

SIXTH COMMITTEE: ORGANIZATION

INTERIM REPORT OF SUB-COMMITTEE J ON ARTICLES
95, 96, 98, 99 and 100

Sub-Committee J was appointed at the twentieth session of the Sixth Committee on 5 January 1948 and consisted of the representatives of Argentina, Belgium, Czechoslovakia, France, India, Italy, United States, United Kingdom and Uruguay; and for the purpose of discussion of the United States amendment to Article 99, the representatives of Australia, China, Denmark and Poland were to be added. Mr. J. E. S. Fawcett, (United Kingdom) was Chairman.

The Sub-Committee held 8 meetings and recommends the following draft Articles to the Sixth Committee for their consideration.

Article 95

"Amendments

- "1. Any amendment to this Charter which does not alter the obligations of Members shall become effective upon approval by the Conference by the affirmative votes of two-thirds of the Members.
2. Any amendment which alters the obligations of Members, shall, after receiving the approval of the Conference by the affirmative votes of two-thirds of the Members present and voting, become effective for each Member accepting the amendment upon the ninetieth day after two-thirds of the Members have notified the Director-General of their acceptance, and thereafter for each remaining Member, on acceptance by it. The Conference may, in its resolution approving an amendment under this paragraph, determine that the amendment is of such a nature that all Members, which have not accepted it within a specified period after the amendment has become effective, shall be suspended from membership in the Organization; Provided that at any time, the Conference may, by the affirmative votes of two-thirds of the Members present and voting, determine the conditions under which this suspension shall be waived with respect to any such Member.
3. A Member not accepting an amendment under paragraph 2 of this Article, shall be free to withdraw from the Organization at any time after the amendment has become effective, upon the expiration of sixty
/days from the

days from the day on which written notice of such withdrawal, which may be given at any time, is received by the Director-General; Provided that the withdrawal of any Member suspended under paragraph 2 of this Article shall be effective upon receipt of written notice of withdrawal by the Director-General.

4. The Conference shall, by the affirmative votes of two-thirds of the Members present and voting, establish rules with respect to the reinstatement of Members suspended under the provisions of paragraph 2 of this Article and any other rules required for carrying out the provisions of this Article, including the determination whether paragraph 1 or paragraph 2 would apply."

Comments

The Sub-Committee has substituted paragraphs 2, 3 and 4 for paragraphs 2 and 3 of the Geneva text with the following objectives: firstly, to provide for suspension of a Member not accepting an amendment, instead of compulsory withdrawal. Secondly, to make it possible for a Member not accepting an amendment may make its withdrawal effective from the moment when the amendment becomes effective. Thirdly, to clarify the procedure.

In particular the draft provides that the Conference may determine the nature of the amendment for the purposes of the Article at the time when the Conference approves the amendment for its submission to Governments.

The draft also provides that the amendment becomes effective ninety days after two-thirds of the Members have accepted it in order that a Member not accepting it, may have sufficient time to consider the amendment and, if necessary, give notice of its withdrawal, so that the withdrawal takes effect simultaneously with the amendment becoming effective. The notice of withdrawal may be given at any time, but cannot in any case become effective before the amendment enters into force.

The ninety-day lapse between acceptance of an amendment by two-thirds of the Members and the date of its becoming effective, also provides adequate time for Members accepting the amendment to implement it through their legislative or administrative machinery.

There is also provision for the waiver of suspension and for rules for the reinstatement of Members suspended.

Article 96

"Review of the Charter.

1. The Conference shall carry out a general review of the provisions of this Charter at a special session to be convened in conjunction with the regular annual session nearest the end of the fifth year after its entry into force.

/2: The Director-General

2. The Director-General shall invite each Member, at least one year in advance, to submit any amendment or observations which they may wish to propose and shall circulate them for consideration by the other Members.
3. Amendments resulting from such review shall become effective according to the procedure established in Article 95."

Comments

The Sub-Committee has expanded this Article in order to provide that the special session may be part of, or be a continuation of, the annual session, to emphasize that Members may submit both amendments and general observations on the Charter for review and to make it clear that any amendments approved at the special session are subject to the procedure of Article 95.

The Draft Article also provides for the circulation of amendments received by the Director-General to Member States for their consideration.

Article 98

"Entry into Force and Registration.

1. Instruments of acceptance of this Charter shall be deposited with the Secretary-General of the United Nations, who will inform all governments represented at the United Nations Conference on Trade and Employment and all Members of the United Nations not so represented, of the date of deposit of each instrument of acceptance and of the day on which this Charter enters into force.
2. This Charter shall enter into force on the sixtieth day following the day on which the number of governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance pursuant to paragraph 1 of this Article shall reach [twenty], and the instrument of acceptance of each other accepting government shall take effect on the sixtieth day following the day on which it is deposited; Provided that, if this Charter shall not have entered into force by [30 June 1949], the Secretary-General of the United Nations shall institute consultation among those governments which have deposited acceptances to determine whether, and on what conditions, they desire to bring the Charter into force.
3. The United Nations is authorized to effect registration of this Charter as soon as it comes into force."

Comments

The discussion turned on two questions: (1) the number of acceptances necessary to bring the Charter into force, and (2) the necessity of the proviso in paragraph 2.

The following representatives were in favour of maintaining the number of twenty acceptances as provided for in the Geneva text: Belgium, France, /India, Italy,

India, Italy, United Kingdom and United States; the following were in favour of making entry into force of the Charter conditional upon its acceptance by a majority of the signatories of the Final Act of the Havana Conference: Argentina, Mexico and Uruguay; the representative of Czechoslovakia proposed a compromise number which was not accepted.

The proviso as redrafted omits any reference to the General Agreement on Tariffs and Trade. The Sub-Committee has inserted a provisional date for the operation of the proviso and has also circulated a request to delegations asking them to submit to the Sixth Committee the earliest estimated date by which ratification of the Charter would be possible in their countries.

The Central Drafting Committee is invited to consider, in paragraph 3, whether a singular or plural verb should follow the expression "United Nations", and also to consider the possible overlapping between the provisions of Article 68 and paragraphs 1 and 2 of the new Article 98.

Article 99

The Mexican amendment to paragraph 3 was withdrawn as certain delegates stated that their governments would encounter constitutional difficulties in attempting to enforce the provisions of Article 99 as drafted in the Mexican amendment.

The delegate for Mexico stated that since several countries might encounter difficulties of a constitutional character for acceptance of the Charter, which was not in Spanish, he reserved the right to raise the same arguments which have been expounded in the Sub-Committee against his amendment, particularly in regard to proposed amendments to Article 92, and also reserved his right to introduce a new amendment to Article 99, paragraph 3, when this Article comes up for discussion in Committee VI.

The addition to Article 99 suggested by the United States concerning Germany and Japan has not yet been completely discussed.

New Article 100 Proposed by the Delegate for Chile

The majority of the Sub-Committee believed that the principle contained in this amendment was already covered by other Articles of the Charter.

A working party was formed to redraft the text submitted by the delegate for Chile; however, since no compromise wording acceptable to all concerned could be found, the delegate for Chile, in a gesture of co-operation, withdrew his amendment.

Article 100

"Deposit of Texts and Date.

1. The original texts of this Charter in the official languages of the United Nations shall be deposited with the Secretary-General of the United Nations, who will furnish certified copies of the texts to all interested governments.

/2. The date of this

2. The date of this Charter shall be the day upon which the Final Act of the United Nations Conference on Trade and Employment is signed."

Comments

The above is the text proposed by the Secretariat for Article 100, (document E/CONF.2/C.6/54). After some discussion of the Costa Rican amendment, the Sub-Committee came to the conclusion that a decision on the question whether the Charter should be entitled the "Havana Charter" would best be decided at a later stage of the Conference. The Sub-Committee points out that it has found no precedent in other similar organizations for giving an official name to the basic instrument.
