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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE V

Fourteenth Meeting
Held on Friday 15 November 1946 at 3 p.m.

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

Report of Ad Hoc Drafting Sub-Committee on Articles 50, 51, and
Proposed New Addition to Article 57

The Report was discussed paragraph by paragraph.

Article 50, paragraph 1:

That this paragraph be approved without change.

Agreed.

Article 50, paragraph 2:

That the words "the United Nations and" be inserted immediately preceding the words "other international Organizations".

Agreed.

Article 50, paragraph 3:

(a) That in sub-paragraph (a), the words "or the Members" be inserted immediately following the word "Organization".

Agreed.

(b) That in sub-paragraph (c), the word "or" in the last line be replaced by the word "and".

Baron van TUYLL (Netherlands) asked whether the Drafting Sub-Committee had left in deliberately the words at the end of the sub-paragraph "or in the general interests". He had supposed that the general interests would be one of the commodity principles. The wording might suggest that the commodity principles were not in the general interests.

Mr. HOLMES (United Kingdom) said that the Sub-Committee had felt that the words broadened the basis of the sub-paragraph. The change had been suggested to remove any suggestion of a discriminatory line between what was done respectively under the commodity principles and in the general interests.

Agreed.

Article 50, paragraph 4:

That the words "a mechanism" be deleted.

Note: As a result of the Sub-Committee's consideration of this paragraph, a further amendment of paragraph 2 of Article 76 is recommended for the Committee's approval.

Baron van TUYLL (Netherlands) complained that the Sub-Committee had restricted the scope of the paragraph. Some sort of mechanism was necessary and his Delegation was anxious to see specific provisions made for arbitration.

Mr. KELLOGG (United States) explained that the Sub-Committee had read the paragraph in conjunction with Article 76 (2) (Interpretation and Settlement of Disputes), and had decided to leave paragraph 4 Settlement of Disputes merely as one of a list of functions without going into detail, but to spell out all the details with respect to the handling of disputes in Article 76 (2).

Baron van TUYLL (Netherlands) answered that in the suggested amendment to Article 76 (2) arbitration was mentioned only with regard to rulings of the Executive Board and not with regard to the decisions of the Conference. He reserved his right to raise the matter later, in connection with Article 76 (2).

Agreed.

Article 50, paragraph 5:

That the words "and promote the acceptance by Members of" be inserted immediately following the words "to make recommendations for".

Note: As a result of the Sub-Committee's consideration of this paragraph, it is recommended that a new provision be added to Article 55.

Mr. HOUTMAN (Belgium) questioned the use of the word "arts".

Mr. KELLOGG (United States) answered that the Sub-Committee had desired to cover such matters as copyrights and cinematograph films which involved artistic as well as technological skill. He agreed to the suggestion of the Belgian Delegate that the wording in the French text should be "procédés artistiques". In answer to Mr. PALTHEY (France), he said that the word was also intended to cover designs of all kinds, fashions, perfumes, jewels and the like.

Mr. DAO (China) asked whether the Sub-Committee had considered any means by which the acceptance by Members could be promoted.

Mr. HOLMES (United Kingdom) replied that the Sub-Committee had considered that, if the Organization was to have as part of its functions the recommendation of international agreements on these various matters, every encouragement should be given to such agreements to become effective. The only means of promotion the Sub-Committee had in mind was indicated in the suggested new paragraph (5) to Article 55 (See below): Members would undertake to give due consideration to the subsidiary agreements mentioned,

and would make up their minds within a reasonable time either to accept them and take the necessary steps for their implementation, or, if they did not so decide, would explain their reasons.

Mr. PARANAGUA (Brazil) supposed that these international agreements could be bilateral as well as multilateral.

Mr. KELLOGG (United States) said that they could, but that the paragraph envisaged primarily multilateral conventions. Bilateral agreements would not be prohibited, but might not normally be appropriate.

Agreed.

Article 50, paragraph 6:

That this paragraph be amended to read as follows:

"To co-operate with the United Nations and with other inter-governmental organizations generally in the attainment of the economic and social objectives of the United Nations and in the maintenance or restoration of international peace and security, and in particular, in the achievement of an economy of effort in the performance of the functions set out in this Article."

The CHAIRMAN suggested that the paragraph would be more effective if redrafted to read: "To achieve an economy of effort in the performance of the functions set out in this Article and to co-operate with the United Nations generally in the attainment of the economic and social objectives of the United Nations and in the restoration and maintenance of international peace and security."

Agreed, as amended.

Article 50, paragraph 7:

That this paragraph be approved without change.

Agreed.

Article 51:

That this Article be amended to read: "The Organization shall have as its principal organs: a Conference, an Executive Board, Commissions as established under Article 61, and a Secretariat".

Agreed.

Article 55:

That the following new provision be added to Article 55, as paragraph 5 thereof:

"5. The Conference may develop and, by the affirmative votes of two-thirds of its Members, recommend for their acceptance, conventions and agreements with respect to any matter within the competence of the Organization. Each Member undertakes that it will, within eighteen months after such recommendation by the Conference, make a decision upon it. Each Member shall notify the Director-General of the action taken, and, in the event of rejection of such recommendation, shall furnish a statement of the reasons therefor."

Agreed, subject to the correction of a typing error in the French text pointed out by Mr. HOUTMAN (Belgium).

Article 57:

That the following new paragraph be added to Article 57, as paragraph 5:

"5. Any Member of the Organization who is not a Member of the Executive Board shall be invited to send a representative to any discussion by the Board of a matter of particular and substantial concern to that Member. Such representative shall, for the purpose of such discussion, have all the rights of Board Members, except the right to vote".

A discrepancy between the English and French texts with respect to the translation of "to any discussion" was noted.

Mr. HOUTMAN (Belgium), while supporting the amendment, asked who would decide whether a question was one of particular and substantial concern to a Member.

Mr. HOLMES (United Kingdom) answered that the clue was contained in the word "invited": the initiative might be expected to come from the Board. The wording followed closely that of Article 69 of the Charter of the United Nations, which provided a similar right of attendance before the Economic and Social Council.

Mr. HOUTMAN (Belgium) observed that the question would be decided by a simple majority.

Mr. DAO (China) considered that the new paragraph should be added to Article 59 (Executive Board - Sessions, Procedure and Officers), since it did not concern Membership of the Board.

Mr. LAURENCE (New Zealand), referring to the use of the word "shall" in the first sentence, considered that the provision, though sound in principle, should be less rigidly drawn, with a view to leaving the Board some measure of discretion.

Amendment agreed to, subject to the proposal of the Chinese Delegate.

Article 76 (2):

That this paragraph be further amended to read as follows:

"2. Any questions or difference concerning the interpretation of this Charter or arising out of its operation shall be referred to the Executive Board for a ruling thereon. Before giving its ruling the Executive Board may require a preliminary report from any of the Commissions or may refer the matter to arbitration under procedure which it shall establish. Any ruling of the Executive Board.....be referred to the Conference".

"3. Any justiciable issue arising out of a ruling of the Conference.....submitted to the Court under this Article".

Notes: Paragraphs 3 and 4 of this Article would then become paragraphs 4 and 5 respectively.

In reply to the Brazilian Delegate, Mr. KELLOGG (United States) stated that a matter would be referred by the Board to one of the Commissions, if appropriate, before the Board itself made a ruling. After the Commission had filed its Report, the Board would then give its final ruling, following which any aggrieved party could appeal to the Conference. In reply to Mr. PALTHEY (France) who desired clarification of the last sentence of paragraph 2, he said that if the Board referred a dispute to arbitration, it might desire to make a ruling on the arbitrator's report, and then any aggrieved Member could appeal to the Conference. It might be found desirable to give the Board the power to make the arbitrator's report final, if the dispute involves a relatively small matter.

Mr. PALTHEY (France) considered that it should be clearly stated that a decision reached by arbitration would be final and irrevocable. If a decision given after arbitration was to be the subject of any appeal, such appeal should be outside the framework of ITO and should be to the International Court of Justice or some other body.

Dr. ALAMILLA (Cuba) desired to give any party the right to contest the submission to arbitration.

Baron van TUILLE (Netherlands) considered it inconsistent to provide for an arbitrator's decision that was not final. The Board might ask the advice of experts and retain discretion to act on it, but they should not term that an arbitration. Arbitration should be allowed on every final decision of the Organization, with a right of appeal to an independent Court. Resort to arbitration, however, or appeal to a higher Court, should only be allowed in the case of a final decision by the Organization; but if the Executive Board, at some earlier stage of a dispute, decided that a question was not so important and there should be recourse to arbitration, that would be acceptable.

H.E. Mr. COLBAN (Norway) approved of the amendment provided that it stated clearly that a party could not be forced to accept arbitration and that arbitration must be final.

Mr. PALTHEY (France) proposed that the Board be given power to decide whether a given issue should be settled within the Organization or by arbitration; if the latter, the Conference should not be entitled to question the award and further appeal should not therefore be envisaged.

Mr. KELLOGG (United States) suggested that the amendment be altered to give the Board power to rule that the matter be referred to arbitration for final decision under procedures which it should establish.

Dr. ALAMILLA (Cuba) stressed the importance of an appeal to a Court from the award of the arbitrator.

Mr. HOUTMAN (Belgium) desired to discriminate between the administrative and the judicial stages, by redrafting the second sentence of paragraph 2 to read: "The Executive Board may require a preliminary report from any of the Commissions in such cases as it deems appropriate, or may refer the question for consultation to experts, following which the question shall be referred again to the Executive Board and to the Conference if necessary". Paragraph 3 would then be amended to read: ".....may be submitted by any Party to the dispute to the International Court of Justice or referred to arbitration".

On the suggestion of the CHAIRMAN, the Committee adjourned while a Drafting Sub-Committee, consisting of the Delegates of Belgium, Cuba, France, Netherlands, Norway (Chairman), the United Kingdom and the United States, reconsidered the amendment. On resuming -

H.E. Mr. COLBAN (Norway) reported that the Sub-Committee had agreed on the following wording:

"Any question or difference concerning the interpretation of this Charter or arising out of its operation shall be referred to the Executive Board. The Executive Board may decide either to give a

ruling in the matter itself or to refer it, with the consent of the Parties, to arbitration upon such terms as may be agreed by the Parties. Any ruling of the Executive Board....." etc.

Baron van TUYLL (Netherlands) said that it was of great importance that rulings of the Conference should be open to appeal to the International Court or to arbitration. Article 76 applied only to justiciable issues and it was the feeling of his Delegation that Members of the Organization should not be prevented from bringing other questions before the Court. He did not think the prestige of the Conference would suffer were any decisions of the Conference to be taken before a Court or submitted to arbitration nor would Members be likely to resort frequently to these procedures. He maintained that there would be issues which the Conference could not settle conclusively and which could only be satisfactorily determined if brought before a Court. He suggested that the words "any justiciable issue arising out of" in paragraph 3, might be omitted or alternatively that provision might be made for the establishment of an arbitration body composed of experts appointed by Members of the Organization. Such a body would be in a position to give final decisions on non-legal questions on which the Conference had decided.

Amendment, as amended by the Sub-Committee, agreed to, the suggestion of the Netherlands Delegate being noted.

Report of Sub-Committee of Committee III: Article 65, Functions of Commission on Business Practices

The CHAIRMAN introduced a redraft of this article prepared by a Sub-Committee of the Third Committee and not yet approved by the Committee. In view of the shortness of the available time, it had been thought necessary to send this document straight to the Fifth Committee. The Third Committee intended, if they followed the Sub-Committee's recommendations, to state in their report to the Preparatory Committee

that they had communicated this text to the Fifth Committee. He hoped the Fifth Committee would not feel called on to discuss the draft, but would be content merely to take note of its receipt and of the fact that its text was being included in the Report of Committee III.

Mr. QURESHI (India) maintained that the Committee should not take note of the document, which might be substantially amended by the Third Committee. The Fifth Committee had made general recommendations for the formation of various Commissions, but no full indication had been given of their nature or functions. It was not known, for example, what would be the function of the Industrial Development Commission when this was set up. The Committee should not, therefore, take note of any detailed functions of the Commission at this time.

The CHAIRMAN replied that he proposed to refer the draft to the Interim Drafting Committee subject to any alterations made in it by the Third Committee. He desired to conform to the formal procedure laid down whereby questions concerning Commission functions came within the jurisdiction of the Fifth Committee.

Mr. HOLMES (United Kingdom), strongly supporting the Chair, said that his Delegation had considered that the substantive part of the recommendations concerning restrictive business practices and the functions of the Commission were interdependent; the present Conference should not finish its survey of Articles 34 - 40 without pronouncing on the functions of the Commission. This draft faithfully followed the Articles that had been adopted. The Third Committee would find it difficult to agree finally to the articles dealing with restrictive business practices without knowing fairly clearly what the functions of the Commission would be. It would be highly convenient if the Fifth Committee would at least take note of the draft, thereby recognizing that the matter was chiefly one for the Third Committee.

Mr. QURESHI (India) repeated his objection, adding that the Committee did not know what the Fourth Committee would decide about its Commission, nor the Joint Committee about the Industrial Commission, was the Committee to act only as a post-office by passing on incomplete drafts to the Interim Drafting Committee? On the other hand, more time would be needed if the drafts were to be properly considered.

The CHAIRMAN thought it would have been better, had the articles dealing with functions of Commissions not been included in the Fifth Committee's terms of reference in the first place. In the circumstances, however, the simplest procedure seemed to be to send the material on to the Interim Drafting Committee without discussion. In answer to the Chilean Delegate, he said it was possible that the Committee might, at its last meeting, take note of any suggestions of the Joint Committee with reference to a Commission on Industrial and Economic Development.

H.E.Mr. COLBAN (Norway) pointed out that the Committee had already decided that reports coming from the other Committees must be sent on to the Interim Drafting Committee, who, if it encountered difficulty, would report it to the Second Session of the Preparatory Committee in Geneva.

Agreed, that the draft be forwarded to the Interim Drafting Committee, and that the transaction be noted in the report.

Report by Joint Rapporteurs on Voting and Executive Board Membership
(E/FC/T/C.V/W.5)

Mr. DAO (China) explained that there had not been time to discuss with his colleague, Mr. BURY, the content of the main body of the Report though he associated himself with the Recommendations and Conclusions.

Mr. FALTHEY (France) suggested that the Committee should address itself to the conclusions as set out in the Rapporteurs Report with a view to reaching a compromise or if this should not prove feasible, with a view to giving the Interim Drafting Committee more concise instructions

as to alternative texts that might be prepared. He did not consider that the issues had been sufficiently clarified and suggested that the Committee should proceed with a full discussion of the Belgian-Netherlands proposal which did not seem to have been adequately considered in the Rapporteurs' Report.

Mr. PARANAGUA (Brazil) drew attention to the fact that his Delegation had also submitted a compromise proposal regarding article 57. Referring to the conclusions in the Rapporteurs' Report, he proposed that the first of these should be amended to read "the majority of Delegates favour the principle of one country, one vote in the Conference and in the Executive Board".

This amendment was agreed to. It was also agreed to delete the word "strong" in the second conclusion.

Mr. PARANAGUA (Brazil) thought that the fourth conclusion concerning the term of office of Board Members might be omitted in view of the fact that this question had not been much discussed. He reminded the Committee furthermore that the Brazilian Delegation had advocated a five year term.

Mr. BURY (Australia) replied that the Rapporteurs' purpose had been to call attention to the fact that this particular matter had not been fully considered by the Committee.

Mr. HOLLIES (United Kingdom) referring to the first recommendation, said it was his impression that the Committee had agreed in principle that the Drafting Committee should be invited to illustrate in concrete terms for consideration at the next meeting of the Preparatory Committee the effect of alternative combinations of the suggested elements in weighted voting.

Mr. BURY (Australia) commented that the Rapporteurs had felt that nothing had emerged from the Committee's deliberations of a sufficiently concrete nature for submission to the Drafting Committee

The CHAIRMAN expressed the view that the problem was not one which could be satisfactorily dealt with by the Interim Drafting Committee nor was it a matter which could be disposed of at this time. He felt the best procedure would be to leave the matter open on the understanding that, Members interested in the weighted voting principle would give the matter further consideration and be ready with more specific suggestions for submission to the Preparatory Committee at its next meeting.

It was eventually agreed that the recommendation as formulated by the Rapporteurs should be deleted from the Report, subject to the view of the minority being recorded for such action as the Drafting Committee may wish to take.

On the suggestion of Mr. HOLMES (United Kingdom) the Committee agreed to add to the second paragraph on Page 1, after "the economics of which differed radically from their own", the words "and some of which had an effective measure of autonomy in matters within the scope of the proposed Organization."

On the suggestion of Mr. NAUDE (South Africa) the Committee instructed the Rapporteurs to incorporate in the section on weighted voting the British Delegate's earlier suggestion that formulae should include a maximum as well as a minimum limit.

On the suggestion of the Chairman, the first line of the third paragraph on Page 1 was amended to read: "The majority of Delegations favoured in principle", etc. On the suggestion of Mr. Laurence (New Zealand) the word "seemed" in the fourth line ("it seemed generally agreed") was replaced by "was".

Mr. BURY (Australia) undertook to consult the Delegate of India with a view to clarifying paragraph (a) at the foot of page 2.

The Committee agreed to delete from page 3 (middle) the paragraph beginning "It was generally agreed..."

On the suggestion of the CHAIRMAN, the first sentence of the section Executive Board was redrafted as follows:

"Many of the Committee, including both sponsors and opponents of weighted voting, felt that there should be provision of permanent seats on the Executive Board for Members of economic importance."

Mr. DAC (China) referring to the comment on page 4 to the effect that it would be better to establish criteria for selecting permanent Members rather than naming them in the Charter, proposed that the possibility of naming such Members in the Charter should be mentioned.

Mr. PAILLEY (France) said that if the matters on which no firm conclusions had been reached (page 5, fifth conclusion) were left for the Second Session of the Preparatory Committee - as most Members would probably wish - another matter should be added: "(e) The System of voting in the Executive Board." If a majority opposed a weighted vote in the Conference, the same majority might favour a weighted vote on the Board.

It was pointed out that it had already been agreed to state in the report that a majority of the Committee were in favour of equal voting in the Executive Board as well as in the Conference. After further discussion, it was decided to leave the matter as it stood.

The Committee agreed to meet on Tuesday, 19 November, to discuss the Draft Report of the Rapporteurs.

The Committee rose at 7.20 p.m.