New Zealand Delegate's suggestion, be transferred to Chapter VII.

Referred to Drafting Committee.

Paragraphs 6 - 7

That these paragraphs be approved without change.

Agreed.

Paragraph 8

That this paragraph be amended to read: "The Conference may, by a vote of two-thirds of its Members present and voting, adopt..."

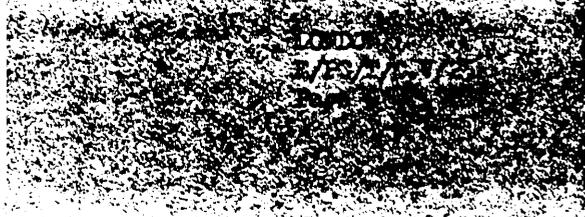
Mr. PALTHEY (France) pointed to a number of provisions elsewhere in the Charter which involved important decisions by the Conference and with respect to which no precise voting procedure had been laid down. As the Charter now stood, such decisions would be taken by a simple majority vote under Article 53. He thought that consideration should be given as to whether a two-thirds majority should not be required in such important cases e.g. in the case of Conference decisions under Articles 20(3), 25(3b), 29, 30, 35 and 45.

Mr. COUILLARD (Canada) said that all these Articles had been discussed in other committees, which had presumably had in mind the voting arrangements which would govern the acceptance of escape clauses in each of them. The Fifth Committee could not undertake so great a task as to review the work of these other committees, though their Chairmen might be consulted in this regard.

Mr. PALTHEY (France) agreed that the question of voting as it affected a particular issue should be studied by the committee substantively concerned. He doubted, however, whether the other committees had discussed questions of voting, which were certainly within the purview of Committee V and should be considered by Committee V possibly with the aid of joint committees.

Mr. BURY (Australia) considered that the draftsmen had been wise in suggesting a fairly specific voting provision where problems could be foreseen as in the case of Article 16, while leaving the text flexible where future procedure was less clear-cut, as in the case of Articles 25, 45, 29 and 30. The question of voting in these latter cases should be discussed after the recommendations of the other committees were known.

Mr. HOUTMAN (Belgium) maintained that the Fifth Committee was exclusively competent to decide on questions of voting. To consult with other committees would probably result in a different solution for each



of the different sections of the Charter. The Fifth Committee should devise a system of voting that would apply consistently to the provisions of the Charter as a whole. All decisions should be voted by a simple majority except those of a very important nature, e.g. amendments, when a two-thirds majority should apply. He would like to know why a two-thirds majority was provided for in the case of decisions of far less importance.

Mr. KELLOGG (United States) said that Article 16 (7) was a comparatively new departure in international organization: it was to some extent legislative in nature and decisions under it would be binding on all Members without ratification. For these reasons it had been thought desirable to afford Members an extra measure of protection by providing for a two-thirds majority.

The CHAIRMAN suggested that the Committee, should agree provisionally with the recommendations of the Sub-Committee on the understanding that consultation should take place with the other Committees, and that any proposals for alteration made by them should be considered later.

Mr. HOUTMAN (Belgium) agreed, provided it was recognized that a final decision in the matter of voting arrangements was the responsibility of Committee V.

Agreed, subject to the reservation stated.

Paragraph 9

That this paragraph be approved without change.

agreed.

Article 59

That this Article be amended to read as follows:-

- "1. The Executive Board shall adopt its own rules of procedure, including rules concerning the convening of its sessions.
- "2. The Executive Board shall annually elect its chairman and other officers who shall be eligible for re-election."

3. The Chairman of the Executive Board, as such, shall be entitled to participate, without the right to vote, in the deliberations of the Conference."

H. E. Mr. COLBAN (Norway) recalled that he had proposed at an earlier Meeting to delete the words "and other officers". As, however, the remarks of the Sub-Committee on Article 62(2) made it clear that these words did not imply Members of the Secretariat, he had no objection to their use.

Mr. KELLOGG (United States) said that the Sub-Committee had assured that the Secretary would probably be supplied by the Secretariat. The new wording of Article 59(2) did not mean that the Secretary would be elected by the Executive Board.

Mr. DAO (China) asked whether the words "as such" in the new paragraph (3) implied that, if the Chairman of the Board was also a Delegate to the Conference, he would be free to participate in the deliberations of the Conference in either capacity.

Baron van TUYLL (Netherlands), who had moved to add the words in the Sub-Committee, answered that the Chairman of the Board would probably be the representative of his government at the Conference. He might at the same time wish to make observations in his capacity as Chairman of the Board.

Agreed.

Article 60

Paragraph 1

That the word "supervise" be substituted for the word "review" in the third line.

Note: It was agreed in full Committee that the last sentence of paragraph 1 may need later consideration in the light of the recommendations of the Joint Committee on Industrial Development.

Paragraph 2

That this paragraph be approved without change.

Paragraph 3

That the word "may" be substituted for the word "shall".

Paragraph 4

That this paragraph be approved without change.

Agreed.

Article 62

Paragraph 1

That this paragraph be amended to read: "The Commissions shall be composed of persons invited by the Executive Board and qualified....."

Note: It was agreed that the Committee's Report might recommend that in inviting qualified individuals to serve as members of Commissions, due regard should be paid to the importance of selecting such members on as wide a geographical basis as possible.

Paragraph 2

That on the second line the word "service" be substituted for the word "office".

Note: It was agreed that the Committee's Report might recommend that the regulations referred to in this paragraph, should include provisions that would enable the services of a permanent Chairman and Secretary to be made available to each Commission.

Mr. DAO (China) desired that the Executive Board should be obliged to consult governments of countries before appointing any of their nationals to be members of Commissions, and that not more than one national of each country should sit on a Commission.

Mr. ERASMUS (South Africa) thought it would be better if the words "and Secretary" were omitted from the Sub-Committee's recommendation. The permanent Chairman would probably secure, in consultation with the Director-General, the secretariat which would best help him.

Mr. TURNER, Secretary, on behalf of the Sub-Committee, explained that the words were not meant to imply that the Secretary would be drawn from

outside the ranks of the permanent Secretariat. He would be a Member of it, made available by the Director-General, but more or less permanently attached to the Commission, to ensure continuity in the Commission's Secretariat as well as in its Chairmanship.

H.E. Mr. COLBAN (Norway) agreed with the South African Delegate. He considered that to provide for the election of the Secretary would amount to a vote of censure on the Director-General, who would not be foolish enough to keep moving secretaries from one Commission to another, but would certainly try to find out who was most fitted for each post and retain him in it as long as he did his work satisfactorily.

Mr. HOUTMAN (Belgium) said that he had desired to ensure continuity in these important posts. He was satisfied, however, that so far as the Secretariat was concerned no special provision to this effect need be incorporated in the Charter.

Agreed, to delete from the Note to Paragraph 2 the words "and Secretary".

H.E. Mr. COLBAN (Norway) appealed to the Delegate of China not to press for the inclusion of his suggested provisions either in the Charter or in any formal recommendation. The Executive Board would, in appropriate cases, ensure that members of Commissions were personae gratae with their governments, but it would be superfluous to make this an imperative rule. Also the Executive Board would most carefully avoid placing two nationals of any country on the same Commission. There would be such keen competition for these distinguished posts that governments would put forward candidates on their own initiative.

After some further discussion, the Delegate for China accepted the Chairman's suggestion that his proposals be mentioned in the Committee's report as the views of the Chinese Delegation.

The Committee rose at 1.08 p.m.