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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE V

Tenth Meeting

Held on 9 November 1946 at 10.30 a.m.

Chairman: Mr. L. R. EDMINSTER (United States)

The CHAIRMAN said that the first item on the Agenda was the Report of the Sub-Committee on "Amendments and Withdrawals" (E/PC/T/C.V/W.3). He called upon Mr. PALTHEY (France), Chairman of the Sub-Committee, to explain the various alterations proposed in the original draft of Articles 75 and 79 of the suggested Charter.

I. Article 75 - Amendments to Charter

Mr. PALTHEY (France) stated, with reference to Article 75, that the Sub-Committee had examined three different questions. First, whether the Charter should attempt a precise definition of the conditions under which new amendments should be presented to the Conference. In this connection, it was thought preferable to leave such conditions to the determination of the Conference itself in accordance with its rules of procedure. Second, what majority should be required for the adoption of any amendment. In this connection, it was decided to recommend that the present United States draft provision be retained. The third and main question was the extent to which new amendments should be binding on the minority which did not accept them. In this connection, the Sub-Committee thought it best to recognize, as a general principle, that amendments should be binding for all. In those cases where new obligations are involved, however, it was proposed that the Conference shall determine

whether such amendments should be binding on all Members and that any Member may then choose either to accept or to withdraw from the Organization. In its proposed redraft of Article 79, the Sub-Committee had recommended a reduction in the period during which a Member must remain in the Organization, from five years to three, together with a reduction from one year to six months in the period of withdrawal notice to be given under paragraph 2.

Mr. LAURENCE (New Zealand) asked for clarification of the second sentence of paragraph 2 of Article 75. He presumed that the decision of the Conference to impose the obligation to withdraw was to be taken by a simple majority vote. It was a question of whether such a decision was not of sufficient importance to call for a two-thirds majority. He wondered also, whether a conflict might not arise if, within the three year period provided for in Article 79 (1), an amendment were introduced which any Member was not prepared to accept.

Mr. PALTHEY (France) replied that it was envisaged that an amendment would first be adopted by a two-thirds majority; the question whether it was to be binding on all Members would then be decided by a simple majority. He did not consider there was any conflict between the freedom to amend the Charter at any time permitted under Article 75 and the obligation to remain in the Organization for three years provided for in Article 79. The latter was an Article of general scope which would apply only insofar as it was not modified or qualified by other specific provisions. It was the thought of the Sub-Committee that freedom to withdraw for reasons other than those connected with amendments involving new obligations, should be preserved.

Dr. ALAMILIA (Cuba) agreed with the French Delegate's explanation. The second paragraph of Article 79 would only apply where withdrawal occurs, after the three year period, in accordance with the general terms of Article 79. The right of a Member to take advantage of the escape provision of Article 75, within the three year period was clearly provided for.

The LEGAL OFFICER suggested that the New Zealand Delegates' point might be resolved by replacing the word "nevertheless" in the last sentence of paragraph 2 of Article 75 with the words "notwithstanding the provisions of paragraph 1 of Article 79." Then in the first paragraph of Article 79, the words "In addition to the provisions of paragraph 2 of Article 75" would be deleted.

This amendment was agreed to.

Mr. DAO (China) asked whether the terms of Article 30 would not be in conflict with the amended terms of Article 79.

Mr. KELLOGG (United States) replied that in drafting the Charter, it had been felt that the provisions of Article 30 could apply at any time, even during the initial three year period, since it involved action on the part of the Organization as a whole. If the Organization were deliberately to take steps which would warrant a member's withdrawal, the matter would presumably have had sufficient consideration. To make the position quite clear, a reference back to Article 30 could be inserted in Article 79.

Mr. DAO (China) suggested that the phrase "Except as otherwise provided" might be added at the beginning of Article 79.

Dr. ALMILLER (Cuba) thought that to be consistent, an appropriate reference should be included in Article 30 to make it explicit that withdrawal in 60 days was permissible notwithstanding the provisions of paragraph 1 of Article 79.

Mr. KELLOGG (United States) suggested that, since other points of the same nature would probably arise, the remarks made on this matter be passed on to the Interim Drafting Committee for their consideration.

Baron van TUYLL (Netherlands) asked Mr. PALTHEY (France) if the Sub-Committee had considered the possibility of providing for new obligations to enter into force only after the lapse of a certain period after their

acceptance by two-thirds of the Members. As matters stood, new obligations would take effect for some Members before taking effect for others. Furthermore, his suggestion would have the advantage of giving Members time in which to take any legal or administrative measures that may be necessary.

Mr. PALTHEY (France) replied that the Sub-Committee had not considered this particular point. Generally speaking, the Conference would have to determine how new obligations should be implemented and would have to prescribe a reasonable period during which this could be done.

Baron van TUYLL (Netherlands) inquired whether the French Delegate meant that this question could be left for the determination of the Conference in the Rules to be drawn up under paragraph 4 of Article 75 as amended?

Mr. PALTHEY (France) replied that it was difficult to envisage how an amendment would be implemented. This might differ with each amendment, depending on its nature. It was necessary to envisage a transitional period which would be, in effect, part of the amendment.

There being no further comment, the report of the Sub-Committee, as amended, was agreed to.

2. Article 76 - Interpretation and Settlement of Legal Questions.

The CHAIRMAN invited Mr. Alamilla (Cuba) to give the view of his Delegation on paragraph 1.

Mr. ALAMILLA (Cuba) said that the success of the International Trade Organization would depend on full representation by the Members of the United Nations. The Organization now consisted of fifty-one nations, of which seventeen used Spanish as their exclusive official language. They constituted the largest body of countries using a common tongue; and it would be appropriate that a Spanish text of the International Trade Organization Charter should be equally authoritative with the English and French texts.

The CHAIRMAN called upon the Legal Adviser to give an opinion on the point.

Mr. RENOUF, Legal Adviser, pointed out that paragraph 1 of Article 76 was bound up with the question of what will be the official language of ITO. A similar paragraph of the United Nations Charter (Article 3) had been taken as an indication that the official languages of the United Nations should be Chinese, French, Russian, English and Spanish. He would consider the Cuban request and any similar request which the Chinese representative might make, as justified.

It was agreed that the Chinese and Spanish texts should be included in paragraph 1 of Article 76, and should be regarded as equally authoritative with the English and French texts.

Mr. MALIK (India) asked if there was any particular object in retaining the second sentence in paragraph 2 of Article 76 to the effect the "The Executive Board may require a preliminary report from any of the Commissions in such cases as it is deemed appropriate", since the services of the Commissions would always be at the disposal of the Executive Board.

Mr. KELLOGG (United States) said that paragraph 4 of Article 60 did, in fact, cover the same ground. It was felt, however, that the Commissions would play an extremely important part in furnishing the Executive Board with well considered opinions of experts in cases of disputes. Hence it was thought wise to reiterate this idea, in connection with Article 76.

Mr. HOUTMAN (Belgium) called attention to a small error in the French text - the use of the word "justiciable" for "justiciaire". He observed that paragraph 2 stated that "any justifiable issue arising out of a ruling of the Conference with respect to the interpretation of sub-paragraphs (c), (d), (e) or (k) of Article 32 or paragraph 2 of Article 49 may be submitted by any party to the dispute to the International Court of Justice". Why had sub-paragraphs (a) and (b) of Article 32 been omitted in this connection?

Mr. KELLOGG (United States) said that paragraphs (c), (d), (e), and (k) had been singled out for special treatment, as they dealt with matters of security and it was thought that every nation would want an unrestricted right to take such matters directly to the Court, if necessary. The thought behind the rest of the paragraph was that the ITO should, as far as possible, itself settle all disputes resulting from its operations. Thus it was provided that all questions would be referred to the Conference. If the Conference decides that a question is (a) very important and (b) of a legal nature, suitable for decision by a court of law, it would be passed on to the International Court. Even the party which wins its dispute in the Conference is obliged to go to the Court on the appeal of the other party.

In response to an observation by Mr. HOLMES (United Kingdom) that Article 32 had not been passed on by Committee II, the CHAIRMAN expressed the opinion that this need not preclude a provisional examination of Article 76 on the understanding that the Committee would return to it later, should this prove necessary.

Baron van TUYLL (Netherlands) had some doubts about the phrase "if the Conference consents" in the twelfth line of paragraph 2, and requested an explanation from the United States Delegate.

Mr. KELLOGG (United States) said that two decisions in addition to that on the substance of a question, would be required of the Conference. On the one hand it had to decide whether the dispute was of a suitable nature for the International Court of Justice to deal with; and secondly whether the dispute was of sufficient importance to justify an appeal to the Court. The United States legal experts had foreseen a considerable amount of future work for the International Court of Justice, and had considered that some reasonable measure of protection should be afforded the Court through the inclusion of appropriate provisions in the constitutions of various specialized agencies.

Baron van TUYLL (Netherlands) commented that in a Conference composed of government representatives, some political decisions might be taken and it would be unwise, in such cases, to prevent aggrieved governments appealing to the International Court of Justice.

A happier solution would be the establishment by the International Court of Justice of a special Chamber to hear commercial cases. A special sub-court for trade disputes would eliminate all objections.

Mr. HOUTMAN (Belgium) agreed with the Netherlands Delegate. The ITO could not but benefit by submitting as many cases as possible to the Court, especially if a special chamber were established to deal with them.

Dr. ALMILLA (Cuba) also agreed that the phrase "if the Conference consents" should be deleted. To protect the Court against too crowded a docket, however, he suggested that a specific qualification to the effect that only very important issues should be submitted, be written into the Article.

Mr. KELLOGG (United States) replying to the points raised by the Netherlands Delegate said first, that under the United States proposals, the Commissions would be international experts with international responsibility and would function as a court of first instance whose decision would be based entirely on non-political considerations. Secondly, it was hoped that ITO would enjoy great prestige and it was desired, therefore, that as far as possible, it should retain within itself the means of dealing with commercial disputes.

Mr. MALIK (India) though sympathizing with the principle underlying the Netherlands proposal, thought that responsibility for settling disputes of a commercial nature should remain with the Conference itself. He suggested, however, as a possible solution, that the phrase in question be amended to "with the consent of the Conference which shall not be unreasonably withheld."

Mr. BURY (Australia) stated that his Delegation would regard any tendency to treat the Commissions as a court of first instance, performing judicial functions, as a very dubious proposition. He did not think the Conference should be given power to prevent certain kinds of disputes from being referred to the International Court of Justice.

Mr. RENOUE, Legal Adviser, stated that Article 26 of the Statute of the International Court of Justice would allow for the setting up of a special chamber to consider commercial cases. It seemed somewhat peculiar to invest the Organization with a jurisdiction which is strictly judicial when it comes to judging complaints and deciding whether they should be passed on to the International Court. There were really no legal considerations involved, however, and the right of appeal could be restricted in the manner proposed if it were so desired.

Mr. PARANAGUA (Brazil) said that, decisions of the Organization on matters within its jurisdiction should be final. When a question of interpretation or some legal question arose, it would best be referred to the Court. But decisions of a commercial character should be the sole responsibility of the Organization whose decision should be immediate and final and not suspended pending appeal to the Court.

The CHAIRMAN proposed the following agenda for the next meeting of Committee V, to be held at 10.30 on Saturday, 9 November:

- (a) Conclusion of the discussion of Article 76.
- (b) Discussion of Article 78, paragraphs 3 and 4
- (c) The appointment of an ad hoc drafting Sub-Committee, and
- (d) the appointment of one or more Rapporteurs.

The Meeting rose at 12.55 p.m.