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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE V

Twelfth Meeting

Held on Tuesday, 12 November 1946 at 10.30 a.m.

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

The CHAIRMAN explained that the Report of the ad hoc Drafting Sub-Committee on Articles 76, 78 (3) and (4) and Article 2, would be distributed to the delegates during the course of the meeting. He suggested that the Committee in the meantime discuss Article 50 (Functions of the Organization).

He invited comments on paragraph 1 of that Article.

To the suggestion of Mr. HOUTMAN (Belgium-Luxembourg), that some reference be made in this paragraph to information relating to employment policy, Mr. KELLOGG (United States) replied that it was his impression that Committee I had recommended that functions relative to the collection of information on employment remain with the Economic and Social Council and its Commissions.

In view of this, Mr. HOUTMAN did not desire to press the point any further.

The CHAIRMAN then directed the attention of the Committee to paragraph 2 of Article 50.

Mr. PALTHEY (France) suggested that the possibility should be kept in mind of the ITO arranging for the exchange of technical experts and for the establishment of a system under which technical assistance and advice would be made available to less developed countries.

Mr. HOLMES (United Kingdom) proposed the addition of the following words at the beginning of paragraph 2: "In collaboration with any other inter-governmental agency that may be concerned." A similar provision might be inserted at the beginning of paragraph 5.

Mr. MALIK (India) asked what was the precise meaning of the United Kingdom amendment. He did not assume it to mean that the ITO would never undertake assistance on its own initiative.

Mr. HOLMES (United Kingdom) explained that the proposed addition was merely meant to be helpful and was in no way limiting. It was designed primarily to avoid confusion or overlapping as, for example, between the ITO and the Fiscal Commission of the Economic and Social Council in the matter of double taxation.

Mr. KELLOGG (United States) suggested that the words "in collaboration with the United Nations and any inter-governmental agency which may be concerned" might meet the point of the Delegate for India. To this the Delegate for India indicated his assent.

To the argument of Mr. DAO (China) that such co-operation was provided for in paragraph 6 of Article 50 and that the point was further covered by Article 71, Mr. HOLMES (United Kingdom) agreed that it was largely a matter of drafting. He had merely desired to strike a warning note in paragraphs 2 and 5, to the provisions of paragraph 6 that followed, and Article 71 which came later in the Suggested Charter.

Mr. LEPAN (Canada) wondered what were the exact implications of this part of the Article. Was it intended that the ITO should employ a large staff capable of providing expert advice - in which case no small financial burden would be involved - or was it merely meant to be a clearing house which would put members in touch with experts in other countries able to give them such advice or assistance as they might need.

To this Mr. KELLOGG (United States) replied that the matter was still under consideration by the Joint Committee. The purpose of this provision was to make it possible for the ITO, in case it should find it desirable by virtue of the possible failure of other organizations to carry out their responsibilities in this field, to assume such functions as may become necessary in the future. There had not been any decision as to precisely what functions, in this respect, the ITO should carry out.

Mr. LEPAN (Canada) further enquired whether in the event of its being decided that the ITO should have a large staff to provide technical assistance and advice, it was intended that such assistance or advice should be paid for by the governments requesting it?

On being informed that the question also remained to be determined, the Canadian Delegate entered a caveat to the effect that at some stage, paragraph 2 of Article 50 should be reworded so as to make perfectly clear its intentions.

Mr. NAUDE (South Africa) asked whether the reference to "other international organizations" was intended to include both governmental and non-governmental organizations.

After some discussion, the CHAIRMAN suggested that perhaps a Sub-Committee might consider this point and decide whether or not the door should be left open so far as non-governmental organizations were concerned.

The CHAIRMAN then directed the attention of the Committee to paragraph 3

Mr. NAUDE (South Africa) considered that it was an undesirable practice, in drafting international instruments to use the word "including" and asked why it was thought necessary to specify sub-paragraphs (a), (b), (c) and (d).

Mr. KELLOGG (United States) explained that it had been desired to make it quite clear that the Organization had all the necessary powers to deal with anything that might arise in these four major fields of activity.

Paragraph (a) of paragraph 3 was approved, subject to the addition, on the suggestion of the Canadian Delegate, of the phrase "or of the Members" after the word Organization in the second line.

Paragraph (b) of paragraph 3 was approved without amendment.

There was some discussion as to the necessity of the phrase "in the general interest" at the end of paragraph (c), and it was agreed to ask the Sub-Committee to give it further consideration.

Subject to this, paragraph (c) was approved.

The CHAIRMAN then directed the attention of the Committee to paragraph (d) of paragraph 3.

Mr. MALIK (India) hoped that with regard to this paragraph the Interim Drafting Committee would consider its appropriate position in Article 50 in the light of the discussion which had taken place. For his part, he thought that it should figure earlier in the Article. His Delegation looked upon industrial and general economic development as the chief means of improving the purchasing power of under-industrialized countries; and the Charter would be more readily acceptable in countries like his own, if this idea were more clearly brought out.

Mr. HOUTMAN (Belgium-Luxembourg) suggested that the point of the Delegate for India was met by paragraph 3 of Article 1 of the Charter.

Mr. KELLOGG (United States) suggested that, assuming the Charter would contain a new Chapter on Industrial Development, the order of the sub-paragraphs of Article 50, might follow the order in which the Chapters themselves were arranged.

The CHAIRMAN then directed the attention of the Committee to paragraph 4 of Article 50.

Mr. HOLMES (United Kingdom) suggested that some cross reference to paragraph 2 of Article 76 might be necessary.

Mr. LEPAN (Canada) wondered whether it might not be wise to set out somewhere in the Charter - perhaps in paragraph 4 - provision for arbitral machinery. The ITO might even set up a panel of well qualified arbitrators.

It was agreed that any discussion on arbitration be deferred until the Committee considered the report of the ad hoc drafting Sub-Committee.

The CHAIRMAN then directed the attention of the Committee to paragraph 5, of Article 50 which was approved subject to the earlier comment of the United Kingdom Delegate.

The CHAIRMAN then directed the attention of the Committee to paragraph 6 of Article 50.

Mr. KELLOGG (United States) explained that the object of this paragraph had been to make quite clear that the ITO could co-operate with the Security Council if need be.

It was agreed that a phrase "other specialized international organizations" should be amended to "other inter-governmental organizations" in conformity with the language used elsewhere. In reply to a suggestion that the word "other" be deleted, it was explained that it meant organizations other than the ITO.

The CHAIRMAN then directed the attention of the Committee to paragraph 7 of Article 50.

Mr. HOLMES (United Kingdom) begged leave to revert to paragraph 5 and to raise a general point thereon. There would be many international agreements dealing with specialized subjects of considerable importance, and the Article, as it stood, contained no provision that the countries, who were Members of the Organization, would be under any obligation to adopt those agreements. He referred to Article 19 of chapter V of the Constitution of the International Health Organization, in which each Member undertook to take certain action, relative to conventions or agreements, within a specific period. The drafting Committee might bear this point in mind and make suitable provision for it.

Mr. KELLOGG (United States) endorsed this suggestion.

The CHAIRMAN then announced that Article 50 had been approved, subject to the considerations put forward during the meeting.

He then directed the attention of the Committee to Article 51, Structure of the Organization.

To an observation from Mr.BURY (Australia) that a Commission for Industrial Development may need to be added to those enumerated in Article 51, Mr.MALIK (India) replied that the Joint Committee already had before it a proposal to this effect, and it was hoped that a decision would be reached on Friday.

Mr.MERINO (Chile) said that his delegation had already submitted proposals to the Conference on the subject of the establishment of a fourth Commission to be called "A Commission on the Expansion of Production, Industrialization and Employment," the function of this Commission to be determined after the Joint Committee had completed its task. A similar proposal had been sent to the Joint Committee itself. It was of fundamental importance that the Charter should ease the difficulties of under-developed countries, so that by means of assistance from the larger and richer countries, they might be helped in improving the lot of their own work-people. By this means the under-developed countries might be put in the way of becoming richer and more prosperous, and helping in the general betterment of mankind.

Mr.MALIK (India) fully supported the Delegate for Chile and gave further details of the work of the Joint Committee on this question.

At this point, Mr.LEPAN (Canada) argued that other Commissions might be required at a later date. Since provision was made in Article 61 for establishing "such other Commissions as may be requested", he considered that all reference to "Commissions" in Article 51 be deleted. Otherwise any future decision to set up a new Commission, would require an amendment of the Charter. Mr.KELLOGG (United States) suggested that Article 51 as a whole might be dropped, but Mr.FRESQUET (Cuba) considered that this might have the effect of lessening the importance of the Commission, as an essential part of the structure of the Organization.

Mr. MALIK (India) proposed that Article 51 be amended to read as follows: "The Organization shall have as its principal organs: a Conference, an Executive Board, Commissions set up under Article 61, and a Secretariat".

This proposal received general support, and Article 51 as amended was approved.

The CHAIRMAN then directed the attention of the Committee to Article 61, Establishment of Commissions.

It was agreed that final approval of the Article should await the findings of the Joint Committee.

The CHAIRMAN then directed the attention of the Committee to Document E/PC/T/C.V/W.4, the Report of the ad hoc drafting Sub-Committee.

The Secretary, Mr. BRUCE TURNER, drew attention to an error in the last line of page 4 of the Report. The Sub-Committee did not in fact approve paragraph 1 without change; the Sub-Committee proposed that the latter part of paragraph 1 of Article 2 of the Charter read as follows: "Or in the event that this Charter has not entered into force by that date, the countries which agree to bring this Charter into force....."

The CHAIRMAN then read article 76 as amended by the Sub-Committee.

Mr. LEPAN (Canada) observed that the change in title would broaden the scope of the article enormously, yet its content remained rather narrowly drawn i.e. it was concerned only with justiciable issues. It seemed to his Delegation that there would be a number of disputes of a commercial rather than of a strictly legal nature and the question arose as to how much of the procedure to be adopted for settling them should be spelt out in the Charter.

Mr. van TUYLL (Netherlands) referred to the possibilities of "arbitrage" as exemplified by the League of Nations system of economic experts, from amongst whom parties to a dispute could choose an arbiter.

Mr. MALIK (India) suggested that it would be preferable not to go into details at this stage, but merely to leave it to the ITC and invest it with the proper authority. He suggested that paragraph 4 of Article 50 might be amended to read "to provide a mechanism including the setting up of arbitration machinery". This suggestion was supported by the Delegate for Canada, China and the Netherlands.

Mr. BURY (Australia) was of the opinion that paragraph 4 of Article 50 was sufficiently wide. It would empower the Organization to make whatever arrangements were necessary.

Mr. HOLMES (United Kingdom) proposed that the words "other than disputes covered by Article 76" be added at the end of paragraph 4 of Article 50. Mr. van TUYLL (Netherlands) however, argued that this would prevent Members from using the method of arbitration in the cases covered by Article 76.

Mr. NAUDE (South Africa) thought it would be more appropriate to include under Article 76, all provisions relating to the settlement of disputes.

It was agreed that the points raised should be further considered by a drafting Sub-Committee.

The CHAIRMAN then read the Sub-Committee's recommendations regarding paragraph 3 of Article 76. It was pointed out that "Article 76 of the Charter" in the third line should read "Article 96 of the Charter".

Paragraph 3 as amended was approved, subject to this alteration.

The CHAIRMAN then read out paragraph 4, which was also approved.

The recommendations regarding Article 78, paragraph 3, were also approved subject to deletion of the word "possible" in the last line but one of the note concerning the United Kingdom proposal. The proposed amendment to paragraph 4 of Article 78 and paragraph 1 of Article 79 were agreed to.

Mr. NAUDE (South Africa) was not quite clear as to the purport of the note on page 4 of the Sub-Committee's report. There might be some dispute as to the meaning of the term "non-self-governing territories."

Mr. LEENDERTZ (Netherlands), in connection with paragraph 3 of Article 78, reserved the right to revert to this provision when the situation with respect to the Netherlands overseas territories had been clarified. He also proposed that the reference to the number of acceptances (in Article 78 (3)) required to bring the Charter into force should be amended to read "20 or more".

The Committee rose at 1.05 p.m.; the meeting would be resumed at 3.00 p.m.
