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AND
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14 February 1947
ORIGINAL: ENGLISH

DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Hold at Lake Success on 13 February 1947 at 10:30 a.m.

Chairman: E. E. Erik COLBAN

1. Second Reading of Articles

In opening the meeting the CHAIRMAN observed that Article 32, paragraph 1, sub-paragraph (b) was being worked on by an ad hoc Drafting Sub-Committee and that the full Committee would be debating this text after receipt of the report from the ad hoc Sub-Committee. The Committee then approved in second reading Articles 62, 63 and 65, as contained in document E/PC/T/C.6/66, and referred them for final consideration to the Legal Drafting Sub-Committee. /

2. First Reading of Article 82 to Article 89 inclusively

The Committee approved in first reading the London text of Articles 82, 83 and 84.

Article 85

The Delegate for France observed with regard to paragraph 1, that he had received instructions from his Government, indicating that the present text of paragraph 1, was incompatible with the provisions of the new French Constitution. This paragraph would have to be redrafted in Geneva in a manner which would make it acceptable under the terms of the new French Constitution.

The Delegates for Cuba and United Kingdom pointed out that paragraph 1

/was not

was not concerned with ratification, which is dealt with in paragraph 2; however, the words "become effective" might be misleading, because they can be interpreted as involving ratification.

The Delegate for the United States explained that Article 85 actually concerned two quite different cases: the first one, dealt with in paragraph 1, concerned amendments which did not involve either fundamental changes in the Charter or any new obligations of Members; in this case no ratification was provided for but simply acceptance by a two-third majority of the Members of the Organization; the second, dealt with in paragraph 2, concerned fundamental changes in the Charter or new obligations; in this case, ratification is required.

The Delegate for the United Kingdom observed that this difference should be clearly expressed in the text and the Delegate for France moved to note the French reservation in the Report of the Committee. The Committee agreed to note the French reservation in its Report and approved the motion of the Delegate for the United Kingdom to insert the words "subject to the provisions of paragraph 2" preceding the first word in the London text of paragraph 1.

With regard to paragraph 2 the Committee agreed to delete the first line of the London text and upon the motion of the Delegate for the United Kingdom, decided to change the last sentence as follows: "in the absence of a determination that a contracting state not accepting an amendment shall be obliged to withdraw from the Agreement, such contracting state shall, notwithstanding the provisions of paragraph 1 of Article 89, be free to withdraw from the Agreement upon the expiration of six months from the date on which written notice of such withdrawal is received by the Secretary-General of the United Nations." The Committee felt that this text, as contained in the United States Draft for a general agreement on Tariffs and Trade, document E/PC/T/C.6/W.58, expressed the intention of this clause more clearly than the London text.

The Committee approved the London text of paragraph 3.

Article 86

The Delegate for the United Kingdom explained the underlying idea of the United Kingdom redraft of Article 86, as contained in document E/FC/T/C.6/W.63 as follows: the United Kingdom holds that it is imperative for the Organization to be master in its own house and to be able to make final rulings and determinations. These determinations call for the exercise of discretion and for rulings on economic subjects on the basis of economic reasoning. In this respect there exists a wide difference between normal commercial treaties, whose character is basically static while the character of the Charter is intrinsically dynamic. The determinations and rulings of the Organization do not form a legitimate object for the review of any court of justice or of the economic chamber of such a court. Judgments of a court call necessarily for the exercise of legal judgment, but not for independent economic evaluation. The term "justiciable issues" in Article 86 of the London Report is quite unclear. According to the views of the United Kingdom, the subjects of nullification and impairment and of interpretation and settlement of disputes belong together, and for this reason the United Kingdom draft of Article 86 has fused the provisions of Articles 35, paragraph 2, and Article 86.

The Committee decided that this was a substantive matter of the highest importance which would have to be referred to the Second Session of the Preparatory Committee. For this reason it was agreed to put paragraphs 2-4 inclusive of the London draft into square brackets and to include in the final Report of the Committee a note on the United Kingdom position on the basis of the précis which will be submitted by the Delegate for the United Kingdom to the Secretariat.

The Delegate for France submitted that, whereas he agreed with the Delegate for the United Kingdom about the lack of clarity of the term "justiciable issues", he had to disagree with the substance of the remarks of

/Mr. SEACKLE

Mr. SHACKLE. He felt that there should be a possibility for review of decisions of an as yet untried Organization. Every young democracy needs two chambers, so that the upper chamber may review the decisions of the lower chamber. He reserved for himself the right to submit a redraft of Article 86 which might be acceptable to the Committee. It must be kept in mind that without a possibility of review, a paradoxical situation might develop by which Members of the ITO might be parties to disputes and at the same time as Members of the Executive Board, be judges in the same disputes. To the observation of the Delegate for Lebanon that there is a tendency to overburden the International Court of Justice with jurisdiction over disputes or many new international agencies and its Members, the CHAIRMAN remarked that his personal observation had led him to believe that the International Court was at present not overburdened.

The Executive Secretary (Mr. LACARTE) directed the attention of the Committee to the instructions to the Drafting Sub-Committee as contained in the London Report, on page 26, Section 6, paragraph (i) and to document E/PC/T/CV/33/Rev.1, page 6 and Appendix III, which instructed the Drafting Sub-Committee to consider the problem of arbitration in the light of the observations which had been made by the Delegates for the Netherlands, Belgium and France on the subject of arbitration.

After the Delegate for Cuba had remarked that the change of Article 86 as proposed by the Delegate for the United Kingdom involved a very major point of substance which should be left to the Second Session of the Preparatory Committee, the CHAIRMAN ruled to adhere to the London text and to refer the decision on Article 86, the question of arbitration and the United Kingdom redraft of Article 86 to the Second Session of the Preparatory Committee.

The Committee approved this course and decided to change paragraph 1 as follows: "Texts of this Charter in the official languages of the United Nations shall be regarded as equally authoritative".

Article 87

The Committee approved the United Kingdom's suggestion to substitute the words "organs of the Organization" for "Conference" in the sixth line of this Article, because the intention of the paragraph was to preclude defaulting Members of the Organization from voting not only in the Conference, but also in the Executive Board or any other organs of the Organization. The Committee changed the title of this Article to read: "Miscellaneous Provisions".

Article 88

The Committee considered the suggestions of the Secretariat, as contained in document E/PC/T/C.6/71. Paragraph 1 of the London text was approved. A discussion ensued over the meaning of the word "acceptance".

The Delegates for Australia and Lebanon expressed their approval of the Secretariat's redraft, while the Delegate for the United Kingdom remarked that this formula might be confusing and that the main point was covered by the provision for the depositing of a formal instrument with the United Nations.

The Delegate for Chile seconded this opinion and the Committee approved the London text of paragraph 2.

With respect to paragraph 3, the Delegate for the United Kingdom expressed his preference for the original text as contained in Article 78 of the United States Draft Charter, insofar as it referred to all governments which have deposited their acceptance, regardless of their representation at the United Nations Conference on Trade and Employment.

The Delegate for the United States observed that re-insertion of the text of Article 78 of the United States Draft Charter would also call for adequate change in paragraph 2.

The Delegate for the United Kingdom, seconded by the Delegate for Brazil moved to note in the Report this discussion and to direct the attention of the Second Session of the Preparatory Committee to this issue. The Committee approved the London text and agreed to include the note suggested by the Delegate for the United Kingdom in its Report.

/With regard

With regard to paragraph 4, the Delegate for Cuba remarked that it was incorrect to refer only to overseas territories and the Delegate for France concurred, stressing the fact that some French overseas territories, such as Alger, are considered Metropolitan France. The Delegate for France suggested to refer the matter to the Legal Drafting Sub-Committee, while the Delegate for the United States suggested the substitution of the words "such other territories" for "overseas territories". After the Committee had approved this substitution and referred paragraph 4 to the Legal Drafting Sub-Committee, the Executive Secretary, (Mr. LACARTE) directed the attention of the Committee to instructions to the Drafting Sub-Committee (document E/PC/T/CV/33/Rev.1, page 7) with reference to the reservations of Australia, France and the Netherlands.

Article 39

The Delegate for the United Kingdom explained that in his opinion a reference to Articles 24, paragraph 3 and 35, paragraph 2 was necessary in paragraph 1. The Committee decided to insert the words: "subject to the provisions of Article 24, paragraph 3, and Article 35, paragraph 2" at the beginning of paragraph 1.

The Delegate for the United States observed that a clause should be included providing for the expulsion of Members who consistently neglected their obligations under the terms of the Charter similar to the respective clause in the United Nations Charter.

The Delegate for the United Kingdom queried whether it might not be good to include a proviso obligating withdrawing Members to pay their contributions to the Organization.

The CHAIRMAN considered both provisions unnecessary and the Delegates for the United States and the United Kingdom did not insist whereupon the Committee approved paragraphs 2 and 3 in accordance with the London text.

3. In accordance with a proposal by the ad hoc Drafting Sub-Committee for

/Article 60,

Article 60, paragraph 3, the Committee agreed to insert in Article 59, paragraph 1, 4th line, after the words "in short supply" the words "or an agreement made in accordance with the provisions of Section E of Chapter V...", and to delete these words from paragraph 3 of Article 60.

The meeting was adjourned until 14 February 1947, 10:30 a.m.
