
SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

COMMISSION B

SUMMARY RECORD

of the Eighteenth Meeting held on Wednesday, 2 July,
1947 at 2.30 p.m. at the Palais des Nations, Geneva.

Chairman: The Hon. L.D. WILGRESS (Canada)

The Commission resumed its discussion of Chapter VIII
(Organization).

1. ARTICLE 81 PARAGRAPH (1).

Mr. TANGE (Australia) explained that the delegation of
Australia proposed the deletion of the words "by the Director-
General" because it would be inappropriate for such an agreement
to be negotiated by the Director-General. The delegation of
the United Kingdom had stated that this agreement would be
negotiated by a committee appointed by the Conference. It would
perhaps be better if this task were undertaken by the Executive
Board.

Experience had shown that agreements once made could
not easily be modified at the Conference. The negotiator
designated by the Organization should therefore have full
discretionary powers.

There was no need to specify precisely who this
negotiator should be. By deleting the word in question
they would automatically refer the matter for decision
to the Conference.

Mr. DIETERLIN (France) recalled that the delegation of France had opposed this amendment at New York because it had felt that a competent person should be specifically nominated for this task. Since there now appeared to be the general identity of view on this question, the delegation of France withdrew its reservation.

DECISION: It was agreed to delete the words "concluded by the Director-General and" in Article 81 paragraph (1).

Mr. RENOUF (Secretary), stated that the Secretariat aimed merely at economy of wording in proposing the deletion of the passage:- "this relationship shall be effected through agreement with United Nations under Article 63 of the Charter of the United Nations". There was no way of bringing specialized agencies into relationship with United Nations other than by the procedure laid down in Article 63 of the Charter. It would be sufficient to stipulate that such agreements should be approved by the Conference.

DECISION: The deletion proposed by the Secretariat was approved.

ARTICLE 81 PARAGRAPH (2)

Mr. van TUYLL (Netherlands) referred to the amendment proposed by the delegation of the Netherlands, whereby a colon should be placed at the end of the first sentence and the words "with particular reference to the importance of food and agriculture in relation to the subjects dealt with in Chapter VII" should be added.

He pointed out that in August a Preparatory Committee of FAO was to discuss the formation of a World Food Council at Paris. It was desirable that the ITO should have a full representative rather than a mere observer at this meeting.

The amendment proposed by the delegation of the Netherlands was designed to indicate that the ITO was ready for mutual action in this field. The delegation of the Netherlands did not, however, insist on this point and would be content if the matter were referred to the sub-committee.

Mr. TANGE (Australia) suggested that the sub-committee should be recommended to examine Article 81 Paragraph (1) at the same time. It had been found that Article 61 (e) and Article 81 paragraphs (1) and (2) coincided in certain respects.

DECISION: It was agreed that the amendment proposed by the delegation of the Netherlands should be referred to the sub-committee, and that the sub-committee should at the same time consider the relations of Article 81, paragraph 1, with Article 61 (e) and others.

ARTICLE 81, PARAGRAPH (3).

DECISION: The proposal of the delegation of the United States that the words " and may invite them to undertake specific tasks", should be omitted, was approved.

ARTICLE 81, PARAGRAPH (4).

The CHAIRMAN recalled that the delegation of the United States had proposed that the words "international organization(s)" wherever used in this paragraph should be changed to "inter-governmental organization(s)".

Mr. FAWCETT (United Kingdom) remarked that there were at least two specialized agencies which had already absorbed private international organizations.

Unless the delegation of the United States had a particular objection to the inclusion of private international organizations in the ITO it would be better to leave the text in its present wording.

Mr. KELLOGG (United States) did not feel that any of the existing private international organisations were suitable for absorption into the I.T.O. The delegation of the United States had proposed this amendment in order to dispel any impression that I.T.O. was to take over such international bodies as the International Chamber of Commerce.

Mr. FAWCETT (United Kingdom) withdrew his objection. He was satisfied that the word "co-operation" in paragraph 3 would in many cases be equivalent to "absorption".

DECISION: The amendment proposed by the delegation of the United States was approved.

2. ARTICLE 62

The CHAIRMAN recalled that the Secretariat had proposed the transfer of this article to Section F - Secretariat. Decision on this matter could be referred to the Legal and Drafting Committee, which was concerned with the arrangement of the Charter.

Mr. KELLOGG (United States) remarked that by Paragraph 2, the provisions of Paragraph 1 were to be extended to the members of Commissions mentioned in Article 72. The members of these Commissions would not belong to the Secretariat of I.T.O.

DECISION: It was agreed to refer the proposal of the Secretariat to the Legal and Drafting Committee.

3. ARTICLE 64, (PARAGRAPH 3).

The CHAIRMAN drew attention to the amendment proposed by the Secretariat, whereby this paragraph should read as follows:-

"Such legal capacity, privileges and immunities shall be defined in an agreement to be prepared by the Organization in consultation with the Secretary-General of the United Nations and concluded between the Members."

Mr. KELLOGG (United States) felt that the paragraph would be clarified if the words "and the Organization" were placed after "Members" at the end of the sentence.

DECISION: The proposal of the Secretariat, as amended by the delegate of the United States, was approved.

4. ARTICLE 85

The CHAIRMAN recalled the amendments proposed by the delegation of the United States, and the reservations made in this regard by the delegation of France.

M. DIETERLIN (France) explained that the delegation of France had made a reservation to this amendment because of a fear that the wording proposed would conflict with certain aspects of the French Constitution. However, after comparing the proposed draft more closely with the relevant provisions of the French Constitution, the delegation of France was now willing to accept the text as it stood.

Mr. TANGE (Australia) suggested that the text proposed by the delegation of the United States should be submitted to the Sub-Committee. He had certain reservations to make regarding the wording proposed.

The object of the amendment proposed by the delegation of the United States was to state clearly that the Conference might permit members not accepting amendments to the Charter, to remain in the Organization. This object might be obtained by the present text.

The Sub-Committee might bear in mind the following points. In the second sentence of paragraph 2 of the draft it was stated that the Conference "may determine" that certain action should be

taken with regard to members not accepting amendments. After the semi-colon in the same sentence, however, it was laid down that the Conference "may determine" nevertheless that an entirely different action should be undertaken. By the existing text of the Article the Conference would determine by a simple majority whether a Member not accepting amendments shall remain in the Organization. The Draft submitted by the delegation of the United States laid down that the Conference might determine by a simple majority whether a Member was required to withdraw from the Organization, and, likewise, whether it might remain in the Organization. The draft then went on to say, however, that a two-thirds vote should be taken to determine whether a Member was to be allowed to remain in the Organization.

These were drafting points which could probably be resolved satisfactorily by the Sub-Committee.

Mr. KELLOGG (United States) said that the delegation of the United States had proposed a two-thirds vote since by a simple majority vote the Conference might expel all non-ratifying members. Having once done this, the Conference might want to discriminate in favour of certain members and set up conditions whereby they would remain in the Organization. This action should be endorsed only by a two-thirds vote.

DECISION: It was agreed to refer the amendment proposed by the delegate of the United States to the Sub-Committee.

5. ARTICLE 86

Mr. DORN (Cuba) said that the amendment proposed by the delegation of Cuba to Articles 35 and 85 and the new Articles 85(a) and 86(a) suggested by it formed a cohesive whole.

They were based on three main ideas; firstly, they were intended to simplify procedures established in various parts of the Charter; secondly, they were designed to unify procedure wherever a particular approach was not demanded by the special nature of the matter; thirdly, they were intended to standardise the unified procedures and to define clearly the jurisdiction of the competent organs. Three stages were proposed as a simplified procedure in the case of complaints. These were:

- (a) the amicable compromise and its procedure
- (b) the administrative decision and its procedure
- (c) the judicial decision in matters of a justiciable character.

The Charter had in various cases provided for consultation by Members before their disputes were brought before the Organisation for decision. These consultations between members involved in a dispute were of a compulsory or voluntary nature. Provision was also made in the Charter for differing kinds of administrative decisions. It was not always specified which organs of the I.T.O. should make these decisions. It was further provided that an appeal might ultimately be made in respect of justiciable cases, to the International Court of Justice. The delegation of Cuba realised that its amendments were little more than a preliminary approach to the problem. This preliminary step should be followed up by

a thorough examination of the different Chapters of the Charter with a view to implementing the three basic ideas. The Sub-Committee or a special Sub-Committee should, therefore, draw up a scheme for the whole Charter, unifying the procedure for the majority of cases.

General discussion should, in consequence, be limited to the following two questions:

(1) Should an effort be made to simplify and unify the form of procedure throughout the Charter, by establishing the following three stages:

- (a) amicable compromise;
- (b) administrative resolution;
- (c) judicial decision

and should the competent organs for the first two stages be at the same time defined?

(2) Should the Sub-Committee or an ad hoc Sub-Committee examine the point on the basis of the various proposals already made in this regard?

The CHAIRMAN said that the meeting should remember that Article 35 had been considered by Commission A, and referred to a sub-committee. This sub-committee would not examine Article 35 until the following week.

It would be wise to have a thorough discussion of the proposals made by the delegations of Cuba and of the United States and to refer the matter then to the sub-committee. The delegate of Cuba might be invited to take part in the sub-committee's discussion. However, it would be best if these studies were postponed until the sub-committee of Commission A had reached some conclusions on Article 35.

Mr. TANGE (Australia) remarked that Articles 86 and 35 both dealt with disputes and the machinery for their settlement. He suggested that the Chairman should approach the Chairman of Commission A with a suggestion that a joint sub-committee be set up. If this were not undertaken, there would be a duplication of discussions in the two existing sub-committees.

The CHAIRMAN thanked the delegate of Australia for his suggestion. He would communicate with the Chairman of Commission A to that effect.

DECISION: It was agreed that the Chairman should communicate with the Chairman of Commission A, as suggested.

Mr. van TUYLL (Netherlands) declared that Articles 35, 85 and 86 were of supreme importance. The drafting, however careful, of the rest of the Charter would be nullified if fair treatment of complaints were not ensured. The authors of the Charter might seek to enunciate equitable and appropriate principles but they would better guarantee the efficacy of the Charter by ensuring the just application of these principles.

In accepting the Charter, Member Governments would pledge themselves to abide by the agreement jointly reached by the Organization; they would be putting their faith in the fair and constant direction of the Organization. Member States would be represented at the Conference of the Organization by economic experts who would in many cases have a responsible position in the economic affairs of their country. Their task would be to work out the policies and procedures of ITO. This would be an immense task and would certainly involve many points upon which opinions would differ.

The Conference itself would not be the best organ for the ultimate settlement of such differences. These disputes should be referred for final regulation to an independent body unaffected by the atmosphere of the Conference itself. This viewpoint was contained in the proposal made jointly by the delegations of the Netherlands, Belgium, Luxembourg and France at the meeting in London.

All Members should retain the right to bring grievances, in the last event, before the International Court of Justice. The International Court of Justice should be entrusted with tasks for which it had been constituted.

It had been said that judicial difficulties would arise in regard to matters of an advanced economic character. Accordingly, it had been suggested at the London meeting that an Economic Chamber should be added to the International Court of Justice. The delegation of Belgium had suggested that some body similar to the Belgian Conseil de Contentieux, should be appointed. In such a way a tribunal of independent economic experts might be set up; this tribunal would act as an advisory board to the Conference and would closely follow the course of disputes where a specific appeal for its judgment had not been made.

The procedure would be as follows. Firstly, the parties would negotiate between themselves. Where no agreement was reached the Executive Board would be asked for a ruling; the Executive Board might here ask for the advice of the tribunal if it were so inclined. Finally, where the ruling of the Executive Board were found to be unsatisfactory, recourse would be had to the decision of the Conference itself. Here it might

be laid down that the Conference must take the opinion of the tribunal, should a party to the dispute insist. It might be well if all cases laid before the Conference were to be passed through the tribunal beforehand. The Conference should be permitted to take the opinion of the International Court of Justice. Any party to the dispute would lastly have the right to appeal to the International Court of Justice.

It was clear that there would be a need for a body of independent economic experts qualified to give decisions on disputes.

It had been objected that the International Court of Justice would be overwhelmed with requests for judgments on minor matters. However, the International Court of Justice was not overburdened and might well be glad to undertake work of this nature. This right of ultimate appeal to the International Court of Justice would encourage impartiality in decisions arrived at by the ITO; this in its turn would reduce the frequency of appeals.

The delegations of the United Kingdom and Cuba had proposed amendments in which preliminary consultations between litigants was advocated. It was clear, therefore, that Article 35 was closely related to Article 86. The distinction between justiciary and non-justiciary cases should be made clear.

The delegation of the Netherlands had not formulated a redraft of Articles 35 and 86 but would do so if it was felt desirable. It had however circulated a paper containing its views which might be submitted to the Sub-Committee or the Special Sub-Committee suggested by the delegate of Cuba.

Mr. DIETERLIN (France) agreed entirely with the views expressed by the Delegate of the Netherlands. The confidence of its members would be undoubtedly the most important asset of the Organization. The separation of powers had for long been recognized in the constitutions of individual states and had ensured citizens of their most essential possession; their freedom. Members of ITO should enjoy similar safeguards. If they were not so protected it was not certain that they would adhere to the Organization.

The Charter would at best be a compromise; differences would be bound to arise in its application. All Members should be entitled to bring such differences before an independent international body which would have full authority to take decisions. The minority parties to a dispute should also have a full right of appeal, otherwise the Executive Board would acquire an autocratic character.

The settlement of highly technical cases had long been a problem in individual countries. To meet this difficulty such bodies as the French Tribunal de Commerce and the Belgian Conseil de Contentieux, had been formed. These could serve as models for the judicial body to be established by the Organization. The plan was in principle for an arbitral body within the framework of the Organization, with a right of final appeal to the International Court of Justice.

The delegation of France was in full agreement with the detailed proposals made by the delegate of the Netherlands, and requested that the paper containing these proposals be referred to the Sub-Committee.

Mr. MINOVSKY (Czechoslovakia) was in favour of the proposal submitted by France and the Netherlands. He considered that the Sub-Committee should be instructed to take this suggestion into full consideration.

Mr. MARTIN (Brazil) also supported the proposal. It was essential that there should be an appropriate organ for arbitration in cases where conciliation between members had failed. Only legal disputes should be referred to the International Court of Justice.

Mr. FAWCETT (United Kingdom) restated his delegation's view that the Organization should be master in its own house. He explained the ideas behind their amendments to Article 86 and their reasons for opposing the French and Netherlands proposal.

The Organization had already a judicial function - when there was a dispute or danger of a dispute, it had to arrange for consultation between members and to mediate. It had also to act like a Court, to make enquiries, establish facts, hear cases and make an order. Articles 35 and 86 established the procedure for action in disputes where this was not covered by other Articles. At the Sub-Committee discussion he would say why his delegation considered it essential to unify the procedure for dealing with disputes for which no procedure was laid down elsewhere. He wished, however, to define immediately the United Kingdom's attitude towards the International Court of Justice. It was their earnest desire to see the International Court of Justice established as a force for the creation of law and order. Nothing would be more likely to discredit the Court than for it to be given work outside its sphere too soon after its creation. It was of course true that the Court might set up an Economics Chamber. There was, however, no provision for this in the Statute which provided for special Chambers on Transport, Labour and Communication.

These matters were more specific than economics and the Court might hesitate to set up a Chamber to cover the vast field of the I.T.O. Charter.

While he considered that reference to the Court of disputes under the Charter should not be free and open to all, the United Kingdom delegation wished the Court to play an important part in the I.T.O., and had therefore suggested that the advisory opinion of the Court should be taken when one-third of the Members considered this course desirable. This measure was a compromise between the total exclusion of the Court and automatic reference. He emphasized that the advisory opinion of the International Court of Justice would be binding on the Conference. In connection with the proposal to refer all disputes to the Court, he stressed the danger of allowing Members to appeal to the Court because they were dissatisfied with the Organization's ruling. He recalled that the Permanent Court had reached decisions by narrow majorities, conflicts would arise inevitably, discrediting both the International Court of Justice and the Organization, and under-mining the confidence of Members in either body. He agreed that there should be one final arbiter, but this should be the Organization, taking the advice of the Court in all matters falling within the latter's competence.

He was interested in the proposal to set up within the Organization a council to advise and, if Members agreed, to arbitrate in disputes. He agreed that the idea should be developed further, but hesitated to advocate the establishment of such a body as a permanent institution. Expert advice on all matters under the Charter would be available in the

Commissions. If legal advice was required, jurists from the panel of the Permanent Court of Arbitration could be asked to sit on ad hoc tribunals. He favoured the establishment of a temporary advisory body consisting of jurists and Members of the Commissions.

In conclusion, he summarized his three main points: firstly, there should be a unified, clear procedure for dealing with disputes under Articles 35 and 86 and other articles where action had not already been defined; secondly, the influence of the International Court of Justice on the Organization should be assured through the advisory opinion process advocated in the United Kingdom amendment; and thirdly, he favoured the idea of a council as a temporary body to deal with disputes and difficulties of interpretation of the Charter.

He pointed out that the United Kingdom redraft of Article 86 had been submitted for the purpose of promoting discussion and did not necessarily represent the final view of his delegation.

Dr. HOLLOWAY (South Africa) was amazed at the United Kingdom delegate's suggestion that justice should be denied to a Member unless one-third of the Members petitioned that justice should be done. He considered it particularly surprising that this view should come from the United Kingdom, the country of Magna Carta and the Bill of Rights, where all subjects had the right to appeal to the King.

The question was not whether the I.T.O. was master in its own house, but rather whether it was master in a house which was not its own.

The United Kingdom delegate based his objection on the fact that Members dissatisfied with the rulings of the Organization might appeal to the International Court of Justice. "Disputes as to the interpretation of the Charter" were not concerned with a Member's approval or disapproval of a ruling, but raised the question as to whether the Organization had been legally competent to make the ruling. If not, then the Organization was the last body to say whether it had been legally competent in the matter. It was essential to provide for appeal to an outside body to which any Member however small, however big, might refer on its own initiative.

The wisdom of the Organization in the matters within its scope was not being questioned, but where a dispute arose on the question of the Organization's right to make any given decision, the case should be heard by an experienced court accustomed to hearing and weighing evidence.

Provision should be made for an outside body to which an aggrieved party could appeal if the I.T.O. exceeded its powers, since clearly the I.T.O. itself was unable to settle such a dispute. There were then two different questions: disputes within the Organization's competence and disputes as to the extent of the Organization's power. The International Court of Justice could safely be relied upon to reject any appeal from a Member which fell within the competence of the I.T.O. On the other hand no Member could be expected to renounce the elementary right of appeal in cases where the I.T.O.'s power to make any decision was called in question.

Mr. FORTHOMME (Belgium-Luxembourg) made a statement on the Conseils de Contentieux Economiques (The Advisory Boards on Conflict) set up in his country for hearing disputes on economic matters.

The problem had been to ensure the impartial settlement of disputes outside the competence of the normal courts of law without infringing the right of appeal to such courts on legal matters. The possibility of a court of experts had been ruled out since experience showed that experts were seldom impartial. The normal law court lacked the necessary technical knowledge. Members of the Civil Service who had the necessary qualities of impartiality and technical knowledge were debarred by reason of their essential functions as advisers to the Minister. A compromise had therefore been reached in the existing Advisory Boards on Conflicts. These were joint bodies composed of a President with legal advisers responsible for supervising the form and procedure, and for ensuring impartiality, and of technical experts to deal with the practical and technical aspects of the cases submitted. To ensure complete impartiality, all parties to the dispute appeared directly before the Board and stated their case fully. The Boards did not pass judgment but advised the Minister. While this advice was not binding, the prestige resulting from the Board's long record of impartiality and competence was such, that in practice their advice was never rejected.

A similar institution might be desirable within the I.T.O. Many disputes on matters of economics which were not essentially legal questions would inevitably arise and a body of the kind he had described would render valuable service.

It should be neither purely legal, nor purely technical in composition. In his view a permanent Board would have a double advantage: it would permit of a better selection of members, and secondly, the experience gained would lead to the establishment of a form of economic jurisprudence which would be exceedingly valuable. For this, continuity was obviously desirable.

He noted that the United Kingdom amendment omitted paragraph (1) of Article 26. This he considered excessive. On the other hand the New York text was open to criticism. If all five official languages of the United Nations were equally authoritative, the possibilities of disputes would be multiplied. Moreover it would be necessary for the members of Boards for the settlement of such disputes of this kind to have a good knowledge of these five widely differing languages. He suggested that the paragraph should read: "This Charter shall be drafted in the official languages of the United Nations. The English and French texts shall be equally authoritative."

Mr. KELLOGG (United States) pointed out that there seemed to be four dangers to be avoided. Firstly, there was the danger of creating in the Charter (which could not easily be modified) a structure which was too top-heavy. There was already provision for a Conference, some four or five Commissions, a Tariffs Committee, an Executive Board, and now a Permanent Council or Board was suggested. This might mean a large international civil service with considerable duplication of functions. The relationship between this Board and the Commissions required clarification. Both were composed of impartial economic experts. It would be regrettable if decisions on disputes by a Commission were subsequently referred to and over-ruled by the Permanent Board since this would undermine confidence.

The second danger was delay. He cited the hypothetical case of a United States decision to boil Dutch tulip bulbs imported into the States as a preventive measure against disease. He traced the progress of the Dutch complaint from its first submission to the Organization, through the Executive Board to the Commodity Commission, back with their report to the Executive Board, later to the Conference, then to the Advisory Council, again to the Conference and finally to the Court, with the additional delays which inevitably would occur when the appropriate bodies were not in session at the time. By the time a final decision had been reached the Dutch bulb trade in the States would have been ruined. Such a procedure was clearly undesirable.

There was also the danger that questions with which it was not qualified to deal would be referred to the International Court of Justice. For example, a court of law could not be expected to define on legal grounds matters which, under Article 26 of the New York Draft Charter "unnecessarily" damage a Member's commercial interests. He agreed with the delegate of Brazil that the Court should pronounce on legal matters only and not on questions of interpretation of the Charter.

The fourth danger was that if appeals were allowed without restraint to the Court it would then have to decide on remedies, a function beyond its competence.

He made three suggestions. If the reference of disputes to a body outside the Organization were agreed such disputes should be screened inside the Organization in order to ensure that economic questions were considered by an economic tribunal and legal matters by a legal tribunal. Secondly he hoped

that some flexibility would be left. Finally, while approving the suggested merger of Articles 35 and 86, he pointed out that this proposal referred only to paragraph (2) of Article 35, not to paragraph (1).

Mr. FAWCETT (United Kingdom) in reply to the criticism of the delegate of South Africa, on the separation of powers and appeals to an outside court, cited the case of the Supreme Court which is appointed by the President with the agreement of the Senate.

He felt that the United Kingdom amendment had been misunderstood. The rights of Members to appeal to the International Court of Justice had not been removed lightly. In his view such appeals were not possible. The Organization could not be a party to the Court since only states could appear before it. As it was impossible for the Organization to appear, it was clearly impossible for the Court to pronounce on any decision from the Organization and therefore no Member could take the Organization to Court. He pointed out that the International Court of Justice was not a court of appeal in the normal sense since it was not bound to accept the findings of the Court below. It could inquire into all the facts but the findings of the Organization would be irrelevant.

The acceptance of the Charter involved giving up some economic sovereignty, in fact if the Organization were efficient it would be precisely because economic sovereignty had been abandoned to it. It was illogical to set up an organization for this purpose and then to seek to avoid its decisions by referring them to an outside body which might not even be competent in the matter.

In his view the United Kingdom amendment answered the purpose completely since it allowed for the advisory opinion

of the International Court of Justice to be sought at the final stage in a dispute and it provided that its opinion should be binding. He thought that this measure met the South African delegate's difficulties.

Mr. TANGE (Australia) referred to the Cuban proposal put forward earlier in the meeting to reconcile Articles 35, and 86 and all other Articles relating to disputes; the possibility of disputes and the procedure for dealing with them. He agreed that it was desirable to avoid confused procedures but doubted whether complete uniformity could be achieved in Articles other than Articles 35 and 86. The role of the Organization was stated in the terms of the Organization and it should be left to the Conference to decide the appropriate functions. In this matter it would be guided by the procedure laid down in Article 86.

With regard to Article 86 itself he agreed with the United Kingdom delegate that it was for the Conference to make the final decision on issues between members. He recognised the desirability of providing procedure for arbitration, subject of course to the consent of both parties to the dispute, and the desirability for the organization to obtain the advisory opinion of the Court. He was opposed to disputes on economics being assessed by the International Court of Justice. It would be impossible in practice for the Court to pass judgment on many disputes emanating from the I.T.O. without recourse to expert opinion and the delay involved might be considerable. At the same time he considered that consideration should be given to providing machinery for the judicial approach to disputes and was interested in the Belgian delegate's statement.

He pointed out that the Australian delegation had submitted amendments to Article 35 which had some bearing on the United Kingdom amendment to Article 86. It would be for the sub-committee to reconcile the two proposals.

As he understood it, the effect of paragraph 4(ii) of the United Kingdom amendment was to allow one-third of the members to obtain a judgement from the Court on any matter since the advisory opinion had to be adopted by the Conference and was binding on it.

Referring to "disputes as to the interpretation of the Charter" he pointed out that most disputes between members would fall under this heading. It would in fact be very difficult to state exactly what were justiciable and what non-justiciable issues.

He considered that the Belgian proposal deserved close consideration. If the Council were temporary, it would be necessary for the Conference to delegate to the Executive Board the right to call it into existence, to avoid the delay which would arise between sessions of the Conference. He referred to the Belgian suggestion for a standing committee but thought the problem primarily one of allocation of functions between the Council or Board and the Commissions.

Mr. FORTHOUME (Belgium - Luxembourg) did not consider that the illustration furnished by the United States delegate in his story of the Dutch tulip bulbs was a valid criticism of the proposals submitted by the Netherlands delegation. Any procedure for conciliation or settlement of disputes would be subjected to delay or even failure in face of the protracted illwill of one of the parties or of even its insistence on what it considered to

be its vital interests, where these came into dispute. Clearly the ease with which a dispute would be settled depended on the importance attached to it by the parties involved. The main difficulty in the proposed machinery, as pointed out by the Australian delegate, was the division of functions between the Commissions of the Organisation and the Advisory Board for Conflicts. He understood that the Commissions would not be primarily concerned with disputes, but with the planning of constructive measures and the implementation of the Charter of the Organisation by Members. Disputes would of course occur in these Commissions as they occur in the functioning of the Civil Administration. There was the possibility that they would be settled on the spot, either between the Members themselves or by the friendly intervention of the Organisation. Only if this failed, would they be referred to the Executive Board, which, in exceptional cases, might wish to refer the matter directly to the Conference. It was at this stage that the Advisory Board would be called upon to examine the dispute and give advice to the Executive Board, or to the Conference should this latter have been asked by the Executive Board for its decision.

Dr. HOLLOWAY (South Africa) thought that the crucial difference of opinion in the Commission lay in what constituted a dispute as to the interpretation of the Charter. Article 35, paragraph 2, contained the words "The Organisation, if it considers the case serious enough to justify such action," . So clearly it must be for the Organisation, and not for the International Court of Justice to decide on the class into which any dispute fell. He was in agreement with the United Kingdom delegate that the Charter set up the Organisation

as a sovereign body. But though the cases where the Organisation could be taken before the Court of International Justice were very limited in number, he could not agree that such could never be the case. Any analogy with the British Constitution, in which the Crown cannot be sued by a private individual, was inapplicable to international law.

M. DORN (Cuba) stated that the proposal to bring Articles 35 and 86 into harmony did not mean that a single procedure would be established for the settlement of all disputes, but only those classes of disputes for which different procedures were unnecessary. He asked the United Kingdom delegate the reason for the omission of paragraph (1) of Article 86 in its proposed text.

Mr. FAWCETT (United Kingdom) replied that paragraph (1) of the Draft Charter would not be omitted but would be placed at the very end of the Charter, to conform with normal treaty practice.

Mr. KELLOGG (United States) considered his tulip-bulb illustration was still valid, for no democratic country ever thought that it was acting in bad faith. He and the Belgian delegate, however, seemed to be in agreement on the need for flexibility in the procedure to be established.

Mr. van TRYL (Netherlands) referring to the United Kingdom delegates' objection that the Organisation could not be brought before the International Court of Justice, agreed that this was the case by provision of Article 34 of the Statute of the Court, but did not admit that it invalidated his proposals. Only cases involving two or more Members of the Organisation would be submitted to the Court, and then only if the dissatisfied party could muster the support of a third of the Members of the Conference. He agreed that a solution must be found to the problem of defining what cases could be referred to the Court as involving legal or judicial aspects, and what cases lay outside

its competence because of their purely economic character. He drew attention to Article 36, paragraph 2, of the Statute of the International Court of Justice, which reads: "The States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact, which, if established,

would constitute a breach of an international obligation:

- (d) the nature and extent of the reparation to be made for the breach of an international obligation.

This declaration, he continued, had been made by twenty-five members of the Commission, and among them four of the Great Powers, and must not be invalidated or prejudiced by any decisions the Commission might reach.

Referring to the Australian delegate's comments on the proposed Advisory Board, he thought a permanent body definitely preferable. Experience and the high authority such a Board would need to command could only thus be gained.

Mr. FORTHOMIE (Belgium-Luxembourg) also stressed the need for careful definition of the functions of the Commissions and the Advisory Board. He suggested that certain of the Commission members might participate in the work of the Advisory Board. This arrangement would require incorporation in the Charter of detailed guarantees regulating membership of the Commissions and the Board. From the numerous references to the Court of International Justice in the Charter, he thought there was little danger of the Court not taking a proper place in the work of the Organisation.

The CHAIRMAN stated that in accordance with the suggestion of the Australian delegate referred to above, he had a letter drafted to the Chairman of Commission A, asking him to bring to the notice of the Sub-Committee on Chapter V the resolution passed by Commission B, proposing a joint meeting of the Sub-Committees on Chapter V and VIII to bring into relationship Articles 35 (2) and 86.

Mr. KELLOG asked if at this joint meeting it was proposed to discuss Article 86 as well as Article 35 (2).

The CHAIRMAN said that the best procedure would be for each Sub-Committee to discuss separately their respective articles, and then for a joint meeting to be held to consider relationship between them.

Decision: The letter was approved.