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UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

TENTH MEETING

of

COMMITTEE V

held in

Convocation Hall

Church House, Westminster

on

Friday, 8th November, 1946

at 10.30 a.m.

Chairman: Mr. Lynn R. EDMINSTER (USA)

(From the shorthand notes of
W. B. GURNEY, SONS & FUNNELL,
58, Victoria Street,
Westminster, S.W.1.)

THE CHAIRMAN: The first item on the agenda this morning is a report of the sub-committee on Amendments and withdrawal. The Chairman of that sub-committee is M. Palthey of France. In that connection, may I say that a mistake has been made in the spelling of his name in the English version of the document which has been distributed; the "x" should be a "y". I call upon M. Palthey.

Mr PALTHEY (France) (Interpretation): Mr Chairman, the sub-committee which was set up with a view to studying the possible new drafting for Article 75 and Article 79 met as instructed. Its work resulted in a new draft of Article 75 and a new draft for Article 79 on Withdrawal and Termination. As regards Article 75 the sub-committee examined three different questions. The first was the question of whether the Charter must precisely define the conditions according to which the new Amendments to the Charter will be presented to the Conference. There we thought it preferable to leave it to the Conference to fix, according to its rules of procedure, these conditions for the introduction of the new amendment.

The second question was the question of what majority would be required for the adoption of any Amendment. Here the Committee decided to keep the United States proposal and it was decided that the majority would be a two-thirds majority.

The third question - which was perhaps the main one - was to what extent the new Amendments could apply to the minority which did not accept them. The Committee thought it would be preferable to admit the general basic principle that the Amendment must be binding for all, even for the minority. Yet there are some cases in which the Amendment introduces new obligations upon the members, and in those cases members must choose whether they are going to accept or not those new obligations. In those particular cases the Conference can make these Amendments binding for all, and then the minority can withdraw if it wishes to do so. We have therefore now come to a final agreement regarding Article 75, which reads as follows: "(1) Amendments to this Charter shall

become effective upon receiving the approval of the Conference by a vote of two-thirds of its members.

2. Notwithstanding the provisions of paragraph 1 of this Article those amendments which involve new obligations on the part of the members of the Organization shall take effect upon acceptance on the part of two-thirds of the members for each member accepting the amendments and thereafter for each remaining member on acceptance by it. In such cases, the Conference may determine that any member which has not accepted the amendment, within a period specified by the Conference, shall thereupon be obliged to withdraw from the Organization. In the absence of a determination that a member shall be obliged to withdraw, a member shall, nevertheless, have the right to withdraw, on due notice, as provided in paragraph 2 of Article 79.

3. The Conference shall, by a vote of two-thirds of the members, adopt rules of procedure for carrying out the provisions of this Article."

The discussion on Article 79, "Withdrawal and Termination," bore only on the period during which the members must remain in the Organization. The United Kingdom Delegate said that the period which was envisaged in the U.S.A. draft was five years, but that that could lead to some difficulties because according to U.S. law the customs agreement which will accompany the signing of the Charter can be valied for a period of three years only. Therefore, the United Kingdom Delegate proposed to reduce the five years period to a three years period. Eventually the United States Delegation was so kind as to agree to that proposal. Now Article 79, as it stands, reproduces the original U.S. wording with the exception that the period is three years and not a five years period, and the notice to be given is to be given six months in advance and not one year. The text read as follows:

"Withdrawal and Termination.

1. In addition to the provisions of paragraph 2 of Article 75, any member of the Organization may give notice of withdrawal from the Organization at any time after the expiration of three years from the date of the entry into force of this Charter under the provisions of Article 78 by written notification addressed to the Secretary-General of the United Nations, who will immediately inform all other members of the Organization.

2. The withdrawal shall take effect six months from the date of the receipt of notification by the Secretary-General: Provided, that the notification may be withdrawn at any time during that period.

3. This Charter may be terminated at any time by agreement of three-fourths of the members of the Organization."

Such is the text which I have the honour to present to the full committee.

THE CHAIRMAN: You have heard the report of the sub-committee. Is there any discussion?

MR. LAURENCE (New Zealand): There are one or two points arising out of the suggestions of the sub-committee on which I would like clarification. With regard to the second sentence of paragraph 2 of Article 75, I take it it is intended that the determination of the Conference regarding imposing the obligation on a member to withdraw is to be taken by a simple majority, in accordance with Article 53. I raise that point because it seems to the New Zealand Delegation that it is a very important decision to take, to ask a member to withdraw; and it is just a question whether that decision is not as important as some others upon which a two-thirds majority is called for.

There are other points which arise under paragraph 2 of Article 75. With regard to the final sentence, I was wondering whether that provides for anything which is not already in Article 79. It would seem to me that if an obligation is imposed on a member which that member is not

prepared to accept the right to give notice to withdraw is available at any time and does not need to be conferred specifically, as is done in this sentence. That leads on to another point, in paragraph 1 of Article 79, wherein notice of withdrawal cannot be given until after the expiration of three years. Now, it would seem that there is no such time limit imposed on the right to amend the Charter under Article 75, so it would appear that a conflict would arise if an amendment to the Charter were made within the three year period which a member was not prepared to accept.

MR. PALTHEY (France) (interpretation): I wish to answer the New Zealand Delegate in my capacity of Rapporteur. On the first question, of the majority, it is obvious that the decision to make an amendment binding for all must be carried out by a two-thirds majority. In the mind of the sub-committee the reference which makes the obligation binding is part and parcel of the amendment; therefore, it was envisaged that the amendment would be adopted by a two-thirds majority, and then the question whether it was to be binding for all would be decided by a simple majority.

On the question of the freedom to withdraw, the freedom to withdraw, even before two years, is not in conflict with the provisions of Article 79. Indeed, Article 79 is to be regarded as an Article of general scope. It is a generally accepted legal principle that general provisions can be applied only in so far as they are not contradicted or otherwise modified by further particular provisions. Thus Article 79 bears on the question of withdrawal without reason, when the case is not envisaged in, for instance, Article 75.. I can say we thought that the freedom to withdraw if the amendment was not binding must obtain.

If the Charter which was accepted by a member is amended, and if the new amendment is not accepted by a member, that member cannot be obliged to remain a member, even if the new amendment does not entail new obligations for him. Therefore, there is no conflict, because

Article 79 is an Article of general scope, and has no bearing on the obligation to remain three years. However, there is an escape clause, and the member can withdraw if the new amendment leads him to think that the new situation does not correspond or does not agree with the terms of the original Charter which he signed.

MR. ALAMILLA (Cuba): I agree entirely with the very clear explanation which the Delegate for France has given, which in my opinion shows exactly what the idea of the sub-committee was. I wish to add only one thing. In the present drafting of Article 79 we have also added, to make more clear the point raised by the New Zealand Delegate, certain words. Article 79 says:

"In addition to the provisions of paragraph 2 of Article 75" -

and then we go on with the right to give the withdrawal after three years, which means we are contemplating that this six months retirement of the member can come inside the three years, and that the second paragraph of Article 79 only applies to such cases where the withdrawal is made after the three years in accordance with the general terms of Article 79. Of course, our idea is very clear. If it is not translated into the actual words of the Article no doubt the masters of the English and French languages can make it clear enough, because we have it very clear in our minds.

THE CHAIRMAN: Before I call on the Delegate of India, the legal adviser from the Secretariat has some suggestions to make with regard to a slight alteration of the wording of the provisions which we have been discussing, and I think they would be helpful.

MR. TURNER (Secretary): I thought that the point raised by the Delegate o New Zealand might easily be resolved by a slight drafting amendment in last sentence of paragraph 2 of Article 75. If we delete the word "nevertheless" and replace it by the phrase "notwithstanding the provisions of paragraph 2 of Article 75" I think that would clear up th matter.

MR. LAURENCE (New Zealand); A very good suggestion.

THE CHAIRMAN: The Delegate of India has asked to speak.

MR. H. S. MALIK (India): It is no longer necessary for me to speak, thank you, Mr. Chairman.

MR. LAURENCE (New Zealand): I can clear up very quickly now the points whi I raised. On the first question I have got the anser that it is clear in the minds of the Sub-Committee that they have considered the point about obliging Members to withdraw on a simple majority. The words suggested by the legal officer, "notwithstanding the provisions of paragraph 1 of Articlae79", instead of "nevertheless", meet my point an I accept them.

THE CHAIRMAN: What are the views of the Delegate of France in regard to this suggestion?

MR. PALTHEY (France)(Interpretation): I am quite in agreement with the suggestion.

MR. ALAMILLA (Cuba): Could we have the new text of the paragraph read slowly?

THE CHAIRMAN: I will ask the legal officer to read the last sentence of paragraph 2 as revised, and the first sentence of the first paragraph of Article 79.

MR. TURNER (Secretary): The last sentence of paragraph 2 of Article 75 will read:

> "In the absence of a determination that a member shall be obliged to withdraw, a member shall, notwithstanding the provisions of paragraph 1 of Article 79, have the right to withdraw on due notice as provided in paragraph 2 of Article 79."

Then in the first paragraph of Article 79 we delete the words

> "In addition to the provisions of paragraph 2 of Article 75"

which are right at the start of paragraph 1 of Article 79.

THE CHAIRMAN: I take it that the change in the wording is agreed to?

Agreed.

THE CHAIRMAN: Any further comments on the report of the Sub-Committee?

MR. DAO (China): Now that the first phrase of paragraph 1 of Article 79 is to be deleted, I wonder whether the terms of Article 30 will not be in conflict with the new terms of Article 79?

MR. KELLOGG (United States): For what it is worth, in drawing up this Charter we felt that the provisions of Article 30 could take place at any time, even during the preliminary period, because it involves action on the part of the Organisation as a whole, and if the Organisation, knowing what it is doing, takes steps which would warrant a member's withdrawal, it seems to me that the matter has had sufficient consideration and that the member should be permitted to withdraw - even during the first period. If the Committee does not think that is clear, we could put in a clause in Article 79 referring back to it, and making it abundantly clear.

MR. DAO (China): In the light of the explanatin given by the Delegate of

the United States, I wonder whether - I am not a legal expert - it would be appropriate to add one phrase at the beginning of paragraph 1 of Article 79 to the effect "Except as otherwise provided for in the Charter

MR. ALAMILLA (Cuba): I believe that, in order to be consistent, in view of what we have done in parargraph 2 of Article 75 we should also add something in Article 30 to make it explicit that this withdrawal in 60 days is permissible notwithstanding the provisions of paragraph 1 of Article 79 - if that is the intention.

MR. KELLOGG (United States): I would suggest that this is the kind of question which could be taken care of by the Interim Drafting Committee which has been envisaged. There will probably be many other questions of the same nature which will come up, and I think the remarks made by members of this Committee should be passed on to the Interim Drafting Committee for their consideration.

THE CHAIRMAN: As chairman I desire to add to that that it would seem to me that if there were only one other place in the Charter where an exception appeared there might be something to be said for making a more explicit coverage of the matter in that provision, but if there are several places in the Charter where this would arise, I think the suggestion of one member that we should just say, "Except as elsewhere provided" would be a wiser solution. However, I agree with the Delegate of the United States that it is a drafting matter, and the Interim Drafting Committee could note the record and try to find a solution.

MR. ALAMILLA (Cuba): I am perfectly willing to leave it to the Drafting Committee. Simply for the record, I would like to say that the general provisions that have been placed in Article 75 would not cover those of cases unless in each one of them it was stated that they are not subject to those general provisions.

THE CHAIRMAN: Any further comments on the Subcommittee's report?

MR. VAN TUYLL (Netherlands): Without wishing to propose another amendment, I would like to ask the Delegate of France if the Sub-Committee have considered the possibility of bringing the new obligations into force not upon acceptance on the part of two-thirds of the members etc., but after a certain period after acceptance by two-thirds of the members. That period could coincide, in my opinion, with the period which the Conference will determine according to the second line of paragraph 2. As it stands it will mean that the new obligations will have to be applied by certain members while they are not being applied by other members. Also I think that the insertion of some period within which the new obligations must be brought into force has the advantage of giving time to members to take legal or administrative measures which may be necessary before they can give effect to these new obligations. As it reads now, the new obligations will have to take effect on the day of acceptance, or the day after.

MR. PALTHEY (France)(Interpretation): I must say that the Committee did not think of this particular point. Speaking from the general point of view, in the case of amendments which would entail new obligations and which might cause some member states to take new internal legislative or administrative measures with a view to implementing these new obligations, the Conference must say how those obligations must be implemented and lay down a reasonable period during which it can be done. In the Charter, when we speak of the possible impact of any new decision and its possible consequences on internal legislation, we envisaged a transitional period, so I think the Conference could do the same, as here the point is a similar one.

MR. VAN TUYLL (Netherlands): If I understand the Delegate of France aright, we could leave this question to be settled by the Conference in its Rules of Procedure for carrying out the provisions of those articles, as is said in paragraph 3 of Article 75. Is that his opinion?

MR. PAUTHEX (France)(Interpretation): No, I think it is difficult, because we cannot envisage in advance how the amendment will be implemented. Paragraph2 of Article 75 speaks of the acceptance of amendments, but the implementation of each amendment will depend on that amendment and may be different from that of others, depending on its nature. So it is difficult to envisage, in the Rules of Procedure, any precise period which would apply to all cases. We can envisage in the Rules of Procedur naturally, that an amendment which must be implemented after a certain delay to be fixed by the Conference will in fact be implemented after that delay, but we cannot be any more precise than that.

MR. VAN TUYLL (Netherlands): So that means that this transitional period would be part of the amendment, to be decided on by the Conference? If that is so, I am satisfied.

MR PALTHEY (France)(Interpretation): That is exactly what I thought.

THE CHAIRMAN: Are there any further comments on the report of the Sub-Committee? If not, the report is agreed to, subject to the revisions which were agreed to in the discussion by the full Committee this morning.

The Committee will recall that at our meeting the other day, at which we discussed the question of voting in the Conference, the delegates from Belgium and Netherlands withheld their position and asked for an opportunity to report their views at a later meeting. I understand that they are now prepared to make a report, and I suggest that it might be timely to hear from them. I wish to add I do not want to provoke a sustained discussion of that subject this morning. I merely want to get those views into the record. If anyone has anything else that he wishes to bring up on that subject that would merely be additionally informative for the purposes of later consideration, possibly, by a Sub-Committee working on this subject, I would also be glad to get that into the record, but I do not wish at our meeting this morning to provoke further discussion or debate on the subject of voting in the Conference.

BARON VAN TUYLL (Netherlands): Mr Chairman, this question has been discussed in the Netherlands delegation and in the Belgian delegation, and we intend to make a joint written declaration on this question, so,if you do not mind, we would like to have discussion of thematter held over until our note has been handed in to the secretariat and handed round to the delegates. I hope that will be done tomorrow.

THE CHAIRMAN: The Chair had the impression, from a discussion of this matter prior to this meeting, that the delegates from the Netherlands and Belgium were in a position to report on the matter this morning. Apparently that is an incorrect impression, and the proposal made by the Chair has proved to be what we sometimes call a "dud". However, it is, of course, quite agreeable that we should postpone consideration of that matter until the gentlemen in question are ready to report.

MR HOUTMAN (Belgium)(Interpretation): Mr Chairman, I wish to apologise for our delay. It has been accounted for already, and I support the Netherlands proposal to give you a clear, written statement of our attitude. This

question is a very important one, and, as you know, it led yesterday to considerable discussion of a contradictory nature; and, if I may say so, the discussions were at times highly dynamic. I consider that it is important for the success of I.T.O. that we come to a full agreement on the question of voting in the Conference. It is in that spirit that the Belgian delegation made contact with the Netherlands delegation, and we may be in a position to propose a compromise. That is the reason why we are treading very cautiously on thorny ground for the time being.

THE CHAIRMAN: Very well. I shall assume that in due course (and I hope to be very clearly advised on the matter) the delegates from Belgium and the Netherlands will be ready to report their views on this matter. I am sorry I have taken up the time of the Committee this morning in bringing up the matter when there was nothing to report.

The next item on the agenda is a discussion of Article 76, "Interpretation and Settlement of Legal Questions". In that connection I believe that the Cuban delegation have submitted two amendments, to paragraph 1 and to paragraph 3, and I assume that the delegate from Cuba will wish to speak on that.

MR ALAMILLA (Cuba): I would like to deal first with paragraph 1 and our amendment there, and then deal with our other amendment when we come to paragraph 3. This is what we are proposing, briefly. As the delegate of Norway said at a previous meeting, the success of I.T.O. largely depends on having in that Organisation all the members of the United Nations. If that highly desirable objective is achieved, we shall then be in this position: that there will be 51 members of the I.T.O., of which no less than 17 have Spanish as their official language. That will mean that 17 governments, comprising one-third of the members of the Organisation, will, as the Article stands at present, have to deal with the Charter and try to understand it as well as they can. I do not think there is any other language of which that can be said, certainly not to that extent. Now, we are not asking here that Spanish be made a working language of the Organisation, because we already know what considerable problems are involved in having only two working languages; but when it comes to

having authoritative texts, we feel that it is necessary that there should be an authoritative text in Spanish as well as in English and French. We therefore ask that the first paragraph of Article 76 be re-drafted accordingly.

THE CHAIRMAN: I think it might be helpful at this point, if we were to have comments upon this suggested amendment from the Legal Officer of the Secretariat.

MR RENOUF: Mr Chairman, I merely wish to point out that this paragraph of Article 76 is bound up really with the question of what will be the official languages of the International Trade Organisation. A similar paragraph in the Charter of the United Nations, in Article 111, was taken as an indication that the official languages of the United Nations should be Chinese, French, Russian, English and Spanish. Therefore I merely wish to bring that to your attention. Personally, I would consider that the delegate of Cuba's request was justified, and I might go so far as to say I would expect a similar request from the Chinese representative. If those two requests are met, we will have a basis of four official languages. That would leave out Russian, and unfortunately there are reasons at the present time why we should omit Russian.

Mr KELLOGG (USA): Mr Chairman, I would simply like to say here that the reason the first U.S. draft confined the languages of the Official version of the Charter to English and French was an effort to make for simplicity so far as possible, but I would be glad to support the proposal of the Cuban delegate and the Legal Officer.

THE CHAIRMAN: Four delegates have asked for the floor, and I believe the order in which their hands appeared was first China, and then India, Chile and Canada.

Mr DAO (China): I want to say that I am glad to hear that our views have been put forward by the Legal Officer and the delegate for the U.S.A. I think we may do well to follow the example set up in the Charter of the United Nations, that five languages will be used.

Mr MALIK (India): Mr Chairman, the words have been taken out of my mouth by my Chinese friend. We would like to support very strongly the proposal put up by the delegate of Cuba. It is a very reasonable one.

Mr MERINO (Chile)(Interpretation): Mr Chairman, I wish to say that I gladly support the Cuban proposal, as so far as I am concerned it is hard for me to follow the work of this Conference, because I do not speak English and even in French it is hard for me to express my thoughts. I therefore wish that we could have Spanish adopted as an official language.

Mr COUILLARD (Canada)(Interpretation): Mr Chairman, I shall be glad to support the proposal with the view to have the Chinese and Spanish languages as official languages. Nevertheless, I support this proposal in the French language.

THE CHAIRMAN: There seems to be no legal obstacle to doing what seems to me to be obviously desirable, and therefore I assume that the two additional languages which have been suggested will be added to this Article. I take it that when the delegate from China suggested that we followed the United Nations text, he was not suggesting that for the moment we add the fifth language which has been referred to ?

Mr DAO (China): As our draft text will be discussed again at the next meeting, and also at the Conference, there will be plenty of opportunity of any addition.

THE CHAIRMAN: Are there any further comments on Article 76 ? We should confine our discussion, I suppose, first to paragraph 2. We have covered paragraph 1, and I should have asked whether there were any comments on paragraph 2. With regard to paragraph 3, the Legal Officer of the Secretariat has some observations to make.

Mr ALAMILLA (Cuba): If we are going to discuss paragraph 3 now, I just want ----

THE CHAIRMAN: Well, I assume that we are almost to it. I was just waiting to see if we are quite sure there are no comments on paragraph 2.

Mr MALIK (India): There is one small drafting point. I want to know whether there is any particular object in retaining this second sentence of this paragraph: "The Executive Board may require a preliminary report from any of the Commissions in such cases as it deems appropriate". Surely the services of the Commissions will always be at the disposal of the Executive Board ? I was just wondering whether there was any particular object in putting it in specifically in this way.

Mr KELLOGG (USA): In reply to the suggestion of the delegate of India, I thoroughly agree that the matter is covered by paragraph 4 of Article 60. However, we felt that in drafting this matter that the Commissions would play an extremely important part in getting to the Executive Board well considered opinions of experts in cases of dispute. We felt that it would be desirable to stress by reiterating the idea in Article 76 the necessity of having before the Executive Board such opinions in any serious case of dispute. It is quite true that it does repeat the same idea.

Mr MALIK (India): Mr Chairman, I shall leave that question to the Interim Drafting Committee.

THE CHAIRMAN: Are there any further comments on paragraph 2 ?

Mr HOUTMAN (Belgium)(Interpretation): I wish to make two remarks, the first of which is on a pure question of drafting. The French text speaks of "contestation justiciable", which of course is a mistake in translation. It should be "judiciaire". The second point I wish to make is a point

of substance. I wish to ask the United States delegate a question, because I do not understand why we speak of any issue arising out of a ruling of the Conference in respect of paragraphs (c), (d), (e) or (k) of Article 32. I should like to know why sub-paragraphs (a) and (b) of Article 32 should not be submitted when their interpretation is at issue, to the International Court of Justice. Indeed, it is envisaged under sub-paragraphs (c) and (b) that the present Charter will not appreciate the adoption of measures with a view to protecting public morals, and also the question of hygiene and the defence of the lives of animals and plants, and so on. We have arranged that such Articles could be invoked with a view to escaping the Customs obligations which have been undertaken by different nations. I therefore wondered whether some serious dispute arising from such points could not be covered and could not be brought before the International Court of Justice, and whether an Amendment should not be adopted here.

THE CHAIRMAN: We have rather confused the situation here. The delegate from Cuba had previously asked for the floor and a question has been asked by the delegate of Belgium of the delegate of the United States. The delegate from the United Kingdom wishes the floor, and I believe that the Legal Officer of the Secretariat has some remarks to make on the next paragraph.

Mr ALAMILLA (Cuba): I only wish to speak on paragraph 3.

THE CHAIRMAN: That is right. I am still getting ahead of myself. I will call upon the delegate of the United States.

MR. KELLOGG (United States): In reply to the question of the Delegate of Belgium as to why we singled out sub-paragraphs (c), (d), (e) and (k) of Article 32 and paragraph 2 of Article 49 for special treatment, I wish to say the reason is that these paragraphs deal with matters of national security, and it was felt that every nation joining the I.T.O. would want the untrammelled right to get such matters of security before the International Court and would not be willing to permit the Conference to cut off that right by a decision to the contrary.

With regard to the rest of the paragraph, the thought behind the draft was as follows. The I.T.O. should, as far as possible, settle all questions arising under its operation in its own shop, and that the International Court should not be called upon to settle matters unless they were really important and had to go to the Court. Secondly, the Court should not be called upon to settle matters which the Conference did not think were of a legal type suitable for a decision by a court of law. It was for that reason that we drafted this paragraph in such a way that all matters go to the Conference; then, if the Conference decides that a matter is (a) very important, and (b) of a nature which a court of law can and should decide, the Conference would pass the matter on to the International Court. You notice that even the party which wins its dispute in the Conference is bound to go up to the court on the appeal of the opposing party. That was the reason for which we drafted this paragraph in this manner. Does that answer the question of the Belgian Delegate?

MR. HOLMES (United Kingdom): I wish to ask for enlightenment. I am afraid I do not myself know whether Article 32, to which we have been referring, has yet been passed by the appropriate committee of this Preparatory Committee. If it has not yet been accepted, or if substantial amendments have been made, our labours at this moment may be in vain.

THE CHAIRMAN: The Chair feels that there is nothing in the suggestion of the United Kingdom Delegate that would prevent us from making a provisional examination of paragraph 2 at this time. It would, of course, be understood that if there are substantial changes in the other parts of the report which would affect this paragraph we will have to go back to it and make the changes that are consequent upon these other changes.

Returning to the question raised by the Belgian Delegate and commented upon by the United States Delegate, is the Belgian Delegate satisfied with the explanation which has been given?

(interpretation)

MR. MOUTHAN (Belgium): I understood the reason which led the United States authorities to have such a draft, as explained to me just now. However, as has been said already, everything depends on the precision and clarity which will be given to Article 32 later. As it stands now, under (a) and (b) I am very much afraid we can see escape clauses that can be construed rather loosely, which would enable some members to escape from the obligations undertaken. I understand we would be able to come back with a text once Article 32 has been amended by the committee which is now considering it. Naturally it is not within our purview to examine it.

THE CHAIRMAN: Are there any further comments on paragraph 2?

MR. VAN TUYLL (Netherlands): I would like to make two remarks. The first is that according to the proposed order of business which we received at the beginning of the work of this committee Article 76 was one of the last Articles which we were going to discuss. I think the reason was that that Article is of very great importance for the work of Committees II, III and IV. Therefore, I would like to stress that we may have to come back to this Article again as soon as we know what has been decided in those committees which deal with interpretation and settlement of legal questions.

My second remark is that I am not quite happy about the words in the third sentence, "if the Conference consents." I would like to have

an explanation from the Unites States Delegate why those words were introduced in this paragraph.

THE CHAIRMAN: The Chair would like to comment on the first point raised by the Netherlands Delegate, and then will call upon the Delegate of the United States to comment upon the second. The first point was with reference to the discussion of this Article at this time. I believe that the point made was that it is premature to take up this Article, that it was set originally at a later point in our order of discussion and it might be better to discuss it further at a later point. With reference to that, I should like to point out that the same observation applies with reference to practically everything that remains for this committee to do. We have promised in the Heads of Delegations meetings to endeavour to conclude our deliberations in Committee V by the end of next week. Of course, it would be understood that there will be perhaps a few points to be cleaned up after that which are obviously contingent upon the discussions in other committees, particularly Committee II which seems to have made less progress because its task is inherently more difficult than those of the other committees.

It must be clear that if we are to conclude our work by the end of next week we simply cannot afford to suspend further discussions of this committee until towards the end of next week. We must go ahead. It is always understood that we are free to come back - indeed, we will have to come back - and take care of changes in these Articles which are contingent upon the work of the other committees. I think that it has already become fairly clear from the record of this committee's work that it has been constructive and worth while for us to go right ahead and discuss these various paragraphs and Articles, even when we know that we cannot make definitive and final decisions about them. Therefore, I suggest we go right ahead with Article 76 and the remaining Articles and do the best we can. Does the Delegate of the Netherlands wish to comment on this particular point?

MR. VAN TUYLL (Netherlands): When I made my remarks I did not wish at all to criticise the decision of the Chair to discuss this Article this morning; I hope you did not misunderstand me, Mr. Chairman, when I made that remark.

THE CHAIRMAN: The Chairman just simply remarked that he was seizing this occasion to say something that he wanted to say anyhow.

MR. KELLOGG (United States): In reply to the second question by the Delegate of the Netherlands as to the words "If the Conference consents", the theory upon which we proceeded in this paragraph was that the Conference must make two decisions on any disputes which came before it. Firstly, it must make a decision as to whether or not a dispute was of a justiciable nature suitable for determination by the World Court, and secondly a decision as to whether or not a dispute was of such importance that the possibly crowded docket of the World Court could be further pressed. Those decisions of course would be made in addition to decisions on the substance of the question. We put in the phrase "If the Conference consents" so as to give to the Conference the right to say, "We have considered the dispute, we have heard all the parties, and we have decided in a certain manner, and we moreover feel that this dispute is not sufficiently important to be put on the docket of the World Court." I may add that this idea was suggested originally by our legal experts who foresaw that even though the Court may not now be very busy it probably will in the future be extremely busy, and some protection must be given to it in the constitution of the various specialised agencies.

MR. VAN TUYLL (Netherlands): I think the prestige of the Conference would have to be extremely high if none of its rulings were to go to the International Court of Justice, but if the Conference is wise and takes wise decisions, it will not very frequently happen that they do. On the

other hand we must not forget that the Conference is composed of representatives of Governments, and, with due respect to the decisions of these representatives of their Governments, I am afraid that perhaps some political decisions may be taken. Therefore I think it will be a dangerous thing to prevent, in certain cases, member countries from appealing to the International Court of Justice. The other objection, that the International Court might be so busy that it could not do all the work with which it was asked to cope, could be covered by asking the International Court, either voluntarily or by changing its Statue, to arrange for a special chamber for commercial matters, and if the Court had that chamber of special commercial experts, the ordinary chambers of the Court would not get so much work to do. That would be quite a different part of the Court. I would like to know what the Delegate of the United States thinks of that.

MR. HOUTMAN (Belgium) (Interpretation): I agree with the fears expressed by the Delegate of the Netherlands. I think that I.T.O. cannot but benefit by submitting as many cases as possible to the International Court of Justice, especially if the latter sets up a special chamber for commercial matters which would judge the cases which in normal circumstances would fallwithin the scope of I.T.O.

MR. ALMILLA (Cuba): We also feel the same as the Delegate of the Netherlands in this matter. We cannot here try to modify the International Court of Justice; that, I think, would be something they would have to do themselves when the case arises when they cannot cope with the work they have to do. But in order to try to solve this difficulty, so that very important questions may be placed before the International Court, I would suggest striking out the words "If the Conference consents" and adding, in the line before where there is a reference to "any justiciable issue," a reference to "any important issue" or something to that effect. In that way any matter which any member considered important would be submitted to the Court. That is only a suggestion.

MR. KELLOGG (United States): As to the first issue raised by the Delegate of the Netherlands concerning possible political factors entering into decisions by the Conference, we thought that just for that reason it became particularly important that the Commission should in fact be the court of first instance in any such dispute. The Delegate of India raised that point earlier and referred to the second sentence in the paragraph. As the Committee will recall, in the U.S. scheme of things the Commissions would be international experts with international responsibility, and when the Commission passes judgment on a question as a court of first instance, we hope that its decision will be entirely based upon non-political considdrations. However, I do see a great deal of value in what the Delegate of the Netherlands has suggested, and would be very glad indeed to have the comments of other Delegates.

As to the second issue raised by the Delegate of the Netherlands, it would seem to the United States that the ITO should as far as possible, attempt to deal within its own house with issues of a commercial nature. We hope ITO will have colossal prestige, and we would like to have it contain within itself the means for dealing with commercial disputes. We would feel that the ITO might, to some extent, lose in prestige if it were required to share responsibility with other bodies.

MR MALIK (India): One has a very natural sympathy, Mr Chairman, with the principle underlying the suggestion made by the delegate for the Netherlands, namely, that an aggrieved party should not be barred from having recourse to a third party when it is dissatisfied with a decision of the Conference, and that it should simply have to obtain the consent of the Conference before going to the International Court. I think that is a very sound principle. On the other hand, there is a real difficulty, and that is this, that we do wish to avoid the submission of these sorts of matters to the International Court, and at the same time I think we must realise that the Conference is going to be a very influential body, and I think one might reasonably leave it to the Conference. I do not think there is any real danger in the Conference itself or any one party being treated on the basis of injustice. I am just wondering whether it would not be as well to leave the authority with the Conference itself but also to put in slightly different words: instead of saying "if the Conference consents" we might say "with the consent of the Conference, which shall not be unreasonably withheld". If you qualify it in that way that might possibly be a solution of this difficulty - because the difficulty is there.

MR BURY (Australia): Mr Chairman, this is not quite the place to re-open an old discussion, but I would like, to record in view of what the United States delegate has just said, that we should regard any tendency to treat these Commissions as a court of first instance, performing judicial functions, as a very dubious proposition. Apart from that, Mr Chairman, it does seem to us that it is rather putting too much to the Conference to give it what is implied here, that is, a power to withhold certain kinds of disputes going to the International Court of Justice. It is quite clear it may well be a court of first instance, but the line of appeal should perhaps be made clear. I was going to suggest that we might hear the views of the Legal Officer on this point, if he could add anything to what has been said.

THE CHAIRMAN: I call upon the Legal Officer of the Secretariat.

MR HENOUF: There is not much of a legal character that I can add to this

discussion. There are really no legal considerations involved in this particular question. On reading that clause at first sight I thought it was rather unduly restrictive of the right of a state to submit a dispute to the International Court of Justice. On the other hand, after hearing Mr Kellogg's explanation, I appreciated his argument that it was framed that way to increase the prestige of the Organisation. Just the same, it seems rather peculiar to me to invest the Organisation with a jurisdiction which is strictly judicial when it comes to judging these complaints and seeing whether they shall be passed on to the International Court. However, it is actually up to the members of this Committee to take a decision whether they wish to restrict that right, and there is nothing illegal if they do take that decision.

There is one other point. Some members have mentioned the fact of the Court forming chambers to consider these commercial cases. That power, of course, does exist under the statute, under Article 26. It says, "The Court may form one or more chambers from time to time to consider particular cases", and it specifies there labour cases and cases relating to transit communications - merely as examples, of course.

MR PARANAGUA (Brazil): Mr Chairman, after hearing such valuable opinions I would ask permission to add something to this discussion. If any decision of the I.T.O. could be submitted to the Court; that would mean that the I.T.O. would be, in effect, like a Lower House having to refer everything to an Upper House, the International Court. This Organisation is the one to decide on certain matters, and it seems to me that any member could try to evade the decision of this Organisation merely by submitting it to the otherCourt. I think it would be better to have a certain definite field in which the decision of the I.T.O. is final. When a question of interpretation or some obscurity of the Charter, or some legal question, arose, it would be better, I think, to refer it to the Court. But I think commercial questions or decisions as to disputes alleging any kind of unfair practice - that is, bad behaviour on the part of a country - should not be submitted to the Court; they should be kept for the sole decision of the Organisation. The decision

in such cases should be immediate, and final, and not suspended until consideration had been given to it by the Court. I think the decisions of the Organisation on the matters within its jurisdiction should be final, and that we should leave to the Court what belongs to the Court. Here in this Organisation we all have the same representation and, consequently, the same obligations, and for that reason there should be no question of appealing from decisions taken by the Organisation.

THE CHAIRMAN: Gentlemen, I had very much hoped that we would be able to conclude the discussion of paragraph 2 this morning, but two more delegates have asked for the floor to continue this discussion. It is now a quarter to one, and it appears that if we permit the discussion to continue it might run on too late into the morning. In as much as we shall have to return to Article 76 in any case, to deal with paragraphs 3 and 4 - and I am sure there will be some discussion on paragraph 3 - I think it may be wise to break off our discussion at this point. If I were sure that the discussion on paragraph 2 would conclude in a matter of two or three minutes, I would continue, but I am afraid that is rather a dangerous assumption. There remains some routine business to transact. The main question is when we are to meet again. Certain delegates have expressed their desire that we should not meet next Monday. I understand that in addition to that the Secretariat is pretty well over-loaded and probably would welcome a slight respite to catch up. On the other hand, if we were not to meet until Tuesday some matters which I think ought to be carried forward in discussion would be neglected, and there are some other items of business that the Chair is anxious to transact. I would like to suggest that in return for a holiday on Monday we settle for a meeting tomorrow morning, which perhaps might not be a very long meeting. We might hope that we could meet - if 10.30 is too early - at 11 o'clock and go on until 12.30 or 1 o'clock or something like that, and conclude the discussion on Article 76. I should like also at that time to make certain proposals with regard to the setting up of some sub-committees, and I should also like at that time to arrange for the appointment of a Rapporteur or Rapporteurs for this Committee. If there were time beyond that, there are still some other Articles that I would be able to suggest to keep the Committee entertained. What are the views of the Committee in regard to a meeting tomorrow morning ? Do they agree, and if so what time would you like to meet ?

Mr COUILLARD (Canada): 10.30 tomorrow morning is satisfactory. I would

like to ask if you are in a position to tell us what other Articles you would like us to discuss besides Article 76.

THE CHAIRMAN: I thought we might - if we get to them - take up Article 78, paragraph 3 and 4, and Articles 1 and 50. I hear no objection to our meeting at 10.30 with a view to adjourning at 12.30 instead of perhaps 1 o'clock. It is agreed, and the Committee is now adjourned.

(The meeting rose at 12.50 p.m.)