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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE V

Eleventh Meeting  
held on Saturday, 9 November 1946  
at 10.30 a.m.

Chairman: Mr. EDMINSTER (United States)

Article 76 Interpretation and Settlement of Legal Questions

Paragraph 2 (Continued)

The CHAIRMAN, recapitulating the previous discussion, said that the point at issue was whether disputes arising out of rulings of the Conference on matters other than those specified should be submitted to the International Court of Justice only with the consent of the Conference, or whether they might be submitted without such consent. The text of the Draft Charter, providing for Conference consent, had been supported by the Delegate for Brazil, and also - subject to slight modification - by the Delegate for India. The Delegates for the Netherlands, Belgium, Cuba and Australia thought that the right to appeal should not be so restricted.

Mr. ERASMUS (South Africa) suggested that, if a party to a dispute which had been passed on by the Conference was still dissatisfied, it was almost certain that the question would be one of considerable international importance. The prestige of the Conference must of course be fully maintained; but a member should not be debarred merely by the decision of the Conference from appealing to the Court. On the other hand, appeal must not be made too easy. The words "if the Conference consents" might be struck

cut, and at the end of the sentence there might be added the words "after a lapse of six months' notice to the Conference; such notice may however be withdrawn within this period". A change in the circumstances, or in the mind of the parties, might well take place within such a period. The delay would moreover protect the Court from being overloaded too rapidly with appeals. An alternative would be to make the consent of the Conference depend on a two-thirds vote.

H.E. Mr. COLBAN (Norway) declared that he always favoured as free an access to the Court as possible, and he could not see any serious danger in allowing such access in the present instance. Commercial issue as such would remain in the hands of the Conference: the Court would only settle legal issues. A two-thirds majority rule would provide any further safeguard that might be necessary.

Mr. LAURENCE (New Zealand) considered that an aggrieved party should have a right of recourse to a skilled independent tribunal, having regard to the fact that the issues in question were described as "justiciable issues" arising out of rulings of the Conference. He had no fear that the Court would be overburdened. It would be protected by the length of time which every case took to prepare, and by the expense of proceedings.

Mr. DAO (China) pointed to paragraph 3, which implied that the Conference, before passing judgment on any justiciable issue would first seek advice from the Court. He proposed that an aggrieved party be given access to the Court "in accordance with the procedure laid down by the Conference". Such procedure might include a time limit.

Mr. BURY (Australia) thought it unlikely that any country would take to the Court an issue upon which it did not feel very

strongly. The Court must serve the world: the rules of access to it must not be drawn to suit the Court's convenience.

Paragraph 3

Mr. RENOUF, Legal Officer, said that the wording of the paragraph was similar to that of Article 96 (2) of the United Nations Charter. There had been some discussion within the United Nations on the legal issue as to whether a specialized agency should be obliged, every time it wished to submit a question to, or ask an advisory opinion of, the Court, to obtain the consent of the General Assembly, or whether on the other hand the Assembly could give a specialized agency a general authority to go to the Court for an advisory opinion at any time.

The Economic and Social Council had decided at its last session that a clause similar to that in the agreement with the International Labour Office should be inserted in all the agreements bringing the specialized agencies into relationship with the United Nations. The words in the ILO agreement were: "The General Assembly authorizes the International Labour Office to request advisory opinions from the International Court of Justice on any legal questions arising within the scope of its activities". He had, accordingly, redrafted paragraph 3 as follows:

"The Organization may, upon being authorized to do so by the General Assembly of the United Nations, request from the International Court of Justice advisory opinions on any legal questions arising within the scope of its activities."

In answer to Mr. HOLMES (United Kingdom) he said that the purpose of the paragraph as redrafted was to enable the Organization to obtain from the General Assembly a general authority authorizing it at any time that a legal question arose within the scope of its activities, to apply directly to the Court without each time

seeking the authority of the General Assembly. He would willingly consider any alternative wording.

Mr. KELLOGG (United States) suggested the wording "with the general or special authorization of the General Assembly".

Mr. HOLMES (United Kingdom) appealed to the Committee, in drafting the Charter, to set a good example and to use simple words without ambiguity. As a layman he considered the wording of the relevant Article of the United States Draft Charter pseudo-legal, nonsensical and capable of several different interpretations. If the meaning of Article 96 of the United Nations Charter as explained by the Legal Officer was clear, there should be no difficulty in drafting in non-legal language a paragraph which would say precisely what was wanted.

Mr. FARANAGUA (Brazil) remarked that the French text was perfectly clear.

The CHAIRMAN proposed, and the Committee agreed, to submit the paragraph to a drafting committee.

#### Paragraph 4

Mr. HOUMAN (Belgium) maintained that the Director-General should have the power, not only to appear before the Court as a witness or adviser, but also as a representative on every necessary occasion. He suggested the words: "The Director-General or his representative may represent the International Trade Organization before the Court in connection with any procedure before that Court."

Mr. HOLMES (United Kingdom) desired, before accepting the proposed wording, to be sure that the statutes of the Court would admit of the appearance of the Director-General as a representative of the Organization.

The CHAIRMAN replied that the Legal Officer of the Secretariat would presumably advise the Drafting Committee on that point.

Article 78 Entry into Force

Paragraph 3

The CHAIRMAN remarked that the earlier suggestion of the Delegate for Czechoslovakia with reference to the use of the word "acceptance" instead of "adherence" in the last part of the first sentence had been noted on the record for consideration. He drew attention also to the Note submitted by the Netherlands Delegation (Document E/PC/T/C.V/17) and suggested that perhaps the best procedure would be to refer the matter raised therein directly to a sub-committee in order that a suitable amendment or new provision might be prepared for the Committee's consideration.

Mr. HOIMES (United Kingdom) said that the paragraph was connected - theoretically at least - with the proposals of the United Kingdom Delegation on voting (E/PC/T/C.V/14 of 5 November 1946). An alternative method of bringing the Charter into force would be to provide that it should take effect when a certain amount of the international trade of the world was covered by the countries which were prepared to accept the Charter. The entry of the Charter into force should not be delayed after its acceptance by the most important trading countries. If, on the other hand, the Charter were accepted only by countries whose total contribution to, or share in, international trade was relatively small, it would not have the same practical effect. He desired that his remarks on this point be merely recorded and perhaps taken into account when the discussion of voting was resumed.

Mr. PARANAGUA (Brazil) observed that the words followed a classical form common to many international conventions. Conventions were ratified by governments individually and not by voters. To take into account in this connection the relative importance of countries would be an innovation in International

Law. He would strongly object to any assumption that the amendment of the paragraph under discussion would automatically follow a change in the voting procedure as proposed by the United Kingdom Delegate.

Mr. MORAN (Cuba) supported the Brazilian Delegate. He pointed out that the proviso prevented the entry into force from being delayed by the failure of twenty governments to accept it, since any of the governments which had made effective the General Agreement on Tariffs and Trade, and any other governments which had deposited acceptances, could bring the Charter into force.

Mr. MERINO (Chile) agreed with the views expressed by the Brazilian and Cuban Delegates.

Mr. KELLOGG (United States) said that in drafting the paragraph there had been no thought of its being linked in any way with the question of voting arrangements but was regarded simply as a question of the ratification or acceptance of the Charter by governments.

Mr. LAURENCE (New Zealand) asked whether, if under the proviso the Charter is brought into force by only a few governments, the United Nations would consider its requirements for the establishment of a specialized agency to have been satisfied.

Mr. KELLOGG (United States) considered that, where an international convention existed binding the governments which adhered to it, any number of governments could agree between themselves to be bound by certain rules. If the Organization were to be brought into being by only a few governments, they presumably would not have the "wide international responsibilities" required of specialized agencies by Article 57 of the United Nations Charter. In practice, very few governments would be willing to join the Organization, unless they were assured that a considerable number

of other governments would also join it. If less than twenty governments acted under the proviso, they would certainly be governments possessing a very large share in world trade, and so would create an Organization with "wide international responsibilities".

Mr. PARANAGUA (Brazil) drew attention to the close connection between Article 78 (3) and Article 56 (Interim Tariff Committee) including the footnote thereto. On the conclusion of the tariff agreement which it is proposed should be negotiated early next year, certain of the provisions of Chapter 4 of the Charter would enter into force. The present paragraph should not therefore be altered without due regard to that transitional arrangement.

Mr. SURESHI (India) proposed to delete the proviso. If considerably more than half the United Nations did not spontaneously accept the Charter at the beginning, the chances of the success of the Organization would not be bright. If the non-member countries followed policies of their own not in conformity with those of the Organization - as had happened during the period between the First and Second World Wars - the purpose of the Organization would be defeated. All the United Nations felt a need for the ITO; and there was no necessity for special clauses allowing a small minority to bring the Charter into force. At least twenty nations should join before the Organization comes into force.

H.E. Mr. COLBAN (Norway) declared that the proviso was a safeguard against the possibility of all the fruit of the work of the Preparatory Committee and the Conference being thrown away. In practice, few of the smaller trading countries would deposit their ratifications until they knew what the great trading countries were going to do. When these nations joined, others would no doubt

rapidly follow suit. The Organization could hardly start if only four or five countries even though they might be great trading nations were willing to join; since, under these circumstances, the four or five governments concerned would almost certainly prefer to make bilateral agreements among themselves.

Mr. HOLMES (United Kingdom) referred to the proposed redraft of paragraph 4 already circulated by his Delegation (E/PC/T/C.V/13 of 5 November 1946). Some slight amendments had been made in the interests of clarity and the suggested redraft now reads as set out in Document E/PC/T/C.V/24.

Mr. PARANAGUA (Brazil) asked what, if a Crown Colony withdrew, would be the effect on tariff reductions relating to its products.

Mr. HOLMES (United Kingdom) answered that some of the territories for which the United Kingdom had international responsibility were self-governing in regard to matters dealt with in the Charter. Their acceptance and withdrawal had therefore to be notified separately. After an interval of some years they might occupy an even more autonomous position; and their situation within the Organization might accordingly be changed.

Mr. MORAN (Cuba) asked the Delegate for the United States to comment on the British amendment. He thought that paragraph 4 of the United States draft already covered it. A government would not have an obligation to make the provisions of the Charter effective in a territory which possessed its own trade legislation and administration.

Mr. LE PAN (Canada) recalled that Canada had not acquired entire political equality with the United Kingdom, or full recognition of its nationhood, until 1939. On the other hand, it had enjoyed complete autonomy in its commercial relationships since 1846; and as long ago as 1854 it had negotiated on its own

responsibility a treaty with the United States. Nevertheless, the legal position had been that at any time between 1846 and 1931, when the Colonial Laws (Validity) Act was repealed, the United Kingdom could have stepped in and enforced on Canada a commercial policy entirely at variance with Canadian policy. Any such action would have aroused bitter resentment in Canada as a grave infringement of her developing her own nationhood.

In the British Commonwealth and Empire such matters proceeded by precedent. The United Kingdom and all other countries possessing responsibility for non-self-governing territories had undertaken, under Article 73 of the Charter of the United Nations, to develop self-government in the territories in question. The grant of autonomy in commercial relations was a practical and fruitful step in that direction.

He therefore strongly supported the redraft proposed by the United Kingdom Delegation.

Mr. KELLOGG (United States) said that he had some sympathy with the position expressed by the Delegate of Cuba. His Government felt, however, that if some form of language could be found which would satisfy those Delegations that meet these particular problems and which did not change the essential substance of the paragraph in question, it would be willing to accept it.

On the CHAIRMAN's suggestion, a Sub-Committee consisting of the Delegates for Belgium, Brazil, India, New Zealand, South Africa, the United Kingdom and the United States was appointed to consider the amendments suggested to Articles 76 (Interpretation and Settlement of Legal Questions) and 78 (Entry into Force), and to consider Article 2 (Membership) insofar as it might be affected by the Note of the Netherlands Delegation (E/PC/T/C.V/17 of 6 November 1946), and to make every effort to report back to the Committee on

LONDON  
E/EC/T/C.V/27  
Page 10

Tuesday morning, 12 November 1946.

Future Work of Committee

The Committee agreed to meet on Tuesday morning, 12 November 1946, to consider the report of the Sub-Committee and to discuss Articles 50 (Functions of the Organization), 51 (Structure of the Organization) and 61 (Establishment of Commissions); and on Tuesday afternoon to discuss the statement on voting to be submitted by the Delegations of Belgium-Luxembourg and the Netherlands, and Articles 57 (Executive Board - Membership) and 58 (Executive Board - Voting).

Rapporteurs

The Committee appointed the Delegates for China and Australia (Mr. DAO and Mr. BURY) to be Joint Rapporteurs, for Committee V.

The Committee rose at 12.49 p.m.

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