

UNCLO - Working Papers - Commissions & Technical Committees - Rapporteur's Report

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COMMITTEE I/2

CHAPTER X. THE SECRETARIAT

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|---------------------------|-------|--|
| June 13 | 40-1 | 1. There shall be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General shall be the chief administrative officer of the Organization. The Secretaries Generalfor a period of three years, and the Secretary General should be eligible for reelection. |
| (Election to be inserted) | | |
| May 24 | | |
| June 1 | unan. | 2. The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are or may be entrusted to him by the Organization. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization. |
| June 2 | unan. | 3. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security. |
| June 2 | unan. | 4. In the performance of their duties the Secretary-General and the staff shall be responsible only to the Organization. They shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials. Each member undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. |
| June 5 | 30-3 | 5. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The |

paramount consideration in the employment of the staff and in the determination of conditions of service shall be the necessity of securing the highest standards.

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COMMISSION I General Provisions

DRAFT REPORT OF RAPPORTEUR (GENERAL) OF COMMITTEE I/2

ON CHAPTER X (THE SECRETARIAT)

Introduction

*Secretariat -
Defining office
Responsible*

1. Committee I/2 was charged with consideration of Chapter X of the Dumbarton Oaks Proposals, providing for the Secretariat of the Organization. In addition to the original three paragraphs of Chapter X, the Committee considered two amendments proposed by the sponsoring governments and other amendments proposed by Canada, Liberia, Mexico, New Zealand, Norway, Philippine Commonwealth, Uruguay, and Venezuela, and a joint amendment of Brazil, Dominican Republic and Mexico.

Check

2. The Committee devoted seven sessions to consideration of Chapter X and its Subcommittee on this Chapter met three times. The Subcommittee was composed of the President of Commission I;

the Chairman of Committee I/2; the Rapporteur (General) of Committee I/2, ex officio; and the Delegates of Canada, China, Greece, Mexico, New Zealand, Norway, United States, Uruguay, and Venezuela.

3. In their consideration of provisions for the Secretariat of the Organization, the members of Committee I/2 demonstrated unanimous agreement that the Secretariat should be of the highest quality and should be organized on a truly international basis. There was no dissension from these principles, and such disagreement as did appear during the discussions was limited to the question of the extent to which specific detailed provision should be made in the Charter for the Secretariat.

4. The Committee took up the various features relating to the Secretariat separately, following a general outline which is used in this report.

Paragraph 1. The Secretariat

a. General Provisions

5. The first sentence of paragraph 1, Chapter X, of the Dumbarton

Oaks Proposals provides that: "There shall be a Secretariat comprising a Secretary-General and such staff as may be required."

There was no discussion of this provision, and the sentence was adopted with only one ^{negative} ~~contrary~~ vote. ✓

b. Secretary-General

6. The second sentence of this paragraph provides that: "The Secretary-General shall be the Chief Administrative Officer of the Organization." Likewise, there was no discussion of this provision, and the sentence was adopted with only one ^{negative} ~~contrary~~ vote. ✓

c. Election and Term of Office of the Secretary-General

7. At the outset of its consideration of the Secretariat, the Committee was advised that Committee II/1 had voted that the Secretary-General should be elected by the General Assembly upon nomination by a majority of seven members of the Security Council. The Committee agreed that in view of this situation it did not, ~~therefore~~, propose to enter into a further discussion of the matter. ✓

The approval of this resolution was understood as not constituting

approval of the substance of the decision of Committee II/1.

8. The Committee then proceeded to the question of the term of office and eligibility for re-election of the Secretary-General.

The Dumbarton Oaks Proposals ^{contained} made no provisions for these questions, ✓

but an amendment of the sponsoring governments provided that the term of office of the Secretary-General should be three years and

that he should be eligible for re-election. Several delegates } ~~assembled~~ ✓

opposed any reference in the Charter to the term of office. They

argued that the Organization should not be bound ~~by~~ the Charter in ✓

this matter, but should be free to determine the length of office

as conditions warranted.

9. ^{Delegates} ~~Delegates~~ answering these views held that the three year term

associated with the eligibility of the incumbent Secretary-General

for re-election provided an adequate method of attracting outstand-

ing candidates for the position and at the same time protecting

the Organization from the lengthy tenure of an unsuitable Secretary-

General.

4. Ratification of Amendments Proposed by
Special Conference

5. Voting Procedure at Special Conference

III. Coming Into Force of Amendments and Withdrawal From the Organization

IV. Withdrawal from the Organization

II. REGULAR AMENDMENTS TO THE CHARTER

9. Paragraph 2, Chapter X, providing for the regular amending process of the Charter, was the subject of very little discussion and disagreement in the meetings of the Subcommittee and Committee. The Subcommittee had accepted by a vote of 6 to 5 the motion of the Delegate of Belgium to modify this paragraph to provide that amendments come into force when ratified by two thirds of all members of the Organization,

conditions as are specified in the Charter." He stated that the term of office would be a matter of agreement between the Security Council and the General Assembly. It was understood by the Committee that the unanimity of the permanent members would be required in the decision of the Security Council on this matter. The Committee adopted, with only one ^{negative} ~~contrary~~ vote, the Netherlands motion to accept the following text:

"The Secretary-General shall be elected by the General Assembly, on recommendation of the Security Council."

OK

should be kept ~~off~~
Netherlands.

d. Deputy Secretaries-General

13. The Dumbarton Oaks Proposals made no reference to deputy secretaries-general. The sponsoring governments, however, proposed an amendment to Chapter X providing that there should be four deputies to be elected by the General Assembly on recommendation of the Security Council for a period of three years.

The debate on this matter revolved about two questions:

First, whether provision should be made in the Charter for deputy secretaries-general; and

Second, if provision were made for deputy secretaries-general, whether the number of such officers should be specified in the Charter.

14. The delegates opposing specific reference to deputies stated that it was impossible at this time to foresee the needs of the Organization with regard to deputies. They explained that the Assembly would be in a better position to estimate these needs at subsequent times. They felt that the

number of deputies would depend upon the distribution of functions within the Secretariat.

15. The Delegate of the Soviet Union proposed that the amendment of the sponsoring governments should be revised to provide for five deputies instead of four. In arguing against the amendment of the sponsoring governments, numerous delegates contended that specification of the number and the mode of election of the deputies might jeopardize the international character of the Secretariat. Some delegates also indicated that they favored the appointment of the deputies by the Secretary-General instead of ^{then} ~~by~~ election by the Assembly upon the nomination of the Security Council. They felt that the method proposed by the sponsoring governments might render difficult the proper relationship between the Secretary-General and the deputies and might not be conducive to the efficient functioning of the Secretariat. ✓

*Confusion
let 4/24/45
October*

16. Those who supported the amendment of the sponsoring governments argued that five deputies would be needed--one

to act as alternate to the Secretary-General and one to serve each of the four principal organs. They stated that the international character of the Secretariat would be protected by the method of election of the deputies, which would parallel the method of election of the Secretary-General. These delegates also explained that the method of election would give considerable prestige to the deputies.

17. The Committee voted 15 in favor to 13 opposed on the question of referring specifically in the Charter to deputy secretaries-general. The Chairman ruled that since provisions of the text of the Charter require a two-thirds majority to be adopted, this vote was not sufficient for adoption.

18. Following this vote the Steering Committee requested Committee I/2 to reconsider the matter of deputies, and to vote on specific proposals. The Committee then rejected by a vote of 20 in favor to 19 against the proposal of the Soviet Union to provide in the Charter for five deputies.

*Revised
of Secret
Union*

The Committee also rejected by a vote of 22 in favor to 18 against the amendment of the sponsoring governments to provide for four deputies. The Committee then adopted by a vote of 40 in favor to 1 against, the first two sentences of paragraph 1, Chapter X, of the Dumbarton Oaks Proposals, as noted above in this report.

19. The Delegate of the Soviet Union subsequently proposed

that the first and third sentences of paragraph 1 be modified,

so as to include reference to deputies but without
so that the paragraph read as follows:

"There shall be a Secretariat comprising a Secretary-General, deputies and such staff as may be required. The Secretary-General shall be the chief administrative officer of the Organization. The Secretary-General and his deputies shall be elected by the General Assembly, on recommendation of the Security Council."

*specification as to
number. His amendment
would have made para-
graph
read as
follows:*

This motion of the Soviet Delegate was rejected by a vote of

24 opposed to 12 in favor.

Paragraph 2, Functions of the Secretary-General

20. Paragraph 2 was considered by the Subcommittee on the Secretariat. The Subcommittee considered a proposal made by the Delegate of Mexico that registration of treaties and other agreements made between members of the Organization should be included among the main functions of the Secretariat, and a similar amendment submitted by the Delegation of the Philippine Commonwealth. The recommendation of the Subcommittee that, since the Charter would provide elsewhere for the registration of treaties, it was unnecessary to include enumeration of this function in Chapter X, was agreed to by the full Committee. The Committee likewise accepted the Subcommittee's recommendation that the language of paragraph 2 should be kept sufficiently broad to cover all of the functions of the Secretariat, and that no attempt should be made to enumerate therein specific functions which are provided in other chapters of the Charter.

21. In view of the fact that Committee ^{II}~~III~~/4 had provided for

a Trusteeship Council, Committee I/2 agreed to amend the original paragraph 2 by inserting reference to this Council in respect to the functions of the Secretary-General.

22. Committee I/2 unanimously accepted the following text of paragraph 2, Chapter X, recommended by its Subcommittee:

"The Secretary General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are or may be entrusted to him by the Organization. The Secretary General shall make an annual report to the General Assembly on the work of the Organization."

Paragraph 3, Functions of the Secretary-General

23. The Subcommittee and the full Committee considered at length paragraph 3, providing that the Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security. The Subcommittee discussed a suggestion that the word right in the first line of paragraph 3 should be changed to duty. It was agreed that the authority to bring to the attention of the Security Council any matter which in his opinion

might threaten international peace and security should be exercised at the discretion of the Secretary-General and should not be imposed upon him as a duty. The Committee agreed to this recommendation.

24. The Subcommittee and the Committee considered an amendment to paragraph 3 proposed by Venezuela which would permit the Secretary-General to bring to the attention of the General Assembly, as well as to the Security Council, any matter which in his opinion might threaten international peace and security. The Venezuelan Delegate explained that his amendment was intended to give the Secretary-General discretionary power to bring certain matters to the attention of either the General Assembly or the Security Council. He contended that this function did not place too great a burden on the Secretary-General. Its advantage was to keep the General Assembly informed of certain situations which states themselves might not bring to the attention of the Assembly.

25. *as amended* Some delegates in opposing the Venezuelan amendment discussed the difficulty in which the Secretary-General might be

placed in having to decide between the General Assembly and the Security Council in presenting matters concerning peace and security. It was argued further that the Secretary-General would be exercising powers which are not even possessed by the member states. The Committee rejected the Venezuelan amendment by a vote of 18 to 11.

26. The Delegate of Uruguay proposed to amend paragraph 3 by providing that in addition to matters which in his opinion might threaten international peace and security, the Secretary-General could bring to the attention of the Security Council any matters which constitute an infringement or violation of the principles of the Charter. The Delegate of Uruguay contended that the Secretary-General should take into account matters which would not necessarily threaten international peace but which would constitute violations of the principles of the Charter. He suggested that there should be some provision by which infringements or violations of the principles of the Charter by the member within its own country should be brought to the attention of

the Organization. Delegates opposing this amendment argued that as in the case of the Venezuelan amendment, it would place a heavy burden upon the Secretary-General. This amendment was rejected by a vote of 16 to 13.

27. The Committee unanimously adopted the text of paragraph 3, Chapter X of the Dumbarton Oaks Proposals, as follows:

"The Secretary-General may bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security."

Paragraph 4, Characteristics of the Secretariat

28. In considering provisions regulating the composition and character of the Secretariat the Subcommittee and Committee considered an amendment proposed by the Sponsoring Powers and similar amendments of Canada and New Zealand. Paragraphs 4 and 5 of the Canadian amendment were used as the basis of the discussion by the Subcommittee because it was felt that they were somewhat broader than the others. Members of the Subcommittee were of the opinion that although the matter might be covered in staff regulations, provision should be made in the Charter that the Secretariat should not seek or receive instructions from any government or from any other authority external to the Organization. Such a provision would be of assistance to the Secretariat and the General Assembly, and would strengthen the position of the Secretariat. The Subcommittee accordingly unanimously recommended the following text of paragraph 4, Chapter X:

"In the performance of their duties the Secretary-General and the staff shall be responsible only to the Organization. They shall not seek or receive instructions from any Government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials. Each member undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities."

29. The question was raised by a member of the Subcommittee ~~was~~ 7.

as to whether paragraph 4 covered the risk which might be faced by a member of the Secretariat as the result of taking an oath of allegiance to the Organization. In answer to this question it was pointed out that the experience of the League of Nations demonstrated that there was no practical difficulty in this matter except in the case of the Fascist states. It was agreed by the Subcommittee, however, to refer this matter to Committee IV/2 for such action as it might deem necessary.

30. The question also was raised whether this paragraph covered the risk which might be faced by a member of the Secretariat who participated in the preparation of military plans for possible use against his own state. It was pointed out that if a member of the Secretariat were to become aware of such military plans, he might be liable to heavy penalty under the laws of his own state for failure to reveal them to his own government. Members of the Subcommittee agreed that this highly important matter could not properly be dealt with in Chapter X of the Charter, but that it likewise should be considered by Committee IV/2 for such action as it might deem necessary. It was felt by members of the Subcommittee that the question of the liability of members of the Secretariat for military service to their own states would be settled by administrative arrangements when the problem arose.

COMMISSION I General Provisions

Committee 2 Membership, Amendment and Secretariat

REPORT OF RAPPORTEUR (GENERAL) OF COMMITTEE I/2 ON CHAPTER X (THE SECRETARIAT)

NOTE: The following report has not been discussed in the Committee. It is submitted to the members of the Commission in order that the comments of the delegations may be communicated in writing or verbally.

Due attention will be paid to such observations by the Commission's Rapporteur in his report to the Conference as shall be submitted for approval at the final meeting of Commission I.

Introduction

1. Committee I/2 was charged with consideration of Chapter X of the Dumbarton Oaks Proposals, providing for the Secretariat of the Organization. In addition to the original three paragraphs of Chapter X, the Committee considered two amendments proposed by the sponsoring governments and other amendments proposed by Canada, Liberia, Mexico, New Zealand, Norway, Philippine Commonwealth, Uruguay, and Venezuela, and a joint amendment of Brazil, Dominican Republic, and Mexico.

2. The Committee devoted seven sessions to consideration of Chapter X and its subcommittee on this Chapter met three times. The subcommittee was composed of the President of Commission I; the Chairman of Committee I/2; the Rapporteur (General) of Committee I/2, ex officio; and the Delegates of Canada, China, Greece, Mexico, New Zealand, Norway, United States, Uruguay, and Venezuela.

*that because of its central importance
to the work of the entire organization*

3. In their consideration of provisions for the Secretariat of the Organization, the members of Committee I/2 quickly and unanimously agreed that the Secretariat should be of the highest quality and should be organized on a truly international basis. There was no dissent from these principles, and such disagreement as did appear during the discussions was limited to the question of the extent to which specific detailed provision should be made in the Charter for the Secretariat.

4. The Committee took up the various features relating to the Secretariat separately, following a general outline which is used in this report.

Paragraph 1, The Secretariat

a. General Provisions

5. The first sentence of paragraph 1, Chapter X, of the Dumbarton Oaks Proposals provides that: "There shall be a Secretariat comprising a Secretary-General and such staff as may be required." There was no discussion of this provision, and the sentence was adopted with only one negative vote.

b. Secretary-General

6. The second sentence of this paragraph provides that: "The Secretary-General shall be the Chief Administrative Officer of the Organization." Likewise, there was no discussion of this provision, and the sentence was adopted with only one negative vote.

c. Election and Term of Office of the Secretary-General

7. At the outset of its consideration of the Secretariat, the Committee was advised that Committee II/1 had voted that the Secretary-General should be elected by the General Assembly upon nomination by a majority of seven members of the Security Council. The Committee agreed that in view of this situation it did not propose to enter into a further discussion of the matter. The approval of this resolution was understood as not constituting approval of the substance of the decision of Committee II/1.

8. The Committee then proceeded to the question of the term of office and eligibility for re-election of the Secretary-General. The Dumbarton Oaks Proposals contained no provision for these questions, but an amendment of the sponsoring governments provided that the term of office of the Secretary-General should be three years and that he should be eligible for re-election. Several delegates opposed any reference in the Charter to the term of office. They argued that the Organization should not be bound by the Charter in this matter, but should be free to determine the length of office as conditions warranted.
9. Delegates answering these views held that the three year term associated with the eligibility of the incumbent Secretary-General for re-election provided an adequate method of attracting outstanding candidates for the position and at the same time protecting the Organization from the lengthy tenure of an unsuitable Secretary-General.
10. The Committee voted in favor of a provision for the eligibility of the Secretary-General for re-election and for a three year term of office.
11. Subsequent to these decisions, the Committee was advised that the vote of Committee II/1 on the election of the Secretary-General had been referred by the Steering Committee to Committee III/1, and that the latter Committee had reversed the decision of Committee II/1 and had accepted the original text of the Dumbarton Oaks Proposals, namely, that the Secretary-General should be elected by the General Assembly, on recommendation of the Security Council, that is, including the unanimous vote of the permanent members.
12. In view of this new situation affecting the election of the Secretary-General, the Delegate of the Netherlands, supported by the Delegates of New Zealand and Belgium, proposed that the earlier decisions of the Committee adopting a three year term of office be rescinded and that the Committee accept the original Dumbarton Oaks text, that is, the third sentence of paragraph 1, with the exception of the clause "for such term and under such conditions as are specified in the Charter." He stated that the necessity of unanimous agreement of the permanent members of the Security Council for the re-election of the Secretary-General every three years would either deprive him of his independence or force him to leave his office at a time when his experience would be most useful to the Organization. If there was hesitation on this point in the Committee, he suggested that the determination of the term of office might be left as a matter of later agreement between the Security Council

and the General Assembly. It was understood by the Committee that the unanimity of the permanent members would be required in the decision of the Security Council on this matter.

The Delegate of the Netherlands also proposed that the word "appointed" be substituted for "elected" in order to emphasize the administrative nature of the Secretary-General's office. The Committee adopted, with only one negative vote, the Netherlands motion to accept the following text:

"The Secretary-General shall be appointed by the General Assembly, on recommendation of the Security Council."

d. Deputy Secretaries-General

13. The Dumbarton Oaks Proposals made no reference to deputy secretaries-general. The sponsoring governments, however, proposed an amendment to Chapter X providing that there should be four deputies to be elected by the General Assembly on recommendation of the Security Council for a period of three years.

The debate on this matter revolved about two questions:

First, whether provision should be made in the Charter for deputy secretaries-general;
and

Second, if provision were made for deputy secretaries-general, whether the number of such officers should be specified in the Charter.

14. The delegates opposing specific reference to deputies stated that it was impossible at this time to foresee the needs of the Organization with regard to deputies. They explained that the Assembly would be in a better position to estimate these needs at subsequent times. They felt that the number of deputies would depend upon the distribution of functions within the Secretariat.

15. The Delegate of the Soviet Union, in order to meet one of the objections raised, proposed that the amendment of the sponsoring governments should be revised to provide for five deputies instead of four. ~~They~~ contended that adoption of the number four and the mode of election of the deputies might jeopardize the international character of the Secretariat. Some delegates also indicated that they favored the

appointment of the deputies by the Secretary-General instead of their election by the Assembly upon the nomination of the Security Council. They felt that the method proposed by the sponsoring governments might render difficult the proper relationship between the Secretary-General and the deputies and might not be conducive to the efficient functioning of the Secretariat.

16. Those who supported the amendment of the sponsoring governments argued that five deputies would be needed--one to act as alternate to the Secretary-General and one to serve each of the four principal organs. They stated that the international character of the Secretariat would be protected by the method of election of the deputies, which would parallel the method of election of the Secretary-General. These delegates also explained that the method of election would give considerable prestige to the deputies.

17. The Committee voted 15 in favor to 13 opposed on the question of referring specifically in the Charter to deputy secretaries-general. The Chairman ruled that since provisions of the text of the Charter require a two-thirds majority to be adopted, this vote was not sufficient for adoption.

18. Following this vote the Steering Committee requested Committee I/2 to reconsider the matter of deputies, and to vote on specific proposals. The Committee then by a vote of 20 in favor to 19 against, failed to adopt the proposal of the Soviet Union to provide in the Charter for five deputies. The Committee also failed by a vote of 22 in favor to 18 against to adopt the amendment of the sponsoring governments to provide for four deputies. The Committee then adopted by a vote of 40 in favor to 1 against, the first two sentences of paragraph 1, Chapter X, of the Dumbarton Oaks Proposals, as noted above in this report.

19. The Delegate of the Soviet Union subsequently proposed that the first and third sentences of paragraph 1 be modified, so as to include reference to deputies but without specification as to number. His amendment would have made the paragraph read as follows:

"There shall be a Secretariat comprising a Secretary-General, deputies and such staff as may be required. The Secretary-General shall be the chief administrative officer of the Organization. The Secretary-General and his deputies shall be elected by the General Assembly, on recommendation of the Security Council."

This motion of the Soviet Delegate was rejected by a vote of 24 opposed to 12 in favor.

Paragraph 2, Functions of the Secretary-General

20. Paragraph 2 was considered by the subcommittee on the Secretariat. The subcommittee considered a proposal made by the Delegate of Mexico that registration of treaties and other agreements made between members of the Organization should be included among the main functions of the Secretariat, and a similar amendment submitted by the Delegation of the Philippine Commonwealth. The recommendation of the subcommittee that, since the Charter would provide elsewhere for the registration of treaties, it was unnecessary to include enumeration of this function in Chapter X, was agreed to by the full Committee. The Committee likewise accepted the subcommittee's recommendation that the language of paragraph 2 should be kept sufficiently broad to cover all of the functions of the Secretariat, and that no attempt should be made to enumerate therein specific functions which are provided in other chapters of the Charter.

21. In view of the fact that Committee II/4 had provided for a Trusteeship Council, Committee I/2 agreed to amend the original paragraph 2 by inserting reference to this Council in respect to the functions of the Secretary-General.

22. Committee I/2 unanimously accepted the following text of paragraph 2, Chapter X, recommended by its subcommittee:

"The Secretary General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are or may be entrusted to him by the Organization. The Secretary General shall make an annual report to the General Assembly on the work of the Organization."

It was agreed by the Subcommittee and by the Committee that the Secretary-General could delegate these duties should occasion require.

Paragraph 3, Functions of the Secretary-General

23. The subcommittee and the full Committee considered at length paragraph 3, providing that the Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security. The subcommittee discussed a suggestion that the word right in the first line of paragraph 3 should be changed to duty. It was agreed that the authority to bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security should be exercised at the discretion of the Secretary-General and should not be imposed upon him as a duty. The Committee agreed to this recommendation.

24. The subcommittee and the Committee considered an amendment to paragraph 3 proposed by Venezuela which would permit the Secretary-General to bring to the attention of the General Assembly, as well as to the Security Council, any matter which in his opinion might threaten international peace and security. The Venezuelan Delegate explained that his amendment was intended to give the Secretary-General discretionary power to bring certain matters to the attention of either the General Assembly or the Security Council. He contended that this function did not place too great a burden on the Secretary-General. Its advantage was to keep the General Assembly informed of certain situations which states themselves might not bring to the attention of the Assembly.

25. Some delegates in opposing the Venezuelan amendment discussed the difficulty in which the Secretary-General might be placed in having to decide between the General Assembly and the Security Council in presenting matters concerning peace and security. It was argued further that the Secretary-General would be exercising powers which are not even possessed by the member states. The Committee rejected the Venezuelan amendment by a vote of 18 to 11.

26. The Delegate of Uruguay proposed to amend paragraph 3 by providing that in addition to matters which in his opinion might threaten international peace and security, the Secretary-General could bring to the attention of the Security Council any matters which constitute an infringement or violation of the principles of the Charter. The Delegate of Uruguay contended that the Secretary-General should take into account matters which would not necessarily threaten

international peace but which would constitute violations of the principles of the Charter. He suggested that there should be some provision by which infringements or violations of the principles of the Charter by the member within its own country should be brought to the attention of the Organization. Delegates opposing this amendment argued that as in the case of the Venezuelan amendment, it would place too heavy a burden upon the Secretary-General. This amendment was rejected by a vote of 16 to 13.

27. The Committee unanimously adopted the text of paragraph 3, Chapter X of the Dumbarton Oaks Proposals, as follows:

"The Secretary-General may bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security."

Paragraph 4, Characteristics of the Secretariat

28. In considering provisions regulating the composition and character of the Secretariat the subcommittee and Committee considered an amendment proposed by the sponsoring governments and similar amendments of Canada and New Zealand. Paragraphs 4 and 5 of the Canadian amendment were discussed by the subcommittee because it was felt that they were somewhat broader than the others. Members of the subcommittee were of the opinion that although the matter might be covered in staff regulations, provision should be made in the Charter that the Secretariat should not seek or receive instructions from any government or from any other authority external to the Organization. Such a provision would be of assistance to the Secretariat and the General Assembly, and would strengthen the position of the Secretariat. The subcommittee accordingly unanimously recommended the following text of paragraph 4, Chapter X:

"In the performance of their duties the Secretary-General and the staff shall be responsible only to the Organization. They shall not seek or receive instructions from any Government or from any other authority external to the

Organization. They shall refrain from any action which might reflect on their position as international officials. Each member undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities."

29. The question was raised by a member of the subcommittee as to whether paragraph 4 covered the risk which might be faced by a member of the Secretariat as the result of taking an oath of allegiance to the Organization. In answer to this question it was pointed out that the experience of the League of Nations demonstrated that there was no practical difficulty in this matter except in the case of the Fascist states. It was agreed by the subcommittee, however, to refer this matter to Committee IV/2 for such action as it might deem necessary.

30. The question also was raised whether this paragraph covered the risk which might be faced by a member of the Secretariat who participated in the preparation of military plans for possible use against his own state. It was pointed out that if a member of the Secretariat were to become aware of such military plans, he might be liable to heavy penalty under the laws of his own state for failure to reveal them to his own government. Members of the subcommittee agreed that this highly important matter could not properly be dealt with in Chapter X of the Charter, but that it likewise should be considered by Committee IV/2 for such action as it might deem necessary. It was felt by members of the subcommittee that the question of the liability of members of the Secretariat for military service to their own states would be settled by administrative arrangements when the problem arose.

The text of paragraph 4 recommended by the subcommittee was adopted unanimously by Committee I/2.

Paragraph 5, Character of the Secretariat

31. The subcommittee recommended to the full Committee an additional paragraph of Chapter X which constituted a revision of the last paragraph of the Canadian amendment, as follows:

"The staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible."

32. During the discussion of this recommendation by Committee I/2 several delegates expressed the opinion that this paragraph was concerned with minor technical details and should not accordingly appear in the Charter. It was also contended that in addition to the Secretariat, the other organs of the Organization would require staff, and that it would not be logical to limit the provisions proposed in paragraph 5 to the Secretariat alone.

33. A number of delegates agreed that the Charter should not contain excessive detail, but contended that the paragraph in question was concerned with matters of principle and not of detail; that in fact the paragraph contained no more than general principles to guide the General Assembly when it established detailed regulations governing the staff of the Secretariat. It was contended by several delegates that the provisions of paragraph 5 would apply to the staffs of the Security Council, the Economic and Social Council, and other organs since the Secretariat itself would serve all these organs. Attention was called to the fact that the unanimous recommendation of the subcommittee arose from the fact that the language for this paragraph was based upon various international incidents establishing international organizations already accepted by many of the participants in this Conference. Similar provisions appear in the constitutions of the Food and Agricultural Organization of the United Nations, the Bretton Woods documents and other international agreements.

34. The Committee unanimously agreed, upon the motion of the Delegate of Brazil, that positions in the Secretariat, as one of the principal organs of the Organization, would be open to men and women on an equal basis. It was emphasized that provision for such participation on an equal basis had been provided in paragraph 3, Chapter IV, adopted by this same Committee.

35. The Committee agreed that the question of the juridical status of members of the Secretariat should not be covered by a provision of Chapter X, since it was under consideration by Committee IV/2.

ANNEX

CHAPTER X. THE SECRETARIAT

1. There shall be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General shall be the chief administrative officer of the Organization. The Secretary-General shall be appointed by the General Assembly, on recommendation of the Security Council.

2. The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are or may be entrusted to him by the Organization. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

3. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security.

4. In the performance of their duties the Secretary-General and the staff shall be responsible only to the Organization. They shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials. Each member undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

5. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The paramount consideration in the employment of the staff and in the determination of conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible.

The sponsoring powers have not offered amendments to Chapter III on membership or on admission, withdrawal, suspension, or expulsion of members.

The following governments participating in the Conference have offered comments or amendments on Chapter III ^{and on} ~~including~~ withdrawal, suspension and expulsion: Australia, Belgium, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Egypt, France, Guatemala, Honduras, Mexico, Netherlands, New Zealand, Norway, Philippine Commonwealth, Uruguay and Venezuela.

Membership and Admission of New Members

In preparing its recommendations on Chapter III, the Committee had to consider two basic problems: (1) relationship of membership to the principles and obligations ^{stated in the} ~~of the~~ ^{charter} Organization; and (2) limitations within which the Organization ^{should} ~~may~~ exercise discretion in the admission of new members. The discussion on these problems centered about the adequacy and elasticity of the formula for membership. It was the unanimous opinion of the Committee that unqualified adherence to the Principles and assumption of obligations were essential to membership in the Organization.

Exponents of the view that the Charter should not ~~un-~~ ^{unduly} ~~excessively~~ restrict the Organization in deciding on applications for admission argued that the Organization itself would be best qualified to judge the fitness of applicants for membership. Those in favor of mentioning in the Charter particular

standards for membership concerning forms and policies of governments stressed the need for the members already participating to be assured that new members would be able and ready to meet their obligations under the Charter and would not pursue policies contrary to the principles of the Organization. It was the sense of the Committee that the Organization should be empowered to admit new members within limits indicated by the term "peace-loving" and permitting the Organization wide discretion to judge the fitness of applicants to carry out their obligations under the Charter.

It was pointed out to the Committee that Chapter III of the Dumbarton Oaks Proposals referred to membership of states. This reference, it was explained, might exclude from membership those nations participating in the Conference which had not yet achieved full statehood. The Committee felt that all nations participating in this Conference should be included as initial members of the Organization.

With respect to the distinction between initial and subsequent members, the Committee desired to ^{prevent} ~~avoid~~ associating any stigma ^{arising out of} with this unavoidable distinction.

A subcommittee on Chapter III was established on May 10 and recommended an English text for Chapter III, which the Committee adopted unanimously on May 12 (the French text was prepared a few days later). The English text as adopted by the Committee reads as follows:

"Members of the Organization are the signatories of the Charter whose ratification has become effective in accordance with Chapter XI.

"Membership of the Organization is open to all peace-loving states which, in the judgment of the Organization, are able and ready to accept and carry out the obligations contained in the Charter."

In order to eliminate any misunderstanding concerning the method by which new members would subscribe to the principles and obligations of the Organization, the Committee accepted on May 25 a modification of the original text proposal by Committee I/2. These paragraphs of Chapter III were consequently modified to read as follows:

"The initial members of the Organization shall be the signatories of the Charter whose ratification has become effective in accordance with Chapter , Article .

"Membership of the Organization is open to all peace-loving states which, in the judgment of the Organization, are able and ready to accept and carry out the obligations contained in the Charter."

Withdrawal, Expulsion and Suspension.

The problems of withdrawal, expulsion and suspension led to the examination of ~~required the Committee to examine~~ the following questions:

1. ~~Whether a member state will be permitted to cease membership voluntarily or will be deprived of imposed actions membership by the Organization;~~ ^{can become a} ~~mon-member, either by voluntary or membership voluntarily or will be deprived of imposed actions membership by the Organization;~~
2. ~~Whether the concept of suspension can adequately~~ ^{be} ~~applied~~ ^{to result from} ~~to serve the purposes intended for expulsion.~~

With regard to provision for withdrawal, it was argued that this concept ~~not only would impair the intention of~~ ^{not only eventual}

universal membership but would ^{also} give recalcitrant members the opportunity ^{both} to menace the Organization as well as to ^{and} avoid obligations by leaving the Organization. Furthermore, if a provision for withdrawal were included in the Charter, the act of withdrawal by any state would indicate either that the state intended to act in contravention ^t to the principles ^{of} of the Organization, or that the state felt that the Organization was not fulfilling the purpose for which it was created. Prohibition against withdrawal would make it necessary to provide for sanctions ^{against members} which ^{attempted} attended to withdrawal, and such a provision in the Charter would render it difficult for practical reasons to secure acceptance of the Charter by national parliaments.

The omission of any reference to withdrawal in the Dumbarton Oaks Proposal was recognized as deliberate on the part of the sponsoring governments. Some delegates cited the omission as evidence that the sponsoring governments opposed a provision for withdrawal, while others interpreted the purpose of this omission to be to permit the Organization to consider in the light of circumstances then existing any case of proposed withdrawal which might arise.

The subcommittee reported to the Committee on May 23, that no reference to withdrawal ^{should} be inserted in the Charter. The views of the subcommittee, in which the Committee concurred, were contained in the following statement:

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"The ~~Commission~~^{the} adopts the opinion of the inviting powers that the faculty of withdrawal of the members should neither be provided for nor regulated. Should the Organization fulfil its functions in the spirit of the Charter, it would be inadmissible that its authority could be weakened by some members deserting the ideal which inspired them when they signed the Charter, or even mocked by aggressor or would-be aggressor states.

"It is obvious, however, that withdrawal or some other form of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice. On account of this risk, inherent to all human enterprises, the Committee abstains from inserting in the Charter a formal clause forbidding withdrawals."

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The question of expulsion and suspension evoked an extended exchange of views. A special subcommittee first studied the question of expulsion and suspension. On May 25, the subcommittee recommended that reference to expulsion be omitted from the Charter. The subcommittee also recommended that, if Committee I/2 sustained the view of the majority of the subcommittee on expulsion, then the Committee should change the draft of paragraph 3, Section B, Chapter V concerning suspension along the following lines:

"The Organization may at any time suspend from the exercise of the rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council, or which shall have violated the principles of the Charter in a grave or persistent fashion. The exercise of these rights and privileges may be restored in accordance with the procedure laid down in Chapter ... para ..."

This concept of suspension was considered sufficiently flexible to achieve the purposes that might be accomplished by expulsion. It was explained that suspension, which was tantamount to temporary expulsion, would avoid the undesirable features of expulsion.

Refer When the matter was brought before the whole Committee, those in favor of omitting any reference to expulsion from the Charter argued that expulsion would be inconsistent with the concept of universality, which assumes the eventual membership in the Organization of all states; would release a member from its obligations under the Charter; would place the expelled state beyond law and therefore require member states to

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take acts of war, instead of police action, against that state; might endanger the Organization more than the state concerned; would provide a nucleus of opposition to the Organization, around which other dissatisfied would collect; would cause member states to break diplomatic and other relations with the expelled state; would obstruct reconciliation between the Organization and any expelled state; and might prove less drastic in effect than suspension.

The supporters of expulsion ^{explained that} held peace and security, not universality, ^{was} ~~to be~~ the aim of the Organization; expulsion would only apply to virtually incorrigible member states which persistently or gravely violated the principles of the Charter; with regard to such states, it was necessary to make absolutely clear what attitude the Organization would assume towards them; retention of membership under suspension might inhibit the Organization from acting drastically enough against such states; absence of the power of expulsion might allow a member state to act in collusion with a non-member state in obstructing the Organization and its purposes; the Organization would be capable of applying expulsion judiciously; expulsion would not release the expelled state from the obligations specified for non-members; and expelled states might be readmitted to the Organization.

The subcommittee, in discussing suspension, had felt that a Norwegian amendment providing for the suspension of rights

and privileges of members failing to pay their financial contributions was too severe and preferred the Netherlands amendment. On this matter the Norwegian delegate stated his willingness to withdraw the Norwegian amendment if the Netherlands amendment were brought officially to the attention of the competent technical committee of the Conference.

At ^{the} ~~the~~ meeting on May 25, ^{when the question} Committee I/2 voted 19 to 16, ^{was presented} in favor of including a provision for expulsion in the Charter; ¹ ~~Committee I/2 did~~ ^{the provision which} ~~this proposition was not sustained because it did not receive~~ ^{the required} support of a two-thirds majority, of delegates present and voting

The Committee then voted on the proposed revision of paragraph 3, Section B, Chapter V concerning suspension.

This proposal was almost unanimously adopted by the Committee.

Having passed on Chapter III, ^{admission} withdrawal, suspension, and expulsion, Committee I/2 concluded its discussion on these subjects.

Committee I/2 ^{therefore} recommends that Chapter III read as follows:

"The initial members of the Organization shall be the signatories of the Charter whose ratification has become effective in accordance with Chapter , Article .

"Membership of the Organization is open to all peace-loving states which, in the judgment of the Organization, are able and ready to accept and carry out the obligations contained in the Charter."

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REPORT OF THE RAPPORTEUR (MEMBERSHIP) OF
COMMITTEE I/2 ON CHAPTER III

The terms of reference of Committee I/2, as it began discussion on May 8, 1945 of Chapter III concerning membership, included the following subjects: membership of the nations participating in the Conference, admission of new members, withdrawal, suspension, and expulsion of members.

Chapter III of the Dumbarton Oaks Proposals read as follows:

"1. Membership of the Organization should be opened to all peace-loving states."

Reference to admission, suspension, and expulsion appeared in Paragraphs 2 and 3, Section B of Chapter V. These paragraphs read as follows:

"2. The General Assembly should be empowered to admit new members to the Organization upon recommendation of the Security Council.

"3. The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter."

The subject of withdrawal was not mentioned in the Dumbarton Oaks Proposals.

When the matter was brought before the whole Committee, The question of expulsion and suspension evoked an extended exchange of views. Those in favor of omitting any reference to expulsion from the Charter argued that expulsion would be inconsistent with the concept of universality, which assumes the eventual membership in the Organization of all states; would release a member from its obligations under the Charter; would place the expelled state beyond law and therefore require member states to take acts of war, instead of police action, against that state; might endanger the Organization more than the state concerned; would provide a nucleus of opposition to the Organization, around which other dissatisfied would collect; would cause member states to break diplomatic and other relations with the expelled state; would obstruct reconciliation between the Organization and any expelled state; and might prove less drastic in effect than suspension.

The supporters of expulsion ^{held} ~~explained~~ that peace and security, not universality, ^{to be} ~~was~~ the aim of the Organization; expulsion would only apply to virtually incorrigible member states which persistently or gravely violated the principles of the Charter; with regard to such states, it was necessary to make absolutely clear what attitude the Organization would assume towards them; retention of membership under suspension might inhibit the Organization from acting drastically enough against such states; absence of the power of expulsion might allow a member state to act in collusion with a

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RAPPORT DU RAPPORTEUR (MEMBRES) DU COMITE I/2
SUR LE CHAPITRE III

Le mandat du Comité I/2, lorsqu'il a commencé sa discussion du Chapitre III relatif aux membres, le 8 mai 1945, comprenait les sujets suivants: participation des nations représentées à la Conférence, admission de nouveaux membres, retrait, suspension et exclusion de membres.

Le Chapitre III des Propositions de Dumbarton Oaks a la teneur suivante:

Australie, Belgique, Bolivie, Brésil, Chili, Costa-Rica, République Dominicaine, Equateur, Egypte, France, Guatemala, Honduras, Mexique, Pays-Bas, Nouvelle-Zélande, Norvège, Commonwealth des Philippines, Uruguay et Venezuela.

Membres et admission de nouveaux membres

En préparant ses recommandations relatives au Chapitre III, le Comité avait deux problèmes fondamentaux à examiner: (1) la relation entre la qualité de membre et les principes et obligations stipulés dans la Charte; et (2) les limites mises à la latitude donnée à l'Organisation pour l'admission de nouveaux membres. La discussion de ces problèmes a surtout porté sur la question de savoir si la formule exprimant la condition d'admissibilité était assez complète et assez souple. L'avis unanime du Comité est qu'une adhésion sans réserve aux principes et aux engagements de la Charte est essentielle à cet égard.

Certains délégués qui sont d'avis que la Charte ne devrait pas lier trop étroitement l'Organisation lorsqu'il s'agira pour elle de statuer sur les demandes d'admission, font valoir que personne ne saurait apprécier avec plus de justesse que l'Organisation elle-même, le bien fondé de telles demandes. Ceux qui estiment, au contraire, que la Charte devrait énoncer certaines conditions touchant la forme et la politique des Gouvernements soulignent que les membres déjà admis doivent avoir l'assurance que les membres nouveaux sont en mesure et véritablement désireux d'exécuter les obligations découlant de la Charte et ne se livreront pas à des activités contraires aux principes de l'Organisation. Le sentiment du Comité est qu'on devrait laisser à l'Organisation le droit d'admettre de nouveaux membres dans les limites tracées par le terme "éprises d'un idéal de paix" et lui accorder une grande latitude pour juger l'aptitude des candidats à accomplir les obligations résultant de la Charte.

Il a été signalé que le Chapitre III des Propositions de Dumbarton Oaks fait allusion à la participation d'Etats. Cette formule pourrait avoir pour effet d'empêcher l'adhésion de nations présentes à la Conférence et qui n'ont cependant pas encore pleinement acquis la qualité d'Etats. Le Comité a estimé que toutes les nations qui participent à la présente Conférence devraient être admises comme membres originaires de l'Organisation.

En ce qui concerne précisément la distinction entre membres originaires et autres membres, le Comité désire éviter qu'une idée défavorable ne résulte, pour certains, de cette inévitable différence.

Un sous-comité chargé de s'occuper du Chapitre III, constitué le 10 mai, avait rédigé un texte anglais de Chapitre III que le Comité a adopté à l'unanimité le 12 mai (le texte français a été préparé quelques jours plus tard). Le texte anglais adopté par le Comité était ainsi conçu:

"Sont membres de l'Organisation les signataires de la Charte qui l'auront ratifiée conformément aux dispositions du Chapitre XI.

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix, qui, au jugement de l'Organisation, sont aptes et résolus à accepter et exécuter les obligations contenues dans la Charte."

Afin d'écartier tout malentendu sur la méthode selon laquelle les nouveaux membres souscriraient aux principes et obligations de l'Organisation, le Comité a approuvé, le 25 mai, une modification du texte proposé par le Comité I/2. En conséquence, ces paragraphes du Chapitre III ont été modifiés de la façon suivante:

"Sont membres originaires de l'Organisation les Etats signataires de la Charte dont la ratification sera devenue effective conformément aux termes du Chapitre _____ Article _____."

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix, qui, au jugement de l'Organisation, sont aptes et résolus à accepter et exécuter les obligations contenues dans la Charte."

Retrait, Exclusion et Suspension

Les questions du retrait, de l'exclusion et de la suspension ont amené le Comité à examiner les questions suivantes:

1. Est-il possible qu'un Etat membre devienne non-membre soit de son propre chef, soit en vertu d'une décision qui lui aura été imposée.

2. Le principe de la suspension peut-il être employé de façon satisfaisante pour atteindre les résultats attendus de l'exclusion?

Quant au retrait, on a fait valoir que celui-ci non seulement irait à l'encontre de l'universalité finale de l'Organisation, mais qu'il offrirait aussi aux membres

récalcitrants la possibilité et de faire pression sur l'Organisation et de se dérober à leurs obligations en quittant l'Organisation. En outre, si une disposition prévoyant le retrait était incluse dans la Charte, le départ d'un Etat quelconque, indiquerait soit que cet Etat s'apprête à agir contrairement aux principes de l'Organisation, soit qu'il estime que l'Organisation ne remplit le rôle pour lequel elle a été créée. L'interdiction du retrait rendrait nécessaire des sanctions contre les membres qui tenteraient de se retirer, et pareille disposition compliquerait pour des motifs d'ordre pratique, l'acceptation de la Charte par les parlements.

C'est intentionnellement ainsi que le Comité l'a reconnu, que les Gouvernements invitants ont passé sous silence la question du retrait dans les Propositions de Dumbarton Oaks. Quelques délégués ont vu dans cette omission la preuve que les gouvernements invitants étaient opposés à une disposition visant le retrait, alors que d'autres l'ont interprétée comme visant à permettre à l'Organisation d'examiner, à la lumière des circonstances, toute proposition de retrait.

Le sous-comité, le 23 mai, exprimé au Comité l'avis qu'il ne devait pas être fait mention du retrait dans la Charte. Cet avis auquel le Comité s'est rallié, était contenu dans la déclaration suivante:

"La commission se rallie à l'avis des Puissances Invitantes qu'il n'y a pas lieu de prévoir ou de réglementer la faculté de secession des Membres. Si l'Organisation remplit sa fonction dans l'esprit qui anime la Charte, il serait inadmissible que son autorité puisse être affaiblie par certains Membres désertant l'idéal auquel ils ont obéi en souscrivant à la Charte, ou même bafouée par des Etats agresseurs ou sur le point de le devenir.

"Il va de soi pourtant que des retraits ou autres formes de dissolution de l'Organisation deviendraient inévitables si, décevant les espoirs de l'humanité, elle se révélait impuissante à maintenir la Paix ou ne parvenait à le faire qu'au détriment du droit ou de la Justice. C'est à raison notamment de ce risque inséparable de toute entreprise humaine que le Comité renonce à insérer dans la Charte une clause formelle d'interdiction de retrait."

La question de l'exclusion et de la suspension a fait l'objet d'un échange de vues prolongé. Elle a été, en premier lieu, étudiée par un sous-comité spécial. Le 25 mai, ce sous-comité a recommandé que l'exclusion ne fut pas mentionnée dans la Charte et qu'au cas où le Comité I/2 adopterait l'avis de la majorité du sous-comité relativement à l'exclusion, le projet de paragraphe 3, Section B, Chapitre V, concernant la suspension devrait être modifié dans le sens suivant:

"L'Organisation peut, à tout moment, suspendre l'exercice des droits et privilèges conférés à tout membre de l'Organisation qui fait l'objet de mesures préventives ou coercitives prises par le Conseil de Sécurité, ou qui aurait violé les principes de la Charte d'une façon persistante ou grave. L'exercice de ces droits et privilèges pourrait être rétabli conformément à la procédure prévue au Chapitre ... par...."

Cette notion de la suspension fut considérée suffisamment souple pour répondre aux buts assignés à l'exclusion elle-même. La suspension, qui équivaut à une exclusion temporaire, ne présenterait pas, selon les explications qui furent données, les caractéristiques fâcheuses de l'exclusion pure et simple.

Lorsque la question fut portée devant le comité, les partisans de l'omission de toute référence à l'exclusion firent valoir que cette mesure était incompatible avec le principe de l'universalité qui suppose, finalement, la participation de tous les Etats à l'Organisation, qu'elle dégagerait le membre visé de ses obligations découlant de la Charte, qu'elle le mettrait hors la loi et, de ce fait, obligerait les Etats membres, à se livrer à des opérations militaires, plutôt que policières, contre cet Etat, qu'elle créerait un danger pour l'Organisation plutôt que pour l'Etat en question, qu'elle entraînerait la constitution d'un noyau d'opposition à l'Organisation autour duquel d'autres mécontents se réuniraient, qu'elle provoquerait la rupture de relations, diplomatiques et autres, entre les Etats membres et l'Etat exclu, qu'elle ferait obstacle à la réconciliation entre l'Organisation et tout Etat exclu, et qu'elle pourrait se révéler moins efficace que la suspension.

Les partisans d'une disposition visant l'exclusion ont souligné que les buts de l'Organisation étaient la paix et la sécurité, non l'universalité, que l'exclusion

ne s'appliquerait qu'aux Etats membres virtuellement impénitents qui violent de façon persistante ou grave les principes de la Charte; que, dans le cas de tels Etats, il était nécessaire d'établir, sans équivoque l'attitude que l'Organisation adopterait à leur égard, que, si un Etat suspendu conserve la qualité de membre, l'Organisation pourrait hésiter à agir de façon catégorique à son égard, que l'absence du droit d'expulsion pourrait permettre à un Etat membre d'agir de connivence avec un Etat non-membre pour contre-carrer l'activité et les buts de l'Organisation, que celle-ci serait capable d'appliquer l'exclusion de façon judicieuse, que cette mesure ne dégagerait pas l'Etat exclu des obligations prévues pour les Etats non-membres, et que les Etats exclus pourraient être admis à nouveau dans l'Organisation.

Le sous-comité, en discutant la question de la suspension, a jugé trop sévère un amendement norvégien prévoyant la suspension des droits et privilèges des membres qui ne verseraient pas leurs contributions financières, et lui a préféré l'amendement des Pays-Bas. Sur ce point, le délégué de la Norvège a accepté de retirer son amendement si l'amendement néerlandais était soumis officiellement à l'examen du comité technique compétent de la Conférence.

A la séance du 25 mai, lorsque la question d'inclure dans la Charte une disposition visant l'exclusion fut présentée, le Comité I/2 n'a pas adopté cette disposition qui n'avait pas recueilli la majorité des deux-tiers des voix des délégués présents et votant.

Le Comité avait voté alors sur la révision proposée du paragraphe 3, Section B, Chapitre V, relative à la suspension. Cette proposition fut adoptée presque à l'unanimité par le Comité.

Le Chapitre III et les questions du retrait, de la suspension et de l'exclusion ayant été ainsi examinés, la discussion sur ces objets est terminée. En conséquence, le Comité I/2 recommande que le Chapitre III soit conçu comme suit:

"Sont membres originaires de l'Organisation les Etats signataires de la Charte dont la ratification sera devenue effective conformément aux termes du Chapitre, Article . . ."

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix, qui, au jugement de l'Organisation, sont aptes et résolus à accepter et exécuter les obligations contenues dans la Charte."

"L'Organisation peut, à tout moment, suspendre l'exercice des droits et privilèges conférés à tout membre de l'Organisation qui fait l'objet de mesures préventives ou coercitives prises par le Conseil de Sécurité, ou qui aurait violé les principes de la Charte d'une façon persistante ou grave. L'exercice de ces droits et privilèges pourrait être rétabli conformément à la procédure prévue au Chapitre _____ par. _____."

RAPPORT DU RAPPORTEUR (MEMBRES) DU COMITE I/2
SUR LE CHAPITRE III

Le mandat du Comité I/2, lorsqu'il a commencé sa discussion du Chapitre III relatif aux membres, le 8 mai 1945, comprenait les sujets suivants: participation des nations représentées à la Conférence, admission de nouveaux membres, retrait, suspension et exclusion de membres.

Le Chapitre III des Propositions de Dumbarton Oaks a la teneur suivante:

"1. Devrait pouvoir être membre de l'Organisation tout Etat épris d'un idéal de paix."

Mention est faite de l'admission, de la suspension et de l'exclusion aux paragraphes 2 et 3 de la Section B du Chapitre V. Ces paragraphes sont ainsi conçus:

"2. L'Assemblée Générale devrait avoir le pouvoir d'admettre de nouveaux membres dans l'Organisation, sur la recommandation du Conseil de Sécurité."

"3. L'Assemblée Générale devrait, sur la recommandation du Conseil de Sécurité, avoir le pouvoir de suspendre l'exercice de tous les droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auraient été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice des droits et privilèges ainsi suspendu, pourrait être restitué par décision du Conseil de Sécurité. L'Assemblée Générale devrait avoir le pouvoir sur recommandation du Conseil de Sécurité, d'exclure de l'Organisation tout membre qui persisterait à violer les principes de la Charte."

La question du retrait n'est pas prévue dans les Propositions de Dumbarton Oaks.

Les puissances invitantes n'ont pas soumis d'amendements au Chapitre III relativement à la question des membres ou à celles de l'admission, du retrait, de la suspension ou de l'exclusion.

Les Gouvernements suivants, participant à la Conférence, ont soumis des commentaires ou des amendements concernant le Chapitre III ou le retrait, la suspension et l'exclusion:

Australie, Belgique, Bolivie, Brésil, Chili, Costa-Rica, République Dominicaine, Equateur, Egypte, France, Guatemala, Honduras, Mexique, Pays-Bas, Nouvelle-Zélande, Norvège, Commonwealth des Philippines, Uruguay et Venezuela.

Membres et admission de nouveaux membres

En préparant ses recommandations relatives au Chapitre III, le Comité avait deux problèmes fondamentaux à examiner: (1) la relation entre la qualité de membre et les principes et obligations stipulés dans la Charte; et (2) les limites mises à la latitude donnée à l'Organisation pour l'admission de nouveaux membres. La discussion de ces problèmes a surtout porté sur la question de savoir si la formule exprimant la condition d'admissibilité était assez complète et assez souple. L'avis unanime du Comité est qu'une adhésion sans réserve aux principes et aux engagements de la Charte est essentielle à cet égard.

Certains délégués qui sont d'avis que la Charte ne devrait pas lier trop étroitement l'Organisation lorsqu'il s'agira pour elle de statuer sur les demandes d'admission, font valoir que personne ne saurait apprécier avec plus de justesse que l'Organisation elle-même, le bien fondé de telles demandes. Ceux qui estiment, au contraire, que la Charte devrait énoncer certaines conditions touchant la forme et la politique des Gouvernements soulignent que les membres déjà admis doivent avoir l'assurance que les membres nouveaux sont en mesure et véritablement désireux d'exécuter les obligations découlant de la Charte et ne se livreront pas à des activités contraires aux principes de l'Organisation. Le sentiment du Comité est qu'on devrait laisser à l'Organisation le droit d'admettre de nouveaux membres dans les limites tracées par le terme "éprises d'un idéal de paix" et lui accorder une grande latitude pour juger l'aptitude des candidats à accomplir les obligations résultant de la Charte.

Il a été signalé que le Chapitre III des Propositions de Dumbarton Oaks fait allusion à la participation d'Etats. Cette formule pourrait avoir pour effet d'empêcher l'adhésion de nations présentes à la Conférence et qui n'ont cependant pas encore pleinement acquis la qualité d'Etats. Le Comité a estimé que toutes les nations qui participent à la présente Conférence devraient être admises comme membres originaires de l'Organisation.

En ce qui concerne précisément la distinction entre membres originaires et autres membres, le Comité désire éviter qu'une idée défavorable ne résulte, pour certains, de cette inévitable différence.

Un sous-comité chargé de s'occuper du Chapitre III, constitué le 10 mai, avait rédigé un texte anglais de Chapitre III que le Comité a adopté à l'unanimité le 12 mai (le texte français a été préparé quelques jours plus tard). Le texte anglais adopté par le Comité était ainsi conçu:

"Sont membres de l'Organisation les signataires de la Charte qui l'auront ratifiée conformément aux dispositions du Chapitre XI.

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix, qui, au jugement de l'Organisation, sont aptes et résolus à accepter et exécuter les obligations contenues dans la Charte."

Afin d'écartier tout malentendu sur la méthode selon laquelle les nouveaux membres souscriraient aux principes et obligations de l'Organisation, le Comité a approuvé, le 25 mai, une modification du texte proposé par le Comité 1/2. En conséquence, ces paragraphes du Chapitre III ont été modifiés de la façon suivante:

"Sont membres originaires de l'Organisation les Etats signataires de la Charte dont la ratification sera devenue effective conformément aux termes du Chapitre _____ Article _____."

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix, qui, au jugement de l'Organisation, sont aptes et résolus à accepter et exécuter les obligations contenues dans la Charte."

Retrait, Exclusion et Suspension

Les questions du retrait, de l'exclusion et de la suspension ont amené le Comité à examiner les questions suivantes:

1. Est-il possible qu'un Etat membre devienne non-membre soit de son propre chef, soit en vertu d'une décision qui lui aura été imposée.

2. Le principe de la suspension peut-il être employé de façon satisfaisante pour atteindre les résultats attendus de l'exclusion?

Quant au retrait, on a fait valoir que celui-ci non seulement irait à l'encontre de l'universalité finale de l'Organisation, mais qu'il offrirait aussi aux membres

récalcitrants la possibilité et de faire pression sur l'Organisation et de se dérober à leurs obligations en quittant l'Organisation. En outre, si une disposition prévoyant le retrait était incluse dans la Charte, le départ d'un Etat quelconque, indiquerait soit que cet Etat s'apprête à agir contrairement aux principes de l'Organisation, soit qu'il estime que l'Organisation ne remplit le rôle pour lequel elle a été créée. L'interdiction du retrait rendrait nécessaire des sanctions contre les membres qui tenteraient de se retirer, et pareille disposition compliquerait pour des motifs d'ordre pratique, l'acceptation de la Charte par les parlements.

C'est intentionnellement, ainsi que le Comité l'a reconnu, que les Gouvernements invitants ont passé sous silence la question du retrait dans les Propositions de Dumbarton Oaks. Quelques délégués ont vu dans cette omission la preuve que les gouvernements invitants étaient opposés à une disposition visant le retrait, alors que d'autres l'ont interprétée comme visant à permettre à l'Organisation d'examiner, à la lumière des circonstances, toute proposition de retrait.

Le sous-comité, le 23 mai, exprimé au Comité l'avis qu'il ne devait pas être fait mention du retrait dans la Charte. Cet avis auquel le Comité s'est rallié, était contenu dans la déclaration suivante:

"La commission se rallie à l'avis des Puissances Invitantes qu'il n'y a pas lieu de prévoir ou de réglementer la faculté de secession des Membres. Si l'Organisation remplit sa fonction dans l'esprit qui anime la Charte, il serait inadmissible que son autorité puisse être affaiblie par certains Membres désertant l'idéal auquel ils ont obéi en souscrivant à la Charte, ou même bafouée par des Etats agresseurs ou sur le point de le devenir.

"Il va de soi pourtant que des retraits ou autres formes de dissolution de l'Organisation deviendraient inévitables si, décevant les espoirs de l'humanité, elle se révélait impuissante à maintenir la Paix ou ne parvenait à le faire qu'au détriment du droit ou de la Justice. C'est à raison notamment de ce risque inséparable de toute entreprise humaine que le Comité renonce à insérer dans la Charte une clause formelle d'interdiction de retrait."

La question de l'exclusion et de la suspension a fait l'objet d'un échange de vues prolongé. Elle a été, en premier lieu, étudiée par un sous-comité spécial. Le 25 mai, ce sous-comité a recommandé que l'exclusion ne fût pas mentionnée dans la Charte et qu'au cas où le Comité I/2 adopterait l'avis de la majorité du sous-comité relativement à l'exclusion, le projet de paragraphe 3, Section B, Chapitre V, concernant la suspension devrait être modifié dans le sens suivant:

"L'Organisation peut, à tout moment, suspendre l'exercice des droits et privilèges conférés à tout membre de l'Organisation qui fait l'objet de mesures préventives ou coercitives prises par le Conseil de Sécurité, ou qui aurait violé les principes de la Charte d'une façon persistante ou grave. L'exercice de ces droits et privilèges pourrait être rétabli conformément à la procédure prévue au Chapitre ... par...."

Cette notion de la suspension fut considérée suffisamment souple pour répondre aux buts assignés à l'exclusion elle-même. La suspension, qui équivaut à une exclusion temporaire, ne présenterait pas, selon les explications qui furent données, les caractéristiques fâcheuses de l'exclusion pure et simple.

Lorsque la question fut portée devant le comité, les partisans de l'omission de toute référence à l'exclusion firent valoir que cette mesure était incompatible avec le principe de l'universalité qui suppose, finalement, la participation de tous les Etats à l'Organisation, qu'elle dégagerait le membre visé de ses obligations découlant de la Charte, qu'elle le mettrait hors la loi et, de ce fait, obligerait les Etats membres, à se livrer à des opérations militaires, plutôt que policières, contre cet Etat, qu'elle créerait un danger pour l'Organisation plutôt que pour l'Etat en question, qu'elle entraînerait la constitution d'un noyau d'opposition à l'Organisation autour duquel d'autres mécontents se réuniraient, qu'elle provoquerait la rupture de relations, diplomatiques et autres, entre les Etats membres et l'Etat exclu, qu'elle ferait obstacle à la réconciliation entre l'Organisation et tout Etat exclu, et qu'elle pourrait se révéler moins efficace que la suspension.

Les partisans d'une disposition visant l'exclusion ont souligné que les buts de l'Organisation étaient la paix et la sécurité, non l'universalité, que l'exclusion