

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THIRTY-FIRST MEETING

Held at the Capitol, Havana, Cuba,
Saturday, 28 February 1948 at 10.45 a.m.

Chairman: Mr. Erik COLBAN (Norway)

CONTINUATION OF DISCUSSION OF THE REPORT OF THE SUB-COMMITTEE ON CHAPTER VIII
(Document E/CONF.2/C.6/83)

Article 91.

Paragraph 3

Paragraph 3 was adopted.

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

Paragraph 5 was adopted.

Article 92

The CHAIRMAN recalled that, during the discussion of Article 100, the Committee had already agreed to the deletion of paragraph 1 of Article 92 of the Geneva text.

Paragraph 1

Mr. RUBIN (United States) proposed that in view of the similar change made in Article 88A, the word "discussions" be inserted before the word "consultation".

Paragraph 1 of the Sub-Committee's text was adopted as thus amended.

Paragraph 2 of the Sub-Committee's text was adopted.

Proposed Annex to Article 95

Mr. MARTEN (United Kingdom) said that the United Kingdom did not in general see any objection to consultations with the International Court of Justice in order to discover what rights prospective Members of the Organization having accepted Article 36 of the Statute of the International Court of Justice might forego under the new Article 88A (1), and in order to devise procedures for avoiding the loss of such rights. But the United Kingdom delegation was not clear as to the meaning to be attached /to the amendment

to the amendment contemplated in the Annex. If the amendment contemplated taking disputes direct to the Court without recourse to the procedures of Chapter VIII and without regarding such procedures as final, in most cases, the United Kingdom would have to oppose the Annex and the Resolution. Members signing the Charter would be obliged to accept for a period of three years an amendment passed by a simple majority at the first Conference. In spite of the provisos contained in the Annex, it amounted to buying "a pig in a poke." He proposed that the Annex be deleted.

Mr. KOJEVE (France) said that the proposed Annex was the result of a compromise following discussion of the Franco-Colombian amendment to Article 88A. He was prepared to accept postponement of the discussion until the first regular session of the Conference when the opinion of the International Court of Justice would have been obtained. If the discussion was to be re-opened, he suggested that it should take place at a special session of the Committee and that the Franco-Colombian amendment should be taken as the basis for discussion.

Mr. COUILLARD (Canada) Chairman of the Sub-Committee, believed that the kind of amendment contemplated was clearly enough defined in the Annex. The matter was referred to the Interim Commission for examination, subject to the provisos contained in the Annex, and at the same time the adoption of any necessary amendment was made as easy as possible.

Mr. GOMEZ (Colombia) was surprised that this matter, which had been the subject of lengthy debates in the Sub-Committee, should be raised again. In view of the equally divided opinions, postponement had seemed the only acceptable solution, and if discussion were to be opened in the Committee, he insisted that the Franco-Colombian amendment to Article 88A and not the proposed Annex should be taken as the basis for discussion. His delegation maintained its reservation regarding the first proviso of the Proposed Annex which he believed limited the competence of the International Court.

Mr. COOMBS (Australia) said that the Australian delegation had always held that even the Geneva text left obscure the limitations on the types of subjects which could be referred to the International Court of Justice. He was opposed to reference to the Court of matters in which it did not have special competence. He accepted postponement of the discussion until after consultation with the Court, which he thought was a reasonable compromise.

Mr. RUBIN (United States) supported the proposal of the Sub-Committee. The Franco-Colombian amendment had raised a complicated problem and, if it were adopted, the United States delegation would have to move the deletion of paragraphs 2 to 5 of Article 91. He regarded the proposed Annex as a desirable compromise and believed that it contained sufficient safeguards to meet the United Kingdom's objections.

/Mr. MARTEN (United Kingdom)

Mr. MARTEN (United Kingdom) said that he supported the compromise inasmuch as he believed that delegates found it difficult to reach a decision without legal advisers. Consultation with the Court and a later amendment were acceptable but the United Kingdom could not bind itself to accept for three years whatever amendment was put forward. Although economic or financial facts established by or through the Organization were excluded by the first proviso, its interpretation of such facts was not. A determination of the Organization regarding the application of quantitative restrictions to meet balance-of-payments difficulties or for purposes of development could for instance be re-opened by the International Court. Such procedure was inadmissible. The Charter was not a palatable document as it stood. Such procedure would make it even less so. An amendment under the proposed Annex might have the effect of radically altering a Member's obligations under the Charter. Members must have the right not to accept such amendments.

Mr. GOMEZ (Colombia) favoured the Annex although he believed that the first proviso in particular seriously limited the powers given to the first Conference. Replying to the United States and United Kingdom delegates, he said that the Franco-Colombian amendment was concerned with the rights of Members and not with decisions of the Organization. The United States proposal to delete paragraphs 2 to 5 of Article 91 was therefore unnecessary.

Mr. KOJEVE (France) found the United Kingdom attitude difficult to understand. The delegate of the United Kingdom agreed that the Organization must be master in its own house, which implied confidence in the legal capacity of the Organization and of the Conference, and yet he was unwilling to accept an amendment passed by a simple majority of the first Conference. Mr. KOJEVE did not believe the operation of the Organization would be compromised by retention of the right to appeal to the International Court of Justice.

The CHAIRMAN said that it was his impression that none of the speakers was opposed to the compromise, which had emerged from the exchange of views in a fully representative sub-committee. Referring to the United Kingdom objection, he said that the draft resolution did not oblige the first Conference to adopt an amendment. It merely imposed on the Interim Commission the duty of submitting one. He was sure that any decision taken would be adopted after careful consideration.

Mr. MARTEN (United Kingdom) said that he maintained his reservation but withdrew his proposal to delete the proposed annex and resolution. He proposed that the following additional proviso be inserted: ". and provided further that if such amendment require any alteration of obligations, any Member may withdraw from the Organization on the expiry of sixty (60) days after receipt of written notification by the Director-General."

/The proposed

The proposed Annex to Article 95 and the Draft Resolution were adopted, subject to discussion of the United Kingdom amendment at the next meeting.

Mr. AGUILAR (Mexico) said that he was prepared to withdraw his delegation's reservation to the proposed Annex, contained in paragraph 15, page 3 of document E/CONF.2/C.6/83, subject to inclusion of the following statement in the record of the meeting:

Pending the result of the consultation which, by resolution of the United Nations Conference on Trade and Employment, the Interim Commission of the International Trade Organization is instructed to carry out with appropriate officials of the International Court of Justice or with the Court itself, regarding possible amendments to Chapter VIII designed to ensure recourse to the International Court of Justice by Members of the Organization which are parties to the Statute of the Court, in respect of questions arising from the Charter but not covered by Chapter VIII, the Mexican delegation maintains the view that paragraph 1 of Article 88A does not impair the rights of Members under the Statute of the International Court of Justice as regards questions arising from the Charter but which are not covered by Chapter VIII of that Charter.

Mr. GOMEZ (Colombia) said that his delegation maintained its reservation regarding the first proviso to the proposed Annex to Article 95.

Mr. ALAYZA (Peru) also reserved his delegation's position regarding the first proviso to the proposed Annex to Article 95.

Mr. OTANEZ (Venezuela) reserved his delegation's position on the Annex pending receipt of instructions from his Government.

The proposed Annex to Article 95 and the Draft Resolution were adopted subject to the above reservations.

TEXT OF THE SUB-COMMITTEE'S REPORT

Mr. RUBIN (United States) proposed that the words: "To propose the suspension or withdrawal of," in paragraph 9 of the Sub-Committee's report be amended to read: "to require a Member to suspend or withdraw,".

The amendment was accepted.

The CHAIRMAN drew attention to paragraph 11 of the Sub-Committee's report. He did not think any action was required.

Mr. RUBIN (United States) explained that the Sub-Committee's text provided for the suspension of rulings under Chapter VIII, pending a review by the Conference, while the second sentence of the former paragraph 4 of Article 92 dealt with the Charter as a whole. He therefore believed that it might be desirable to amend other provisions of the Charter as suggested

/in paragraph 11

in paragraph 11 of the Sub-Committee's report.

Mr. KARMARKAR (India) said that he withdrew his reservation, subject to further instructions.

Mr. HARADAR (Iraq) said he must maintain his reservation regarding the Annex to Article 95 and the draft resolution, pending receipt of instructions.

REPORT OF THE SUB-COMMITTEE ON ARTICLES 95, 96, 98, 99 AND 100 UPON THE AMENDMENT PROPOSED BY THE DELEGATION OF THE UNITED STATES TO ARTICLE 99 (Documents E/CONF.2/C.6/12/Add.10 and E/CONF.2/C.6/80)

Mr. WUSZ KING (China) accepted the proposed text but asked which was the competent authority in respect of Japan. In his view, the competent authority was the Far Eastern Commission.

Mr. COOMBS (Australia) thought that the Committee should avoid discussions in a field in which delegations had no authority to speak for their Governments. When an application was received, the Conference would have to satisfy itself that the applicant was in fact the competent authority.

The CHAIRMAN, agreeing with the delegate of Australia, said that the expression "competent authority" imposed on the applicant power the duty of proving that it was such.

Mr. WUSZ KING (China) proposed that the text adopted be forwarded to the Far Eastern Commission.

Mr. BERDA (Czechoslovakia) agreed that discussion was undesirable but stated that in the view of his delegation, the competent authority for Germany was the Inter-Allied Control Council in Berlin.

Mr. KOJEVE (France) supported the Australian delegate. The text would not be put into effect for one year and in the interval the authorities might not be the same.

Mr. BLESZCZYN (Poland) said that existing treaties which could not be disregarded, made it absolutely clear that the competent authorities were the Inter-Allied Control Council in the case of Germany and the Far Eastern Commission in the case of Japan. He also believed that the new text should not be inserted as an amendment to Article 63. It was intended not to give the Inter-Allied Control Council and the Far Eastern Commission a place in the Organization, but to establish a modus vivendi between them and Members. He suggested that the text be included as an interpretative note to Article 99 or as an annex to the Charter.

Mr. MACRADO (Cuba) asked for an assurance that the text applied only to countries at present under military occupation as a result of the second World War. The American countries could not recognize the validity of the military occupation of territories in the Americas.

/The CHAIRMAN said

The CHAIRMAN said that the question of deciding which were the competent authorities was outside the scope of the Sixth Committee and must be left to the Conference. He proposed that the attention of the Central Drafting Committee be drawn to the point raised by the delegate of Poland. He thought that interested delegations might transmit the text to the Far Eastern Commission. The Conference should take no action likely to prejudice the decisions regarding the competent authority.

Mr. BLUSZTEIN (Poland) said that the expression "competent authority" gave rise to doubts, as was shown by the Chairman's remark in connection with the Chinese proposal to submit the text to the Far Eastern Commission. He saw no objection to the Chinese proposal.

The CHAIRMAN said that in his view the Committee had neither the information nor the authority necessary to decide the question.

The delegates of France and the United Kingdom concurred with the Chairman.

Mr. GARCIA SERRATO (Uruguay) said that the wording of the text was unambiguous and that the intention of the proposal had been made clear during discussions in the Sub-Committee. The text was intended to apply only to territories now under military occupation.

Mr. BENDA (Czechoslovakia) said that he must maintain his reservation and requested that the following declaration be inserted in the report of Committee VI: "The Czechoslovak delegation declared that in its view the competent authority in respect of Germany is the Inter-Allied Control Council in Berlin."

Mr. BLUSZTEIN (Poland) reserved his position and requested that the following declaration be included in the report of Committee VI: "In the view of the Polish delegation, the competent authority for Germany is the Inter-Allied Control Council in Berlin and for Japan, the Far Eastern Commission in Washington."

Mr. KOJEVE (France) had no objection to the inclusion of the Polish and Czechoslovak statements but asked that it be made clear in the report that the matter had not been discussed in the Sixth Committee. Delegations that had not expressed an opinion could not be regarded as, ipso facto, agreeing with the views put forward by the delegations of Poland and Czechoslovakia.

The CHAIRMAN said that the declarations would appear in the names of the delegations making them.

Mr. WUNSZ KING (China) said he would prepare a statement pointing out that in the opinion of his delegation the competent authority in the
/case of Japan

case of Japan is the Far Eastern Commission and would refer it to other delegations represented on the Far Eastern Commission before submitting it for inclusion in the report.

The text proposed by the Sub-Committee was approved.