

A.1

E/TC/T/C.V/PV/11.

UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT.

Verbatim Report

of the

ELEVENTH MEETING

of

COMMITTEE V

held in

Hoare Memorial Hall,

Church House, Westminster

on

Saturday, 9th November, 1946

at

10.30 a.m.

CHAIRMAN: Mr. Lynn R. EDWINSTER (U.S.).

(From the shorthand notes of
W.B. GURNEY, SONS & FUNNELL,
58, Victoria Street,
Westminster, S.W. 1.)

THE CHAIRMAN: We continue this morning the discussion of article 76, and we will resume our discussion of paragraph 2. I would remind the Committee that the point at issue, when we adjourned yesterday, 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 present United States text which provides for Conference consent in such cases has been supported by the Delegate of Brazil, and, subject possibly to some slight modification, by the Delegate of India, who, together with the United States Delegate, feel that the ITO should assume full responsibility for dealing with disputes of a commercial nature.

The delegates of the Netherlands, Belgium, Cuba and Australia, on the other hand, have argued that the right of appeal to the Court should not be restricted by making the Conference's consent a condition precedent. Do any other delegates wish to comment on this point?

MR QURESHI (India): Mr Chairman, may I suggest that we revert to the simultaneous interpretation if the system is now working. I think it would save time.

THE CHAIRMAN: If it is agreeable to the French-speaking delegates, we will use the phones. I leave it to them.

MR PALTHEY (France) (interpretation): I would prefer the successive interpretations system, Mr Chairman, at this meeting, if you have no objection.

(The Delegate of Chile also indicated his desire for the successive interpretation system to be used)

THE CHAIRMAN: Certainly. I now call upon the delegate of South Africa.

MR ERASMUS (South Africa): Mr Chairman, in the light of yesterday's discussion, and trying to give the matter some thought, because it is rather a difficult matter, if I understand this Article perfectly correctly, it seems to me that if a dispute arises it first has to be considered by the Committee who will make an advisory report; then after that, if no satisfactory solution is arrived at, it is referred to the Executive Council and after that to the Conference. If the party to the dispute is still not satisfied with the decision the matter, it seems to me will be of great importance to that particular party and might also be of international importance; so that I feel the issue here is this, that we must try - and in this I agree with the United States delegate - to keep the prestige of the Conference as high as possible; but I do not think that we should bar a member merely through a decision of the Conference from appearing. As I say, it is a difficult matter, and the point is I think that we must try to find a middle road by not completely barring a person from appearing and, on the other hand, not making it too easy. Frankly, I am just putting this forward as a

E/PC/T/C.V/PV/11

suggestion which might go forward to the Drafting Committee, but we might strike out the words "if the Conference consents," and then, after the words, "the dispute to the International Court of Justice" insert, "after the lapse of six months' notice to the Conference.

Such notice may, however, be withdrawn within this period." Now my reason for the amendment is this, that if such a party is not satisfied with the decision of the Conference he may appeal, but we put a time limit upon it, without dragging it out, because in the light of future developments, when things may have changed, there might have been time for reflection and the party might again submit to the decision of the Conference. I agree it is quite a light argument there, but it might be of some use. On the other hand, it might prevent the International Court of Justice from being overloaded with appeals too rapidly.

Thank you, Mr Chairman. Then, Mr Chairman, there is another alternative suggestion I could have made. The one I have already made is the time limit idea, and the other one is this. Instead of striking out the words "if the Conference consents," we might add, "if the Conference consents by one-third vote of the members present and voting," or "one-third vote of the Conference": so that there are two alternative suggestions. But, as I say, I have not made up my mind about it absolutely finally, and it is just a suggestion.

MR. PARANAGUA (Brazil): Mr Chairman, the case here is not about the whole of Chapter IV; it is only about the sub-paragraphs dealing with national safety, and that is very important. I think that the text as we have it here is better than the amendment proposed, because it is not a question of secondary importance; it is the most important question. Sub-paragraphs (c), (d), (d) and (k) are questions of national safety, and I think the text we have here in Article 76 is preferable. I cannot support the proposal of the South African delegate.

THE CHAIRMAN: I should say to the Delegate from Brazil that I do not believe that the issue which we are discussing turns on those sub-paragraphs he has mentioned, (c), (d), (e) or (k) of Article 52 or paragraph 2 of

I.

E/PC/T/C.V/PV/11

Article 49, but rather has to do with the latter part of the sentence of paragraph 2 of Article 76, which says: "Any justiciable issue arising out of a ruling of the Conference with respect to the interpretation of sub-paragraphs (c), (d), (e) or (k)," and so on; and then "and any justiciable issue arising out of any other ruling of the Conference may, if the Conference consents, be submitted by any Party to the dispute to the International Court of Justice." Now it is my understanding that that is the part that our discussing is focussing on at the moment, and that the suggestions of the South African delegate have reference to that and not to sub-paragraphs (c), (d), (e) or (k) of Article 32 or to paragraph 2 of Article 49.

Mr PARANAGUA (Brazil): I accept the explanation.

Mr ERIK COLBAN (Norway): Mr Chairman, I am in principle always in favour of as open an access to the Court as possible, and I cannot see that there would be any serious danger in allowing any justiciable issue arising &c. to go to the Court, even without the consent of the Conference. It is said that we would not have commercial disputes taken out of the hands of the Conference; but the commercial dispute as such would not be taken out of the hands of the Conference, but only legal points; and the heading of Article 67 says "Interpretation and Settlement of Legal Questions". I think that should be a sufficient safeguard; but if an additional safeguard should be wanted, I think the suggestion made by the delegate of South Africa, especially his second alternative, is very interesting. Then if the Conference does not by a two-thirds majority refuse, it should be admissible to send it to the Court.

Mr LAURENCE (New Zealand): Mr Chairman, there are two points in this matter to which I think insufficient attention has been given in the discussion. One is that the issues in question are described as justiciable issues. The other aspect is that the issues or the dispute arises out of rulings of the Conference. Now, if the consent of the Conference is to be required before a ruling of the Conference can be taken before the International Court, I do not think it gives an aggrieved party all the rights to which he should have access. I think that if a party feels aggrieved and is not prepared to accept the ruling of the Conference on a justiciable issue, that party should have the right of recourse to an independent tribunal skilled in the particular aspect which is in question. Fears have been expressed that the International Court is going to be over-burdened. I question whether that is the case. There are practical points which exercise restraint. One is the time which would be taken in having the case heard by the International Court. The other is the expense involved. I think those two things would be very

E/PC/T/C.V/PV/11

good safeguards against trivial issues being taken to the International Court. So from our point of view we would feel very much happier if the words "if the Conference consents" were deleted from this clause, particularly on the points that they are justiciable issues that are involved and they are rulings of the Court that are involved.

THE CHAIRMAN: It seems to the Chair that the delegate from South Africa stated the issue very clearly on the one hand. There have been those who feel that some check upon the right of appeal in such cases to the Court of Justice should be provided in order to make the International Trade Conference as autonomous as possible and to uphold its prestige in the field of commercial disputes; and the original draft had attempted to supply that check by inserting the words "if the Conference consents". On the other hand, some delegates feel that there is no serious danger that the right of appeal would be resorted to to an excessive degree and capriciously, and that possibly you could just omit the words "if the Conference consents" and interpose no obstacles. Possibly there is some compromise between those two that could be worked out perhaps along the lines suggested by the delegate from South Africa. That is certainly not for the Chair to say; but it is very clear that we have here a problem which should be submitted to a Subcommittee to be considered further and worked upon.

Mr DAO (China): Mr Chairman, I have listened with great interest to the arguments both pro and con in this respect. The anxiety felt by the delegate for the Netherlands and others as to the right of a Member to appeal against the decision of the Conference seems apparent. However, if we read this paragraph 2 in conjunction with paragraph 3, we should imagine that the Conference will not pass judgment so lightly on any justiciable issue without seeking an advisory opinion of the Court first; and we should also think that the Conference may lay down certain procedure for handling the cases of dispute; so that we

E/PC/T/C.V/PV/11

feel that it may be desirable to delete the words "if the Conference consents". There might be some sort of phrase such as "in accordance with the procedures laid down by the Conference", which would take care of all the suggestions made with regard to the period or with regard to the ways in which the dispute can be brought to the International Court of Justice.

Mr BURY (Australia): Mr Chairman, I should like, on further considering this matter, to support the remarks made by the delegate of New Zealand, on the grounds that all issues which go to the Court would be justiciable issues; that presumably no country would take a case to the International Court of Justice unless it was something on which they felt very strongly. And I would like to make a further point, that, although, of course, we must be concerned not to load the International Court of Justice with trivial cases, the International Court of Justice must exist for the world and not all these other things be designed to fit into the International Court of Justice.

THE CHAIRMAN: If there is no further discussion on paragraph 2, it will be submitted for further consideration to a Subcommittee which I shall appoint at the end of our discussion this morning. We pass next to paragraph 3.

In that connection, I understand that the Legal Officer of the Secretariat desires to suggest an amendment.

MR RENAUF (Legal Officer of the Secretariat): In connection with this paragraph of Article 76, there are two points which I would like to bring to the attention of the Committee.

The first is that the wording of this paragraph is similar to the wording of paragraph 2 of Article 96 of the United Nations Charter. In that respect I would like to point out that there has been some legal debate in United Nations circles about what is the exact meaning of paragraph 2 of Article 96. That paragraph reads: "Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities". The question which has been debated is whether a specialised agency must, every time it wishes to submit a question to the Court, go to the General Assembly and on each occasion ask the General Assembly for permission, or whether the General Assembly can give a specialised agency a general authority to go at any time to the Court for an advisory opinion.

The second point, which is connected with that point, is that the Economic and Social Council, at its last Session, took a decision to the effect that a similar clause regarding advisory opinions would be inserted in all the agreements bringing the specialised agencies into relationship with the United Nations. That clause was designed to remedy this defect in Article 96 (2) of the United Nations Charter, and the effect of that decision was to incorporate in all agreements a similar clause to that in the Agreement with the I.L.O. Different clauses had been inserted in each agreement with the specialised agencies, and the Economic and Social Council thought that it had better lay down a uniform practice, a uniform clause, to be inserted in each agreement.

The relevant part of the I.L.O. Agreement reads: "The General Assembly authorises the I.L.O. to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other

than questions concerning mutual relationships". I think that clause in the agreement must also be borne in mind when we are considering this paragraph.

Therefore, taking into account that legal question arising from the United Nations Charter and the clause which is now being inserted in all the agreements with specialised agencies, I have drafted a redraft which you will now find in front of you. That redraft reads: "The Organisation 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".

I would point out there that I think and I hope that that redraft removes the legal doubt. "The Organization, upon being authorised to do so" -- to do what? -- to request from the Court advisory opinions on any legal questions. I think it is quite clear that that would give the Organisation a general authority rather than an ad hoc authority from time to time.

The second point is that this redraft is wider than the United States draft, which merely says that the Organisation may refer questions concerning the interpretation of this Charter, whereas the draft I have placed in front of you provides for advisory opinions on any legal questions arising within the scope of its activities. The reason I broadened it is that Article 96(2) of the United Nations Charter is in accordance with the redraft.

MR HOLMES (United Kingdom): Mr Chairman, I am not quite sure that I quite appreciate what this discussion is about. Do I understand that the object of the suggestions made by the Legal Advisor is to secure, or make provision for the Organisation to secure, from the Assembly of the United Nations a general authority to obtain opinions from the International Court on any legal questions, without referring in individual cases for authority to the General Assembly? Is the difficulty that we are trying to read into the relevant Article of the United Nations Charter the idea that a specialised agency, such as the International Trade Organisation is designed to become, should be able to obtain once and for all from the General Assembly of the

United Nations authority to go to the International Court whenever it wishes to have an advisory opinion of the Court on legal questions arising within the scope of its activities? If that is the point -- if we are to get something which covers an interpretation of that sort, then I must say that I do not think that this text which has just been circulated meets the point at all. It could, no doubt, be amended to do so, but in its present form it seems to me to leave the matter open to considerable doubt. The words "upon being authorised to do so" qualify the words "advisory opinions on any legal questions". I should be very grateful for a clarification of the issue.

MR. RENAUD (Legal Officer of the Secretariat): I must apologise to the Committee if I did not make myself clear. Mr. Holmes is correct in that the purpose of this redraft is to enable the International Trade Organisation to obtain from the General Assembly a general authority which will enable it at any time a legal question arises within the scope of its activities, to go direct to the Court without having to have recourse each time to the General Assembly.

As to the wording of the text, I have only put it forward as a working basis. I had thought that it covered the point I made, but if the Committee considers that it does not, I am perfectly willing to hear

any text which may express my thoughts better.

MR. KELLOGG (US): I wonder whether we could not clear up this difficulty by taking the United States clause, with the authorisation of the General Assembly, and saying "with the general or special authorisation of the General Assembly."

MR. BURY (Australia): Irrespective of expressing any view, I wonder whether that meets the other point concerning questions relating to the interpretation of the Charter on any legal questions.

MR. KELLOGG (US): In reply to the Delegate of Australia, I was only suggesting using that clause in the United States text. I was not discussing the second question.

THE CHAIRMAN: The Chair does not desire to cut off debate or discussion on this, but it seems to me that we are really debating a drafting matter. We seem to be agreed that we want this paragraph so drafted that it will be possible for the International Trade Organisation to refer legal questions to the Court of Justice for an advisory opinion without having to clear each time with the General Assembly. If we are agreed on that, it seems to me it is not necessary to prolong our discussion as to how it should be done. It is a drafting matter.

MR. HOLMES (UK): I merely want to make a general appeal that in any drafting of this instrument, we at any rate shall set a good example and try to have it in simple words which will avoid any ambiguity. I must say that as a layman the wording of the relevant article in the United States Charter seems to me to be quite nonsensical, almost obviously capable of half a dozen different interpretations. If we are right in the interpretation to be given to Article 96, that it means a particular thing, as expressed by the Legal Adviser, then of course we have got something to start with. If there is no doubt about that, then I should not think there is any difficulty in drafting it. The layman's non-legal language is precisely what is wanted. What we have, both in the Charter of the United Nations

E.2

E/PC/T/C.V/PV/11.

and this Draft Charter of our own Organisation, is a sort of pseudo-legal language which gives rise to doubts almost in every word.

MR. PARANAGUA (Brazil): I agree with the United Kingdom Delegate, but I must point out that the French text is perfectly clear. Once more we can see that the diplomatic language is absolutely clear. It is the English text that is not clear. Everybody who can understand French knows what the French text means.

THE CHAIRMAN: I suggest that we submit Article 3 to a Drafting Committee, along with these other legal matters that we have discussed, and with the admonition to the Committee, perhaps, to eliminate all nonsense, if any, in it, and make it say what we want it to say. We pass next to paragraph 4.

MR. HOUTMAN (Belgium-Luxembourg) (Interpretation): In the same spirit of clarity and for the sake of clarity, I wish to correct the present wording of paragraph 4. As it now stands, paragraph 4 reads: "The Director-General or his representative may appear before the Court on behalf of the Organisation in connection with any proceeding before that Court." In reality, it is not only useful that the Director-General be empowered to go there as a witness or to give all the required explanations, but also that he should be in a position to represent the ITO before the Court when the case arises. That is the reason why I should like the text of paragraph to read: "The Director-General or his representative may represent the ITO before the Court in connection with any proceeding before that Court."

THE CHAIRMAN: Is there any further discussion on paragraph 4?

MR. HOLMES (United Kingdom): I feel that before we can accept paragraph 4, either as at present worded or as I would agree rather better worded by the Belgian Delegate, we ought to be quite sure that the Statutes of the Court themselves admit of the appearance of the Director-General as the representative of the Organisation. That is a matter perhaps for the Legal Adviser to advise upon.

E.3

E/PC/T/C.V/EV/11.

THE CHAIRMAN: The Legal Officer of the Secretariat presumably will be in a position to advise the Drafting Sub-Committee on that point. If there is no further discussion of paragraph 4, the suggestions which have been made for revision will be taken into account by the Sub-Committee.

We pass next to a consideration of Article 78, paragraphs 3 and 4. With reference to paragraph 3, the Delegate of Czechoslovakia raised a point at an earlier meeting regarding the use of the term "acceptance" instead of "adherence" in the last part of the first sentence. His point has been noted on the record for consideration.

I should add that the Netherlands Delegation has submitted a note, document 17, regarding the provisions of this paragraph and the related provisions in another article, with the suggestion that the matter to which attention is drawn be further considered in the Drafting Sub-Committee. Delegates will no doubt have noted the position as explained in Document 17, circulated some time ago; and it is suggested that perhaps the best procedure would be to refer the matter directly to a Sub-Committee in order that a suitable amendment or new provision may be prepared for this Committee's consideration.

E/PC/T/C.V/PV/11

MR HOLMES (UK): Mr Chairman, I would not wish to object to that procedure at all, but I merely introduce those few remarks here in order to say that to some extent the third paragraph of this Article is connected, theoretically at any rate, with the suggestion we have made on behalf of the United Kingdom in connection with voting, that is to say, that I think there might be two views as to the best way in which the instrument could be brought into effect. One is on the lines of the present draft which provides that twenty countries shall accept or adhere to it; another would be that it should come into effect when a certain amount of the international trade of the world was covered by the countries which were prepared to accept it. Now that sounds perhaps a little complicated, but the idea behind it I think is readily intelligible. It would not be necessary, one would have thought, to hold up the operation of this instrument if a very large part of the effective international trade which it is designed to apply to was covered by the acceptance of the instrument by the most important trading countries. On the other hand, of course, if the instrument commanded acceptance only on the part of those countries whose total contribution to or share in international trade was relatively small, then, naturally, the instrument would not have the same useful and practical effects. I wonder whether my remarks might merely be recorded on this point, and perhaps taken into account when we discuss further the issue of voting.

THE CHAIRMAN: The delegate of Brazil.

MR PARANAGUA (Brazil): Mr Chairman, this wording in paragraph 3 of Article 78 is a classical reference about ratification of conventions. Conventions are ratified by governments, not according to votes. If we have twenty governments ratifying a convention then the convention can come into force, but we are not to take into account whether a government is more or less important than any other or how many countries give their adherence to a convention or a treaty. It would be something like an innovation in international law to attach weight to the size or importance of a particular

E/PC/T/C.V/PV/11

country.

THE CHAIRMAN: Excuse me one moment. I think the delegate of the United States ought to hear this. The Delegate of Brazil is making some remarks which I think the American delegate ought to hear, because he may wish to comment upon them.

MR PARANGUA (Brazil): Mr Chairman, I was saying that this paragraph 3 of Article 78 is more or less a classical example of the sort. In some treaties we know that it would not be put into force unless or until such and such governments deposit their instrument of ratification; but here is a case where the coming into force of the convention will more or less depend on the weight and importance of certain countries. As I said before, conventions and international agreements are ratified by governments, not by voters; and I cannot accept the suggested change of this wording in regard to certain countries doing a certain amount of trade, according to which formula a convention will come into force. Also, I must point out that we did not decide about the vote question; and I do not want to see the question of voting decided because we decided something else and then imply that the other matter is decided after the voting question is decided. Then we could change that - I do not agree with the change - but do not change it here and then imply a decision on the other question.

MR MORAN (Cuba): Mr Chairman, The Cuban delegation wants to support the views already expressed by the Brazilian delegate, and, in doing so, I have a few words to say. If there is no possibility of bringing an agreement into force, or of agreeing on the Charter, because of the precise wording in paragraph 3, that is, that no matter the number of governments that may agree about the Charter, they can get together and agree to make the Charter come into force; so I do not see any fear at all that we will be faced with the position that we will not have a sufficient number of government members to start the Charter.

MR MERINO (Chile) (interpretation): Mr Chairman, I fully agree with everything that has just been said by the Brazilian and Cuban delegates.

E/PC/T/C.V/PV/11

MR KELLOGG (USA): Mr Chairman, I think that the Cuban delegate has expressed our position very well. We did not feel in drafting paragraph 3 of Article 78 that we were dealing with a question of votes at all. It is very simply a question of the ratification or the acceptance of the Charter by governments, and we felt that there might be two ways in which the Charter might be brought into force, speaking only in terms of governmental action. We do not feel that the question of voting is involved here.

MR LAURENCE (New Zealand): Mr Chairman, there is a point that arises under this section, as to whether or not any part of the United Nations Organization requires to be fulfilled. We have in the proviso of paragraph 3 these words: "That if this Charter shall not have entered into force by December 31st, in some year to be specified, "any of the governments which have made effective the General Agreement on Tariffs" and so forth. Now, assuming for argument's sake that any of the governments does not accede to it, would the United Nations Organization regard that as being a satisfactory fulfilment of its requirement for the establishment of a specialized agency?

We have in paragraph 2 of Article 78 that instruments of acceptance by Governments shall be deposited with the United Nations Organisation. I have not searched the documents of incorporation of the United Nations to find out whether or not that Organisation would require any standards of numbers or anything of the sort to be met before agreeing that a specialised agency is acceptable to it; but I think it is a question to which our legal advisers might address themselves as to whether or not this proviso can be fulfilled just in the simple words "any of the Governments which have made effective" and so forth.

Mr KELLOGG (USA): In reply to the comment of the delegate of New Zealand, I would like to say three things: first, that it seems to me that if you have a question of an International Convention binding the Governments which adhere to it, you can have any number of Governments who can agree among themselves to be bound by certain rules. Second, ^{on} the question of whether such an Organisation, having only few Governments as Members, could become a specialised agency of the United Nations, so far as I know, subject to correction by the legal adviser, the only applicable words in the United Nations Charter are found in Article 57, which refer to "the various specialised agencies established by intergovernmental agreement and having wide international responsibilities". I assume that if this Organisation were put into effect with only a few Governments, they would not have wide international responsibilities and they would not be recognised as a specialised agency. That is, of course, subject to correction by the legal adviser. However, I think the point raised by the New Zealand delegate may be academic; at least, I hope it is; because I assume that no Government, or very few Governments, would be willing to join an Organisation and to bind themselves in this way unless they were assured that there would be a considerable number of

E/PC/T/C.V/PV/11

other Governments doing the same thing; and, although the second alternative envisaged by paragraph 3 does take into consideration the possibility that there may be less than 20, I think we can be perfectly certain that those Governments less than 20 which might put the Organisation into effect will be Governments which have a very large share of world trade, and hence they will create an organisation which will have wide international responsibilities.

Mr. PARANAGUA (Brazil): Mr Chairman, I apologize for intervening so much in this discussion, but in this matter I have some information which I think would be useful. This question is connected with another one submitted to the Subcommittee on Procedure. We are passing through an interim period, because we have a tariff agreement which implies to a certain extent the entry into force of very important provisions of the Charter, and I call attention to the note to Article 56, page 37. After we had the tariff agreement in the Spring of this year some provisions of Chapter 4 of the Charter — provisions relating to many clauses — will enter into force. That means that to a certain extent the Charter will be in force. It is a period of transition. It is for that reason that I wanted to give this information, and I think it is interesting to approve this Article as it is connected with Article 50 and take into consideration this explanatory note.

Mr. QUERESHI (India): Mr Chairman, I suggest that the second alternative should be dropped, as theoretically there is a possibility of less than 20 countries being able to bring into being an international organisation. If it happens that an important international organisation comes into force, then unless considerably more than half the number of United Nations have spontaneously expressed their willingness to come into it, the chances of its success are not very bright. I am afraid that if the countries not joining the organisation begin to

E/PC/T/C.V/PV/11

follow policies of their own which are not in conformity with the policies of international organisation in the field of trade, as such policies were seen during the inter-war period, the whole purpose will be defeated. It is quite clear that such an organisation has pronounced advantages, and all of us feel that there is a need for an organisation. Therefore, we need not put in any clauses by which it should be possible for a small minority to bring such an important organisation into being. Out of 50 United Nations, 20 is not a very large number. Therefore we should make it a condition that at least 20 countries should join before the organisation comes into force. I strongly support the views which have been expressed by Brazil and some other countries.

H.1.

E/PC/T/C.V/PV/11.

MR COLBÁN (Norway): I do not hold any very definite views with regard to the provision in paragraph 5 of Article 78, but I feel that it is a safeguarding clause in order to avoid the possibility of all the results of our work being lost. Obviously this situation, that some governments must step in order to save the results of our work, will not materialise unless, amongst these few governments, are the great trading countries. Let us look the situation in the face. I do not think that most of the secondary and smaller trading countries will deposit their ratifications very hastily; they will wait and see what the great trading countries do, and then they will flock in as rapidly as they possibly can. That is how I visualise what will in fact happen. Therefore, I think that even if you do not get 20 countries at once within the time limit fixed, at any rate you can get, say, 17 or 18; we do not know how many. I do not think it is possible that you should start this with, say, 4 or 5, even if they were the great trading nations; they would certainly prefer to make bilateral agreements between themselves, and would not worry so very much about the rest of the world so little disposed to come in.

THE CHAIRMAN: The morning is wearing on and we are not meeting on Monday; we have to complete our work next week. Therefore, I think we had better close the discussion on paragraph 5 and, if possible, cover paragraph 4 with a minimum of delay; and there is some further business to be transacted this morning, and I believe we agreed that we ought to try to adjourn somewhere around 12.30, or as soon thereafter as we could. That does not leave very much time.

MR LAURENCE (New Zealand): Mr Chairman, I just want to be very brief. In view of the fact that Article 57 of the United Nations Charter as read out by the United States Delegate does give the right to the United Nations to impose some condition of entry of specialised agencies, I think that either our legal people or the Drafting Committee should give some consideration to the point as to whether or not we can leave Article 78 in its present form, without any reference to the fact that there may have to be conditions laid down by the

United Nations Organisation itself to be met before in fact the Charter can enter into force.

THE CHAIRMAN: We now come to paragraph 4. Is there any discussion on paragraph 4?

MR HOLMES (United Kingdom): We have already circulated, Mr Chairman, a paper (No. 13 in the series allotted to this Committee) for a redraft of this paragraph. In the interests of clarity, to which I have referred, we have attempted ourselves to make it a little clearer still, and perhaps with your permission, Sir, I might refer to a slight redraft of our own proposal, which could perhaps, after the meeting, be produced for the benefit of the Members of the Committee. Our redraft, as slightly amended, would read as follows:

"Each Government accepting this Charter does so in respect of its metropolitan territory and the oversea 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. Each member shall notify the Secretary-General of the United Nations of its acceptance of the Charter on behalf of any such self-governing territory willing to undertake the obligations of the Charter, and upon such notification the provisions of the Charter shall become applicable to that territory".

re-
There would be a slight consequential amendment to our suggested/draft of the first few lines of Article 79(1) which I refer to in this context, merely because it is the counterpart: the question of withdrawal on behalf of an oversea territory which is self-governing in respect of these relevant matters.

MR PARANAGUA (Brazil): I would like to have a little explanation about the implications of this amendment. In the case of the withdrawal of a Crown Colony, what would be the result of tariff reductions relating to the products of this Crown Colony? That means we are having the counterpart of this withdrawal of a Crown Colony. The products of this Crown Colony would not be entitled to any tariff reductions. That means the United Kingdom will continue to be a member of the Organisation, but the Crown Colony excluded from the Organisation would not be entitled to any advantage amongst the members of the Organisation. Is that right -- the implications of this withdrawal?

H.3.

E/PC/T/C.V/FV/11.

MR HOLMES (United Kingdom): I think the position is a simple one, that in the case of certain countries for which we have international responsibility those territories are self-governing in respect of the matters with which we are concerned generally. Therefore, we must notify separately their acceptance of those matters, if they wish to accept them; and therefore there must be a separate withdrawal, if they wish to withdraw. I do not know whether that sufficiently answers the point. If they come in, of course, well and good. As long as they are in, the whole Charter would apply to them. If they withdraw, then the position would be different. I am not suggesting for a moment, of course, that these particular territories, which, as I explained before, might be different at the moment of acceptance from the position which would be reached some years hence, because, as is well known, the British Commonwealth has a tendency to develop and change --- I am not suggesting that these territories will not necessarily come in, but that is the position which they have reached on the road to autonomy.

MR. MORAN (Cuba): I would like to hear the comment of the United States Delegation about this point brought out by the amendment introduced by the UK Delegate. It seems to me that the wording of paragraph 4 of the United States Charter covers what the UK proposal tries to cover. If the compromise that the government is accepting is to make the provision of the Charter effective in the territories in which it has authority to do so, if it is a case of a territory which has its own laws or regulations governing trade, the government will not have any obligation to make the Charter effective in that territory. I think that with perhaps fewer words the United States Charter covers the point.

THE CHAIRMAN: The discussion of this matter has proceeded for some time. We have passed the time when we agreed to close, and two more Delegates wish to speak. I have two important items of business to transact before we can close. I do not want to shut off discussion, but I hope Delegates will remember that this matter is going to be referred to a Sub-Committee, and that there will be further opportunity to consider it, and therefore, I hope you will make your further remarks brief. I call on the Delegate of Canada.

MR. MORAN (Cuba): Mr. Chairman, I asked the United States Delegate to clarify the position in regard to this matter, and if the Delegate of Canada is going to bring out another point, I think we should first hear what the United States Delegate has to say about the matter.

MR. LE PIN (Canada): I hope my remarks may be of some use to the Delegate of Cuba, but I am entirely willing that the United States Delegate should speak.

THE CHAIRMAN: I ask the Delegate of Canada to bring out his point, and then we will hear the Delegate of the United States.

E/PC/T/C.V/PV/11.

MR. LE PAN (Canada): It seems to me that it might be useful if I were to say just a word about an era of Canadian history which seems to me entirely relevant to this discussion. We acquired entire political equality with the United Kingdom and the full recognition of our nationhood only comparatively recently -- in fact, if one had to pick a date, one would pick 1939. On the other hand, we have enjoyed complete autonomy over our commercial relations since 1846, exactly 100 years, and so long ago as 1854 we negotiated on our own responsibility a treaty with the USA.

Now, in reply to what the Cuban Delegate has said, I would like to point out that, although in fact from 1846 we had complete authority over our own commercial relations, the legal position was that the United Kingdom at any time between 1846 and 1931, with the repeal of the Colonial Laws (Validity) Act, might have stepped in and have forced on us a commercial policy that was entirely at variance with the commercial policy we were in fact following. I would remind you that many of these things in the Commonwealth and Empire proceed by precedent, and I think it has been so in this case.

I would also like to emphasise that if at any time after 1846 the United Kingdom had attempted to interfere with our commercial policy, we would have considered that a grave infringement of our developing nationhood, and it would have been extremely bitterly resented in Canada. It should also be borne in mind that the United Kingdom, and indeed all those countries which have responsibility for non-self-governing territories, have undertaken, under Article 73 of the Charter of the United Nations, to develop self-government in the territories for which they are responsible. I think the granting of autonomy in commercial relations is a most useful step towards the development of self-government in those territories. So that, on behalf of the Canadian Delegation, I would strongly support the redraft that has been submitted by the United Kingdom Delegation.

MR. KELLOGG (USA): In case the comment of the Delegate of Canada does not cover the point raised by the Delegate of Cuba, I simply want to say that I have some sympathy with the position expressed by the Delegate of Cuba, but that the United States feels in this respect that the United States does not have these problems, and if some form of language can be developed which will satisfy those Delegations which must face these problems, and which does not change the essential substance of this paragraph, we would accept it.

THE CHAIRMAN: The Chair now desires to appoint a Sub-Committee to consider the amendments that have been suggested to Articles 76 and 76, and also article 2 in so far as it may be affected by the Netherlands note. I also want to suggest that this Sub-Committee make every effort to be in a position to report back to the full Committee on Tuesday morning, when we expect to have our next meeting. We are not meeting on Monday. I suggest that as members of that Sub-Committee the following Delegations be represented: Belgium, Brazil, India, New Zealand, South Africa, the United Kingdom, and the United States. I suggest that on Tuesday morning, when we meet again, we take up the report of the Sub-Committee which I have just appointed, if it is ready, and that we also take up for discussion Articles 50 on the functions of the Organisation and Articles 51 and 61, both of them rather routine provisions which we ought to be able to dispose of quickly. I say that Articles 51 and 61 are routine - I do not say that of Article 50. In the afternoon I hope we will also be able to have a meeting. We must drive at a hard pace if we are to get through next week. At the afternoon meeting I should hope that we could take up for discussion the statement which the Delegations from Belgium and the Netherlands

I.L.

E/PC/T/G.V/FV/11.

are submitting with reference to voting. I will say as to that that they have submitted a French text this morning. That will be translated and will be circulated to the full Committee as soon as possible, so that we would be in a position to consider it on Tuesday afternoon, and at the same time we would take up the further discussion of Articles 57 and 58 on the Executive Board.

I believe that will probably be a pretty full day's work. There remains one item of business that I would like to dispose of before we adjourn, and that is the question of a Rapporteur. The time has now come when we must provide that institution for the service of this Committee. I have a feeling that the job of reporting on the work of this Committee is going to be rather onerous; at the same time our time is limited; and the job must be completed by the end of next week. But it seems to me that it might be desirable if we were to appoint not one but two Rapporteurs and make it a joint job. I therefore would like to suggest for the approval of the Committee the appointment of two Rapporteurs and I would like to suggest for those positions the Delegate of China and the Delegate of Australia.

MR COLBAY (Norway): Mr Chairman, I beg only to support your suggestion and to express the confident hope that the Australian and Chinese delegates may accept this heavy task.

THE CHAIRMAN: In the absence of any objection to those nominations, or any objection on the part of the two victims to being nominated, I shall assume that what has just been done is satisfactory to the whole Committee. (Agreed)

COMMITTEE SECRETARY: Mr Chairman, before we adjourn, might I inquire now of the members of the sub-committee which has just been appointed whether any of them have any strong objection to having a meeting sometime on Monday? If not, Mr Chairman, I will arrange for a notice as to the time and place of the meeting to be in Monday's "Journal." It will probably be in the afternoon.

THE CHAIRMAN: Then, if there is no other business, the meeting is adjourned.

(The Meeting rose at 12.50 p.m.)