

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE NINTH MEETING

Held at the Capitol, Havana, Cuba

Friday, 12 December 1947 at 10.30 a.m.

Chairman: Mr. Erik COLBAN (Norway)

The CHAIRMAN informed the Committee that the Second Committee had approved the terms of reference of the Joint Sub-Committee of the Second and Sixth Committees as set out in document E/CONF.2/C.2/8 and asked the Sixth Committee also to approve them. The terms of reference were approved.

DISCUSSION OF ARTICLE 74

Paragraph 1

Mr. AMADOR (Mexico), speaking about his amendment to paragraph 1 believed that it was fundamental to reaffirm the absolute sovereignty of the Conference and to remove any doubt that any other organ could usurp that sovereignty. This would be consistent with the framework of the United Nations where all organs were subordinated to the sovereign body of the General Assembly.

Mr. STINEBOWER (United States) considered that the amendment had to be examined together with other amendments, and called the attention particularly to another Mexican amendment to Article 81, paragraph 2, providing that the decisions or determinations of the Tariff Committee might be appealed against before the Executive Board and before the Conference. A decision could scarcely be taken at this stage since it would be consequential upon the decisions in regard of other substantive articles.

The CHAIRMAN agreed that the final decision on Article 74, paragraph 1, would depend on the final wording of Article 81.

Mr. AMADOR (Mexico) stated that the Mexican amendment that the decisions of the Tariff Committee could be appealed against before the Executive Board and before the Conference only reaffirmed the thesis that all organs of the Organization must be subordinated to the sovereignty of the Conference. However, there was no link in his opinion between his amendment and Article 81.

Mr. HOLMES (United Kingdom) agreeing with a suggestion of the Chairman to put the words "subject to the provisions of Article 81" in square brackets until Article 81 had been discussed, was sympathetic with the idea underlying

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the Mexican amendment but considered that the Tariff Committee could not be looked upon in precisely the same way as other organs. He reserved his position regarding the amendment.

The Chairman's suggestion was adopted.

Paragraph 2

The CHAIRMAN, referring to the Mexican amendment to add the words "the Committee for Economic Development" said that consideration of this amendment would have to await the report of the Joint Sub-Committee of the Second and Sixth Committees.

Mr. GAZDAR (Pakistan) explaining his amendment considered that a majority of two-thirds should be required for such an important and vital decision as the assignment of powers or duties of the Conference to the Executive Board.

Mr. de GAFFIER (Belgium) said that the Preparatory Committee had aimed at plenitude and had reserved the two-thirds voting majority for exceptional cases.

Mr. AMADOR (Mexico) supported the Pakistan amendment considering that the delegation of powers of the Conference was a very important matter which warranted a two-thirds majority.

The countries which had participated in the Preparatory Committee had reserved their freedom of action during the examination of the Draft Charter in this Conference as was explicitly provided for in the Protocol to the General Agreement on Tariff and Trade. Countries which has not participated in the Preparatory Committee had even more right and justification to make their views known at this Conference.

Mr. STINEBOWER (United States) agreed with the last remark of the representative of Mexico. He said that the word "assign" had been used deliberately instead of "delegated" to underline the fact that the Conference was retaining full authority. It was important to take into account that the number of functions the Conference could assign to the Executive Board was limited. Whenever the word "Conference" was used in the Charter instead of "Organization", the Conference could not assign that function to the Board.

The qualified majority of two-thirds had been limited in the Charter to decisions of basic importance and the assignment of functions to the Executive Board should not be regarded as that important.

Mr. COOMBS (Australia) understood the desirability of underlining the authority of the Conference. He had some doubts, however, about this amendment. These arose partly from the fact that the Organization should be an effective administrative organization which would be on the job all

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the time and not only during the annual conferences. If the Organization was to be effective, it should have continuous functions start from the functions which could be performed at intervals.

If the proposed amendment were adopted one-third of the Members could prevent the assignment of continuous functions to the Executive Board. From the reverse point of view, a two-third majority would be required for the reassignment of functions to the Conference and one-third of the Conference could prevent the reassigning. Therefore, the Executive Board might conceivably be carrying out functions which a majority of Members did not wish it to carry out and decisions of the Conference and the Board might conflict though they might prove to be undesirable, would be difficult to change later on. The Conference could determine its own rules of procedure.

Mr. PACHACHI (Iraq), without expressing a firm opinion on the matter wished to support the representative of Mexico. The powers of the Executive Board were laid down in the Charter. Any additional powers should be assigned by the Conference to the Board by a two-thirds majority. He could not see the difficulties raised by the representative of Australia; he was sure that if the questions were reasonable, the minority of one-third would not stand in the way of a decision. But generally, in order to avoid hasty decisions, a two-thirds majority was preferable.

Mr. KING (China) sympathized with the motives underlying the Pakistan proposal. Without wishing to minimize it, he had to point out that it was an amendment of procedure. He therefore suggested that after the Organization had been established, the Conference, in drawing up its own rules of procedure might decide the matter.

Mr. AMADOR (Mexico) explained that if the Committee considered that the question of assignment of powers by the Conference was an important matter, then it was quite logical that decisions should be taken by two-thirds majority, especially when taking into account that many articles of the draft Charter, particularly those relating to constitutional matters, were taken from the United Nations Charter, and that Article 18, paragraph 2, of the United Nations Charter provided that General Assembly decisions on important matters should be taken by a two-thirds majority.

Mr. GAZDAR (Pakistan) thought that the difficulties pointed out by the United States and Australian representatives would not arise since the Article of the draft Charter would be adopted by a simple majority. If, after a general distribution of functions, the Conference wished to delegate some of its powers to other organs, then it should do so by a two-thirds majority.

/Mr. STINEBOWER

Mr. STINEBOWER (United States) explained that powers, expressly assigned by the Charter to the Conference, would not even by a two-thirds majority be assigned to the Executive Board. This could be done only by amendment of the Charter itself. While assignment of functions was an important matter, he had to point out that the United Nations Charter made a distinction between questions of procedure and substance. No procedural question had ever been treated by the United Nations General Assembly as an important matter needing a two-thirds majority under Article 18. The question at hand was that of expediting the procedure of the Organization. Even after functions had been assigned to the Executive Board, the Conference retained the right to review the substance of the Board's actions.

Mr. OLDINI (Chile) thought that the importance of the Pakistan amendment could not be denied. However the arguments put forward by the representative of Australia pointed out other aspects of the question. The Organization had to be active and had to solve problems continuously. One of the most important among those problems was that of economic development. The proposed terms of reference for the Economic Development Committee, it seemed, would not, in his opinion be wide enough. There was a danger therefore that no organ would deal with those problems except when the Conference met once a year. For this reason, work in that field should be assigned to the Executive Board. If, however, the Conference would need a two-thirds majority for such decisions, one-third of members could delay or block the assigning of those functions to the Board. He suggested that a sub-committee should study the question together with other connected matters.

Mr. VIRATA

Mr. VIRATA (Philippines) thought that the provisions of Article 74 were closely related to the general character of the Organization which had not yet been fully discussed, and it would be premature to consider whether the character of the Organization was more of an executive or a consultative nature. While he appreciated the Pakistan and Australian points of view, as well as the position the Chinese representative had taken regarding Article 73, paragraph 2, more time was needed to study the matter and the duties and powers of the Executive Board.

Mr. KING (China) considered that the Executive Board was a link in the execution of policies from one Conference to another. The examination of the problems should be postponed until the character of the Organization had emerged from discussions.

Mr. WOULBROUN (Luxembourg) wished the original text of Article 74 to be retained without the Pakistan amendment, especially in view of the voting provisions of Article 18 of the Charter of the United Nations.

The CHAIRMAN summarized the discussion up to that point and expressed the opinion that the Chinese and Philippine suggestions to adhere to Article 73, paragraph 2, would not achieve the desired result. A choice had to be made between simple majority and qualified majority. He did not anticipate an atmosphere pervading the Executive Board in which a decision would be taken with only a close majority; there should always be general consent. If a decision by almost unanimous vote should prove to be a mistake, that decision could be corrected at the next annual Conference. There was no danger, he thought, of a simple majority trying to force its view over an important minority. If a two-thirds majority was required, on the other hand, it might prove very difficult to change a decision once it was taken. His personal opinion would be to retain simple majority for Article 74. He also did not favour the appointment of a Sub-Committee; it would be better to decide the issue in full Committee, and he invited a show of hands to discover the feeling of the delegations present.

Dr. COOMBS (Australia) proposed the formation of a Sub-Committee to look into the whole question.

Mr. OLDINI (Chile) supported the Australian suggestion for the formation of a Sub-Committee which he himself had advanced at an earlier time. He reiterated his apprehension regarding the Chairman's invitation to "vote on the first reading", a procedure which was premature and might be misinterpreted as involving a decision, when opinions had so far been expressed on only part of the amendments.

/Mr. DJEBARRA

Mr. DJEBARRA (Syria) also favoured the creation of a Sub-Committee to study the Pakistan amendment but felt that paragraph 2 dealing with the assigning of powers by the Conference was too obscure. The Sub-Committee should make it clear whether such transfer of powers was automatically limited to a certain period or whether it was granted until revoked again by a special session of the Conference.

Mr. KOJEVE (France) felt it was very difficult to decide on this question before the composition and the powers of the Executive Board had been agreed upon. If the Executive Board were to be composed in such a way that it would reflect the opinion of only one sect of the Conference's opinions, then a qualified vote would have to be retained. It would be more logical to return to the discussion of Article 74 after having agreed on Article 75.

Mr. de GAFFIER (Belgium) was of the opinion that the discussion should concentrate on the Pakistan amendment without touching upon other matters.

The CHAIRMAN, in accordance with the wishes of the Committee, constituted a Sub-Committee composed of Australia, China, Luxembourg, Mexico, Pakistan and the United States, with the following terms of reference: to study and to make proposals, in the light of the discussion within the Committee, regarding the Pakistan amendment and to report its conclusions to the Committee.

After Mr. SPEEKENBRINK (Netherlands) had asked to have his delegation's amendment considered by the Sub-Committee studying the Pakistan proposal, and after Mr. HOLMES (United Kingdom) had spoken against such inclusion in the work of the Sub-Committee, the CHAIRMAN ruled that the Netherlands amendment should not be included in the terms of reference of the Sub-Committee. He also reassured Mr. OLDINI (Chile) that he had not ever thought of calling for a formal vote but was interested only in finding the consensus of opinion within the Committee by a show of hands of all delegations present.

Paragraph 3

The CHAIRMAN invited the delegation of Chile to withdraw its reservation to paragraph 3 (E/PC/T/186, page 48, footnote to Article 74), the substance of which, in his opinion he thought, was amply covered by the pertinent Chilean reservation to Article 15 (same document, page 16, footnote 2). Since Mr. OLDINI (Chile) was unable to agree to that deletion because Article 15 had not yet been decided upon, the Chairman postponed the discussion of this point until Article 15 had been dealt with, and maintained the footnote provisionally.

/Mr. MONDELLO

Mr. MONDELLO (Italy) explained that his proposed amendment had been submitted for consideration only if a system of weighted voting were adopted. It could, therefore, be left to a later stage.

Mr. GARCIA-SERRATO (Uruguay) emphasized that his delegation's amendment (Annotated Draft Agenda, page 8, section 3) was not identical with the Italian amendment. There was a considerable difference between "a majority of votes cast" (Italian proposal) and a "majority" of the Members of the Organization (Uruguayan proposal), the latter meaning one half of the Members plus one, similar to the provisions of Article 72, paragraph 2. Paragraph 3 referred to "exceptional circumstances" only should not be ruled by the same procedure as other matters.

Mr. AMADOR (Mexico) considered that it would be difficult to attempt to define accurately the "exceptional circumstances" as mentioned in paragraph 3, sub-paragraphs (a) and (b). An infinite number of considerations could enter into such definitions, and his amendment (Annotated Draft Agenda, page 8, section 2), by deleting the sub-paragraphs, would eliminate the anticipated complications, and make it possible for the Organization more simply to waive obligations.

Mr. de GAFFIER (Belgium) supported the Mexican proposal.

Mr. GARCIA-SERRATO (Uruguay), when asked by the CHAIRMAN whether he would agree to accept the Mexican version, preferred the version of his delegation, feeling that a majority of one-half plus one of the Members was sufficient for the purpose of obtaining waivers of obligations, and that a two-third majority would make that procedure too difficult and too cumbersome.

Dr. COOMBS (Australia) recalled the experience of the Preparatory Committee in arriving at the present version of paragraph 3. The opinion of the Australian delegation at that time was that waivers of the obligations should be permitted by a simple unqualified majority since there were many obligations particularly in relation to general commercial policy which could be implemented under the Charter only if economic conditions were such that no severe hardships would result from complying with such obligations. The obligations under the Chapter on General Commercial Policy were dependent upon observation of certain obligations which major industrial powers undertook under the Chapter on Employment and Economic Activity and if the major powers should fail to implement such principles it would be necessary for some countries to seek revision of obligations under the General Commercial Policy Chapter. There was a definite link between the obligations under the various Chapters of the Draft Charter. In the event
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of a sudden depression a Member should be able to obtain, without being forced to withdraw from the Organization, relief from such obligations as would inflict severe hardships upon his economy.

The Preparatory Committee thought, however, that waivers of the obligations should not be easy to obtain and should be decided upon by a qualified majority of two-thirds. His delegation had agreed to this provided that the Charter enabled the Conference to define certain categories of exceptional circumstances to which other voting requirements would apply for the waiver of obligations and prescribe such criteria as may be necessary for their application.

The Australian delegation he said, could not agree that these provisions, inserted by way of compromise, could be omitted from the Charter. They represented a minimum element of elasticity enabling the Organization to lay down in advance rules permitting rapid action in the case of crises. They were all the more important as conceivably more than one-third of the Members might not be affected by the crisis conditions of a sudden drop in employment and demand and, therefore, might prevent the waiver urgently needed by a Member adversely affected by this condition. Only prompt and effective action could safeguard economic security and the two sub-paragraphs which the Mexican representative proposed to delete ensured that such action could be taken when necessary.

Mr. TINOCO (Costa Rica) shared the Uruguayan and Australian points of view and felt that the rule of a simple majority of the Members was sufficient to decide on granting waivers of obligations. Article 74 should remain in its present form with the deletion of the two-thirds vote clause. His statement was endorsed by Mr. AUGENTHALER (Czechoslovakia).