

Apart from the problem of the definition of aggression, there is the problem of determining the aggressor. The aggressor, or he who has "provoked" an aggression, has no right of self-defense under municipal law; also in municipal law there are situations where neither of two fighting persons can invoke the right of self-defense. To determine the aggressor must, in cases of self-defense, be left, in the first instance, to the person in question. But self-defense becomes a truly juridical institution in municipal law only through the control of self-defense by independent courts with compulsory jurisdiction. No such judicial control is provided in Art. 51. But here, too, some progress has been achieved, through giving a certain control over the exercise of the right of self-defense to the Security Council. The latter not only retains, notwithstanding Art. 51, all authority and responsibility to take at any time the necessary measures, and thus to determine an act of aggression and, consequently, the legality of self-defense. The state or states acting in the exercise of self-defense, are, moreover, legally bound to report immediately to the Security Council the measures taken in the exercise of the right of self-defense, and they can take such measures only until the Security Council has taken the measures necessary to maintain international peace and security.

The concept of self-defense in Art. 51, to sum up, reveals a progressive development, although it is, of course, still far away from the juridical precision which the legal institution of self-defense has in advanced municipal law.

JOSEF L. KUNZ

PROPOSED ITO CHARTER

Eighteen United Nations have recently participated, through their representatives on the Preparatory Committee, in the preparation of a draft charter for an International Trade Organization.¹ Earlier phases of the effort looking to a United Nations Conference on Trade and Employment, which is to be held at Havana beginning on November 21, 1947, were the subject of earlier comment by the present writer.²

The provisions of the Charter as they have now evolved are the results of intensive work by the Preparatory Committee at its first session (held in London, October 15 to November 26, 1946),³ revisory effort by the Drafting Committee (which met in New York from January 20 to February 25, 1947),⁴ and further discussion and formulation at the second session of the Preparatory Committee which convened at Geneva on April 10, 1947, and

¹ Doc. E/PC/T/180.

² "Toward a World Conference on Trade and Employment," this JOURNAL, Vol. 41 (1947), pp. 127-131.

³ Report in Doc. E/PC/T/33.

⁴ Report in Doc. E/PC/T/34.

continued its labors for more than four months.⁵ While minutes of the meeting that produced the most recent version of the Charter are not yet available for public use, the discussions have deservedly received wide attention in the world press. In view of the magnitude of the undertaking which the Charter represents, and the potential importance of the ITO as an instrumentality designed to make the basic plan work, the substantive provisions of the draft Charter seem to merit the attention of those who are concerned for the development of law and order in the field of international economic relations as well as for observers of institutional development within the framework of the United Nations system. The limits of a brief comment preclude detailed consideration of the one hundred articles and permit only summary and, in some cases, illustrative, statements.

The purposes and objectives of the proposed ITO, as set out in Chapter I, refer to higher standards of living, full employment, and the conditions of economic and social development envisaged in Article 55(a) of the United Nations Charter. The ITO Charter envisages both national and international action to assure a large and steadily growing volume of real income and effective demand, and, by increasing the production, consumption, and exchange of goods, to contribute to a balanced and expanding world economy. Further purposes are to foster and assist industrial and general economic development (particularly of countries in early stages of industrial development), to encourage the international flow of capital for productive investment, to further the enjoyment, on equal terms, of access to markets and of products and productive facilities needed for economic prosperity and development. The plan is further designed to reduce tariffs and other barriers to trade, to eliminate discriminatory treatment in international commerce, to enable countries ("by increasing opportunities for their trade and economic development on a mutually advantageous basis") to abstain from measures which would disrupt world commerce, reduce productive employment, or retard economic progress. Finally, the Charter looks to the facilitation of consultation and coöperation in the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices, and commodity policy.

In Chapter II, on "Employment and Economic Activity," there are references, *inter alia*, to the maintenance of domestic employment through measures to be taken by each member state, "appropriate to its political, economic, and social institutions." In connection with fair labor stand-

⁵ Members of the Preparatory Committee represented at the second session were: Australia, Belgium, Luxembourg, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, The Netherlands, New Zealand, Norway, the Union of South Africa, the United States and the United Kingdom. The Soviet Union, a member of the Preparatory Committee as created by the United Nations Economic and Social Council, was not represented.

ards, one goal specified is the elimination of substandard conditions of labor in production for export, "and generally." A separate article relates to the removal of maladjustments within the balance of payments, and another to safeguards for members subject to deflationary pressure.

Chapter III, on "Economic Development," sets forth that ". . . all countries have a common interest in the productive use of the world's human and material resources. . . ." ⁶ There is a provision that "No member shall impose unreasonable or unjustifiable impediments that would prevent other members from obtaining on equitable terms . . . facilities for their economic development, . . ." and that no member shall take unreasonable action within its territories injurious to the rights or interests of other members' nationals in the enterprise, skills, capital, arts, or technology which they have supplied.⁷ Elements of an investment code are incorporated in the Charter. In connection with this are also found provisions on non-discriminatory protective measures permissible for the purpose of economic development. Although elimination of preferences is a major objective and Chapter IV contains provisions directed to this end, under special circumstances referred to in Chapter III (Art. 15) "new preferential measures" that are proposed by a member may be approved by the ITO.

Of central importance are the provisions which relate to general most-favored-nation treatment as to customs, the methods of levying duties, and rules and formalities in this connection, also provisions concerning the elimination of preferences and national treatment as to internal taxation and regulation. A section on "Quantitative Restrictions and Exchange Controls" states a general rule to the effect that there shall be no prohibitions or restrictions other than duties, taxes, or other charges, but allows certain exceptions, as in the case of countries in balance of payments difficulties, provided that any restrictions permitted under such exceptions are administered in a non-discriminatory manner. To the rule of non-discriminatory administration of such restrictions, exceptions are to be permitted, with prior approval of the ITO required after March 1, 1952, when there is "widespread disequilibrium."⁸ In the matter of exchange control it is provided that members shall not, "by exchange action, frustrate the intent of the provisions" of this section, nor, "by trade action, the intent of the International Monetary Fund."⁹ Coöperation of the ITO with the Fund is envisaged. Separate sections deal with subsidies and with state trading. In connection with the latter a rule of non-discrimination and the application of commercial considerations are prescribed,¹⁰ and negotiations (when

⁶ Art. 8.

⁷ Art. 11.

⁸ Art. 23.

⁹ Art. 24.

¹⁰ Art. 30.

requested by an interested member) looking to the limitation or reduction of protection afforded (through operation of a monopoly) to domestic producers of the monopolized product, are contemplated.¹¹ In a section on "General Commercial Provisions" are to be found articles on freedom of transit, anti-dumping and countervailing duties, valuation for customs purposes, formalities connected with importation and exportation, marks of origin, publication and administration of trade regulations, information, statistics and trade terminology, boycotts, emergency action on imports of particular products, consultation and territorial application.

Chapter V, on "Restrictive Business Practices," provides that each member shall take appropriate measures, individually or through the ITO, or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic practices (or which interfere with the achievement of other objectives of the Charter).¹² Detailed provisions cover the method of investigating, consulting, and reporting, in cases where such business practices are alleged. Action or omission to act by the ITO is not to prevent a member's enforcing its own statutes or decrees against monopoly or restraint of trade. Even as to types of agreements excepted (by Art. 51) from the provisions of the chapter, the ITO may make recommendations.

Seventeen articles, comprising Chapter VI, relate to "Intergovernmental Commodity Agreements." Among the introductory considerations is recognition of the fact that the tendency toward disequilibrium between production and consumption of primary products, accumulation of burdensome stocks, and pronounced fluctuations in prices may necessitate special treatment of the international trade in such commodities.¹³ Commodity studies are to be arranged by the ITO, which, upon recommendation of a study group or at the request of a member whose interests represent a substantial part of world production or consumption or trade in particular commodity, is to convene a conference on the subject. General principles are set forth covering intergovernmental commodity agreements, and further rules for commodity control agreements and their administration through commodity councils. There are also provisions on settlement of disputes, and provisions whereby any international organization, such as the FAO, may attend a study group or commodity conference, ask that study of a particular primary commodity be made, submit to the ITO any relevant study,

¹¹ Art. 31.

¹² Art. 45. Art. 47 specifies the obligation of members to take measures, by legislation or otherwise, to ensure that public and private enterprises do not engage in practices having specified effects.

¹³ Art. 52. See "The International Trade Organization—How Will It Work?" United States Department of State Publication 2597 (Commercial Policy Series 92), p. 6.

and recommend further study.¹⁴ Members accept certain obligations as to existing, as well as future, commodity arrangements.¹⁵

For the student of international government Chapter VII, relating to the ITO itself, will perhaps hold greatest interest, although, as Under Secretary Clayton has pointed out, the “. . . form of the original machinery established in the ITO is less important than the commitments member governments are willing to undertake on the substantive matters. . . .”¹⁶ Eligible to membership in the ITO will be the states invited to the Havana Conference on Trade and Employment which accept the Charter and other states approved for membership by the Conference.¹⁷ Article 69 spells out functions of the ITO largely in terms of collecting information, encouraging and facilitating consultation, undertaking studies and making recommendations, promoting international agreements, consulting with members, and coöperating with intergovernmental organizations for achieving social and economic objectives and the restoration and maintenance of international peace and security. Structurally the ITO will include a Conference, meeting in annual sessions (aside from special ones), an Executive Board (for the composition of which three alternative plans are presented in the Charter, but which seems likely to include a group of states of chief economic importance and other states elected by the Conference), a Tariff Committee, such Commissions as may be established by the Conference, a Director-General and staff, and possibly other organs. Powers and duties of these proposed agencies are set out in some detail. Article 84 provides for consultation and coöperation with other international organizations referred to in Article 57 of the United Nations Charter. By Article 86 the ITO “shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.” In the territory of any member the Organization is to have, for itself and its representatives, such legal capacity, privileges, and immunities as are necessary for the exercise of its functions.¹⁸

Chapter VIII seems likely to hold special interest for international lawyers, since it relates to the settlement of disputes and to interpretation. If representations made by one member to another do not result in adjust-

¹⁴ Art. 64.

¹⁵ Art. 65.

¹⁶ *International Trade Organization. Hearings before the Committee on Finance, United States Senate, Eightieth Cong., First Session on Trade Agreements System and Proposed International Trade Organization Charter, Pt. 1, p. 20* (hereinafter cited as *Hearings*).

¹⁷ Art. 68 of the Charter also envisages membership for separate customs territories not responsible for the formal conduct of their diplomatic relations. The Havana Conference is to determine conditions of application of Charter provisions to trust territories. The effect upon membership in the ITO of a member's exclusion from the United Nations Organization also remains to be determined.

¹⁸ Art. 87.

ment within a reasonable time there may be reference to the Executive Board or, with the latter's approval, to the ITO Conference. The Board may refer a matter involving two or more members to arbitration, with consent of the members concerned and on terms agreed upon between such members and the Board. Rulings of the Executive Board may, at the request of an interested member, be reviewed by the Conference, which has power to suspend obligations or concessions under or pursuant to the Charter; if such action is taken the member with respect to which the suspending action is taken may, upon giving the required notice, withdraw from the ITO. Article 91 relates to references to the International Court of Justice. The latter may be asked, by the Conference or the Executive Board, for an advisory opinion on legal questions "arising within the scope of activities" of the ITO. Any resolution of the Conference or Conference decision shall be subject to review by the Court through request from the ITO for an advisory opinion, pursuant to the Court's Statute. Furthermore, at the instance of any "substantially interested" member of the ITO, the latter shall request such an opinion, transmitting a statement of facts and other information which the Court may require; pending delivery of an opinion by the Court any Conference resolution or decision on the matter involved is to have full force and effect, although the Conference may suspend effectiveness of such resolution or decision if damage which would result from enforcement would be difficult to repair. The advisory opinion of the Court in such cases is, it should be noted, to be binding upon the ITO and the resolution or decision which has given rise to the request is to be modified if it is not in accordance with the opinion. Nothing is said in the Charter as to binding effect upon individual members.¹⁹

Chapter IX, on "General Provisions," provides alternate versions to cover relations of a member with a non-member. One of these provides that nothing in the Charter is to preclude members from consulting or making commercial treaties or maintaining relations with non-members, provided that no member shall seek preferential export or import duties or taxes or exclusive advantages in its trade with a non-member.²⁰ The Charter is not to be construed to require a member to make disclosures that it considers contrary to its security interests, or to prevent a member's taking action under the United Nations Charter for the maintenance of international peace and security. The provisions concerning amendments

¹⁹ On the intended meaning of the part of the Charter relative to this subject matter (as provisions were formulated prior to the Geneva discussions) see the testimony of Leroy Stinebower in *Hearings*, Vol. I, p. 566. By Art. 92 of the Charter, nothing in Chapter VIII thereof is to exclude procedures provided for in the Charter for consultation and settlement of differences arising out of its operation.

²⁰ Art. 93. There is in the same version a provision which envisages suspension (after full consultation) of application of Charter provisions for any member if a substantial part of the latter's foreign trade is with a non-member; withdrawal of the member, in case there is no satisfactory adjustment, may follow.

distinguish between those involving changes in obligations assumed by members under the Charter and those not involving such changes. The Conference may declare that an amendment of the former type is of such nature that all members not accepting it within a period of time specified by the Conference shall withdraw from the ITO. The Conference is to call a special session, before the end of the tenth year from the date of the Charter's entering into force, for review of its provisions. Without prejudice to other parts of the Charter which refer to possible withdrawal, a member may, upon giving the required notice of intention to terminate, withdraw for itself or its separate customs territories at any time after three years.²¹ The effectiveness of the Charter itself (for all states bound by it) may be terminated at any time by agreement of three-fourths of the members.

Perhaps the most striking thing about the proposed Charter is the comprehensiveness of its design. The head of the American delegation at Geneva has appraised the work of the Preparatory Committee as a "miracle" of international coöperation.²² That much remains to be decided when the Conference on Trade and Employment convenes in Havana is emphasized by the alternative provisions formulated on certain matters and by the fact that some of the eighteen states represented at Geneva reserved their positions on various parts of the instrument. In any case, there is in prospect a multilateral agreement which is not without some flexibility, and an organization which is not a "superstate" but essentially a "medium for consultation,"²³ the operation of which may in the future present many international questions of legal as well as economic significance.

ROBERT R. WILSON

INTERVENTION—THE TRUMAN DOCTRINE AND THE MARSHALL PLAN

While the Marshall proposal for aid by the United States toward European recovery is often called a corollary of the Truman Doctrine, they differ essentially in their aims. While both are directed against the expansion of Soviet Russia the Truman Doctrine looks to military aid to Greece and Turkey, and the outcome is unknown. The Marshall proposal, on the other hand, looks purely to economic aid for the countries of Western Europe and professes to disregard political considerations.

The so-called Truman Doctrine is often called an extension of the Monroe Doctrine. But this is surely an error. The Monroe Doctrine was limited geographically to this continent. It announced that American arms would protect the Continent against any effort of Europe to extend its system across the Atlantic. Several efforts at European intervention

²¹ Art. 97.

²² Address of Under Secretary Clayton broadcast from Paris, reported in *The Washington Post*, Sept. 11, 1947, p. 1.

²³ *Hearings*, Vol. I, p. 3 (testimony of Mr. Clayton).