

INTERNATIONAL HEALTH CONFERENCE

SUMMARY RECORD OF THE EIGHTH MEETING OF COMMITTEE III (LEGAL QUESTIONS)

Held at Hunter College, Friday, 12 July 1946, at 2:15 p.m.

Chairman: Dr. EVANG (Norway)

Proposal relating to Conventions, Regulations, and Recommendations

The CHAIRMAN requested that the committee first consider the proposal of the delegations of the United Kingdom (E/H/L/W. 26, p.3) in as much as Committee II, then in session, was also to examine the text. The United Kingdom Delegation had proposed the insertion in the text of the Constitution of a phrase reading as follows:

"Members undertake in relation to Conventions, Regulations, and Recommendations adopted by the Assembly the obligations set forth in Annex I to this Constitution."

The CHAIRMAN proposed that the Committee approve the text as read as well as the principles set forth in Annex I, with the understanding that final drafting would be referred to the General Drafting Committee. This was approved by the committee, and its decision was communicated immediately to Committee II.

Article XVIII (Amendments) E/H/L/W.25

Lt. Col. LAKSHMANAN (India) pointed out that the text as drafted would bind all members to carry out amendments even though only two-thirds of the members had ratified them. He felt that amendments should come into force only for those states ratifying them, and proposed that the article be changed accordingly.

Mr. HAKIM (Lebanon) stated that the text as drafted was similar to that stated in the Charter of the United Nations, and proposed that the World Health Organization should follow the same procedure as that adopted

by the United Nations. He therefore suggested that the text be left unchanged.

The CHAIRMAN, acting under authority of Article 34 of the Rules of Procedure, requested the Secretary for a clarifying statement. The Secretary stated that at the San Francisco Conference a declaration, not to be included in the Charter, had been agreed upon. The statement read as follows:

"A member is not bound to remain in the Organization if its rights and obligations as such are changed by an amendment to the constitution in which it has not concurred and which it finds itself unable to accept."

The Secretary asked whether (1) the Delegate for India would accept the present draft if such a declaratory statement were agreed upon, (2) the Delegates favouring the present draft would also accept the declaratory statement.

Lt. Col. LAKSEMANAN (India) stated that he would agree to the present draft if the declaratory statement were also approved.

Article XVIII was thereupon unanimously approved.

The declaratory statement as read by the Secretary was unanimously approved.

Article XIX (Entry into Force)

Paragraph 1

Paragraph 1 was unanimously approved.

Paragraph 2

Mr. COTE (Canada) suggested revision of the text to read "Acceptance shall be effected by the deposit . . . "

Paragraph 2 as amended was adopted unanimously.

Paragraph 3

The CHAIRMAN reminded the Committee that the drafting committee had been requested to present two alternative texts. In the preliminary vote taken in the Committee, thirteen had favoured the first alternative (twenty-six Members of the United Nations), and ten had favoured the second (twenty-one states). However, in view of the fact that

a quorum had not been present, it had been decided to present both alternatives for further consideration by the Committee.

Dr. GROMASHEVSKY (U.S.S.R.) called attention to an error in the French text which had stated the first alternative as an integral part of the text, while putting the second alternative favoured by the majority in brackets. He believed that the second alternative would be more in keeping with democratic processes and would strengthen the authority of the World Health Organization.

Mr. SANDIFER (United States), upholding the proposal made by his Delegation for twenty-one states, did not feel that it was in keeping with democratic processes to allow only members of the United Nations to bring the Constitution into force. All states eligible to membership should be included, since this was to be a World Health Organization, not a United Nations Health Organization. However, since the inclusion of states now represented by observers would increase the number of states concerned by sixteen, he proposed as a compromise twenty-six states without specifying membership in the United Nations.

Mr. EVSTAFIEV (Byelorussian S.S.R.) stated that his Delegation had originally proposed two-thirds of the Members of the United Nations, but had accepted the number twenty-six as a compromise. Why, he asked, was the question re-opened when a majority of the Committee in the preliminary vote had preferred the formula "twenty-six Members of the United Nations"? He recommended adherence to this plan to bring about quick and effective ratification of the Constitution.

In response to this question, the CHAIRMAN explained that since the preliminary vote did not represent a quorum, he had ruled that both texts be again presented.

Dr. STAMPAR (Yugoslavia) strongly favoured application of the majority principle. He felt that it would be unwise for the Constitution to be put into force through acceptance by a minority. He pointed out that it would be necessary, if the minority principle were approved, for many Delegates to communicate with their governments; this would mean a long delay.

The proposal of the Delegate for the United States would not satisfy the majority principle. To do this, either twenty-six Members of the United Nations or thirty-four of all states represented should ratify.

Mr. HAKIM (Lebanon) also favoured ratification by a majority, and felt that the United States proposal was unsatisfactory. It was essential to have good and close relations with the United Nations, which had sponsored the Health Conference, and he believed that this relationship would suffer if the Constitution were not brought into force by a majority of Members of the United Nations.

Dr. GROMASHEVSKY (U.S.S.R.) was grateful for the concession made by the United States Delegation, but felt that the United States proposal lacked a logical basis. Twenty-six unspecified states would constitute neither a majority of the United Nations nor a majority of all states represented. The suggestion made in favour of twenty-six Members or thirty-four unspecified states was more logical.

Mr. SANDIFER (United States) emphasized the fact that in international practice it was customary for multilateral conventions to be brought into force by a very small number of states. Conventions establishing the FAO and UNESCO had been brought into force by acceptance of twenty states. The majority principle was irrelevant since it was primarily a practical question, that is, - how many states would need to ratify to bring about effective operation. He believed strongly that all parties to the Constitution should have fair and equal treatment, in accordance with democratic principles.

Dr. VAN DEN BERG (Netherlands) pointed out that two questions were involved, one quantitative - the number of states, and one qualitative - the kind of states, whether Members or unspecified, and suggested they be considered separately. He supported the proposal for twenty-six members of the United Nations.

Mr. VALLAT (United Kingdom) then proposed that ratification by twenty-one Members of the United Nations bring the Constitution into force. He emphasized strongly that the majority principle had no relevance whatever, since only

those countries ratifying the Constitution would be affected by it and the decision of these States would not bind the others.

Dr. BUSTAMENTE (Mexico) moved closure of the debate. The motion was seconded, and carried by a vote of twelve to one.

The CHAIRMAN then summarized the motions now before the committee as follows:

1. twenty-six Members of the United Nations - second alternative in text favoured by majority in preliminary vote;
2. twenty-one states (unspecified) - first alternative in text, favoured by minority in preliminary vote;
3. twenty-six states (unspecified) - moved by United States, and seconded by Mexico;
4. twenty-one Members of the United Nations - moved by the United Kingdom and seconded by several States.

Since no delegate had spoken for motion (2), the Chairman asked if this motion could be eliminated. The Committee agreed.

A debate then followed regarding the rules of procedure. During the course of discussion Dr. GROMASHEVSKY moved that, rather than submit the motions separately, the Committee vote first as to whether all states or only Members of the United Nations should be included, and secondly as to the number required. This was seconded by Dr. VAN DEN BERG (Netherlands) and was carried by a vote of ten to five.

The committee voted fourteen to nine in favour of including the words "Members of the United Nations" in the text. This automatically excluded motion (3).

Motion (1) calling for twenty-six Members of United Nations was defeated by a vote of fifteen to eight.

Motion (4) calling for ratification by twenty-one Members of United Nations was carried by a vote of sixteen to four.

The approved text of Paragraph 3 therefore read as follows:

"This Constitution shall come into force when twenty-one Members of the

United Nations have become parties to this Constitution in accordance with the provisions of paragraph 2 of this Article."

The CHAIRMAN then stated that since a quorum was not present at this meeting, it would have to be decided whether both alternatives (1) and (4) should be referred to the plenary session of the Conference.

Mr. SANDIFER emphasized that without a quorum the Committee's decision in regard to any of the proposals presented could not be regarded as final. He therefore moved that the motion (3) also be presented to the plenary session.

The CHAIRMAN stated that the normal procedure would be to report only the text adopted by the Committee, but that since a quorum was lacking, he would suggest that an explanatory note be added giving all proposals and the Committee's vote on each.

Mr. COTE (Canada) supported this proposal which was seconded by Mr. VALLAT (United Kingdom), and it was agreed by the committee to present in the text motion (4) with a full explanatory note.

Article XIX, Paragraph 4

Unanimously adopted.

Article XIX, Paragraph 5

Unanimously adopted.

Article XIX, Paragraph 6

Unanimously adopted.

Article XX (Interpretation), Paragraph 1

The Committee originally approved Paragraph 1 without discussion, but discussion was reopened on a motion of Dr. BUSTAMANTE (Mexico) that there be five authentic texts of the Constitution (Chinese, English, French, Russian, and Spanish) in accordance with Article 111 of the United Nations Charter. This motion was supported by the Delegates for NORWAY, PANAMA, CHILE, and FRANCE. It was opposed by several Delegates because of the practical and juridical difficulties. After further discussion, the amendment proposed by the delegate of MEXICO was put to a vote and carried without a dissenting vote.

Paragraph 2, 3, and 4 were adopted unanimously.

Draft Protocol Concerning the Office International d'Hygiene Publique.

Article I, II, III, IV, and V were adopted unanimously.

Article VI was submitted for discussion. Dr. STAMPAR (Yugoslavia) asked that the figure of twenty States necessary for the entry into force of the Protocol should be increased. The CHAIRMAN, acting in accordance with the terms of article 34 of the Rules of Procedure, requested the Secretary of the Committee to make a statement. The Secretary then pointed out that in this case the "majority" principle did not appear to be applicable. The Protocol therefore could only become effective in respect of the ratifying States exclusively and "as between themselves".

Article VI was then approved by a vote of eighteen to one.

The concluding paragraph of the Draft Protocol was adopted unanimously.

Annex I, mentioned in Article II was approved as corrected by the Secretariat.

Assumption by the Interim Commission of duties and functions entrusted to UMRRA

In view of the fact that Committee IV had already completed its work, the CHAIRMAN proposed that Committee III adopt the text given in Document E/H/L/W.26, (f), to be referred to the General Drafting Committee.

The Delegate for the UNITED KINGDOM requested that the Conventions and Protocols mentioned in the text be fully identified.

This was agreed by the Committee.

Dr. BUSTAMANTE (Mexico) voiced the feelings of the Committee in expressing cordial appreciation of the excellent leadership given by the Chairman, Dr. Evang.

The meeting rose at 6:00 p.m.
