The Relationship between GATT and the United Nations

Peter Neumann
The Relationship Between GATT
And The United Nations

PETER NEUMANN*

I. INTRODUCTION

This article has a twofold purpose. The immediate aim is to explain and define the relationship between the United Nations and the General Agreement on Tariffs and Trade, commonly known as GATT. It is a further goal to contribute to an understanding of why the developments on the legal plane took place as they did and to facilitate an understanding of the interplay between international politics and international law by making available a rather minute study of a well defined question with wide implications.

This task necessitates an analysis of the establishment, development and present legal status of the General Agreement, of the Charter for the International Trade Organization, and of the Interim Commission of the International Trade Organization.

The two bodies which did come into existence, the General Agreement and the Interim Commission, have a common origin in resolutions of the Economic and Social Council (ECOSOC) and, in addition, share largely identical purposes which are stated in general terms in Article 55 of the United Nations Charter and more specifically in the General

---

*Assistant Legal Officer, General Legal Division, United Nations Secretariat. The article represents the personal views of the author and not necessarily those of the United Nations. The author wishes to acknowledge the encouragement and assistance received from Hannah J. Zawadzka Neumann.

1. For text of the original agreement, hereinafter referred to as the General Agreement, see Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the U.N. Conference on Trade and Employment, Geneva, Switzerland, 1947.


4. Hereinafter referred to as the Interim Commission.
Agreement and the resolution establishing the Interim Commission. A closer analysis, however, reveals a number of features which, despite the intimate working relations between the two, confirms that the General Agreement and the Interim Commission are legally distinct bodies. They are, moreover, not organs of the United Nations.

II. STATEMENT OF FACTS

On February 18, 1946, ECOSOC passed a resolution\(^5\) for the calling of an International Conference on Trade and Employment. In accordance with the resolution, ECOSOC appointed Members to a Preparatory Committee and defined its mandate. With the exception of the Soviet Union which declined to attend, all Members appointed to the Preparatory Committee met and participated in the Committee's work. The reason given by the Soviet Union for its abstention was that it "had not found it possible to devote sufficient preliminary study to the important questions which were the subject of the Committee's discussion."\(^6\) This reason appears more readily understandable in view of the fact that the Soviet Union was the only country with a centrally planned economy among the 19 Members of the Preparatory Committee.

The Preparatory Committee, on April 19, 1947, at its second session in Geneva, initiated negotiations directed to the substantial reduction of tariffs and other trade barriers and to the elimination of preferences on a reciprocal and mutually advantageous basis. The negotiations resulted in the framing of a General Agreement on Tariffs and Trade and of a Protocol of Provisional Application.\(^7\)

The decision to negotiate the General Agreement within the Preparatory Committee was taken by the Committee itself in a resolution adopted at the end of the first session.\(^8\) The preamble to that resolution is of considerable interest in three respects: (1) it interprets the terms of reference laid down by ECOSOC in a manner which might be somewhat difficult to reconcile with the words of the resolution; (2) it informs us that the Governments attending the first session had received and accepted an offer from the United States Government to "negotiate concrete arrangements for the relaxation of tariffs and trade barriers of all kinds;" and (3) it states as the position of the Preparatory Committee

---

5. 1 U.N. ECOSOC, Res. 1/13.
7. Quoted from the preamble of the Final Act adopted at the conclusion of the second session of the Preparatory Committee of the U.N. Conference on Trade and Employment, 1947.
that the planned Conference on Trade and Employment would be facilitated if concrete action were taken by the principal trading nations to enter into mutually advantageous negotiations directed to the substantial reduction of tariffs and to the elimination of preferences.

It appears that the essence of the mandate of the Preparatory Committee was "to elaborate an annotated draft agenda including a draft convention." The mandate further directed the Preparatory Committee to take into account as a basis of discussion that the agenda should include a certain number of topics which were specified in the resolutions contained in paragraph 3. It would therefore seem that the Members of the Preparatory Committee made a very broad interpretation of the mandate given to them by ECOSOC when they negotiated and signed the General Agreement. Although it may be maintained that the General Agreement covers the same issues as were suggested for inclusion in the agenda for the Conference on Trade and Employment, it might be argued from a textual analysis that these issues were only "suggested" to the Preparatory Committee as a basis for discussion; they were to be "taken into account" when the Preparatory Committee elaborated "an annotated draft agenda including a draft convention." As a further argument, it may be mentioned that the objective of establishing an international trade organization as a specialized agency of the United Nations was widely supported.

From a purely practical point of view, the assumption that the success of the Trade and Employment Conference would be facilitated if the 18 Governments attending the meetings of the Preparatory Committee first negotiated and concluded agreements among themselves on trade liberalization may be easily accepted. However, it would then seem desirable that provisions be made so that the interests of the unrepresented States would not be impaired.

One of the keys to understanding the unique character of the General Agreement is the provision for joint action by the CONTRACTING PARTIES in Article XXV. Areas for joint action do not, however, in-

9. See note 5 supra.

10. Although the ECOSOC resolution listed the topics "International Agreement relating to regulations, restrictions and discriminations affecting international trade" and "Establishment of an International Trade Organization" in connection with the agenda of the Conference, the preamble of the Committee's resolution mentioned them as having been suggested for inclusion in its own agenda.

11. The Article reads in part:

"1. Representatives of the Contracting Parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Whenever reference is made in this Agreement to the Contracting Parties acting jointly they are designated as the CONTRACTING PARTIES."
clude the multilateral reductions of trade barriers which are negotiated at sessions called for that purpose, but cover, in addition to administrative questions, the important function of settling disputes among the Contracting Parties over compliance with the obligations assumed pursuant to the General Agreement. This delimitation of the area within which legally binding measures may be taken by a majority vote is determined by "common sense." It is only when the Governments concerned have a predictable common interest in complying with previously agreed rules that such a machinery for joint action will function effectively.

In respect to ratification, the delegates also demonstrated realism in formulating the General Agreement. The General Agreement was never ratified. In fact, none of the original signatories ever submitted instruments of acceptance. Instead, the representatives who signed the General Agreement drew up a "Protocol of Provisional Application." Their Governments undertook, upon signature of the Protocol on behalf of all the Governments concerned not later than November 15, 1947, "to apply provisionally on and after January 1, 1948:

(a) Parts I and III of the General Agreement on Tariffs and Trade, and

(b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation." The provisional and limited applicability of the General Agreement is strengthened by Article 5 which provides that any Government was free to withdraw upon sixty days notice. The technique used enabled the Governments to avoid the usual constitutional requirements, such as approval by their legislatures, with which the Governments would have had to comply had they wished to ratify the General Agreement. Thus, the General Agreement is an agreement among the executive

---

3. Each of the Contracting Parties shall be entitled to have one vote at all the meetings of the CONTRACTING PARTIES.

4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast."

12. Art. XXVI, para. 5, of the General Agreement provided that it "shall enter into force, as among the Governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with the Secretary-General of the United Nations on behalf of governments signatories to the Final Act the territories of which account for eighty-five per centum of the total external trade. .." Annex H attributed the largest shares of the total external trade to the United Kingdom with 25.7% and to the United States with 25.2%. Each of the two states was thus able to block the entry into force of the General Agreement.

13. Part I contains a "most-favoured-nation" clause and schedules of multilateral concessions.

14. Part II contains a set of principles, substantive rules and procedures for conducting trade and for related measures of economic policy.
branches of certain Governments, a fact distinguishing it from the constitutive documents of international organizations in general and from the specialized agencies of the United Nations in particular.

The fate of the Havana Charter bears out the realism inherent in the Protocol of Provisional Application. However, the question may also be posed whether it was ever intended to have the General Agreement ratified. If ratification was never intended, it may be said that the politics of realism was further accentuated; the commercially stronger powers would have a more advantageous bargaining position under a provisionally applicable protocol than under a ratified General Agreement or under the International Trade Organization as proposed in the Havana Charter.

The Preparatory Committee reported to ECOSOC which resolved to convene the conference at Havana, Cuba, on November 21, 1947, and to invite to the conference Member States of the United Nations as well as the Allied Control Authorities in Germany, Japan, and Korea, and certain non-member States with “an appreciable interest in world trade.” Only Members of the United Nations were granted voting rights. The Conference was in session from November 21, 1947, to March 25, 1948. At the last meeting in plenum the Chairman “declared approved the text of the Final Act, the text of the Havana Charter, the Resolutions, and the Reports of the Six Main Committees.”

The Final Act of the Conference—to which was annexed the text of the Havana Charter for an International Trade Organization, a resolution establishing an Interim Commission of the International Trade Organization, and the other resolutions of the Conference—was signed by representatives of the 53 States participating, the representative of the Secretary-General of the United Nations, Mr. A. D. K. Owen, and by the Executive Secretary of the Conference, Mr. E. Wyndham White.

The binding character of the signatures became a matter of discussion at the closing stage of the Conference. The Final Act states that “the Conference . . . drew up the Havana Charter for an International Trade Organization to be submitted to the Governments represented.” The delegate presenting the text to the plenum as elaborated in the committee concerned, explained that it signified only that the texts of the Charter in English and French were thereby authenticated and that the sig-

15. While some have suggested a negative answer, the rationale that since the General Agreement was to become effective only after the Havana Conference it would have little independent significance is not persuasive. It is a mistake to assume that the Charter and the Agreement were so similar.
natories were committed to submit the Charter to their Governments. The delegate of Bolivia wished to add the following sentence, "The Delegations of the Countries represented at the Conference . . . expressly state that the provisions of the Havana Charter are not binding upon the Countries which they represent, unless they are approved by their respective Governments and Congresses in accordance with their present constitutional systems." While the Bolivian proposal was rejected, the Conference adopted proposals submitted by the delegates of El Salvador and the United States. These proposals were, respectively, that there be "a full explanation of the Bolivian point of view in the summary records" and that "a clear explanation" be given by the President of the Conference "at the time of signature of the Final Act, that such signature 1) committed the delegations to submit the Charter to their Governments, 2) did not commit Governments to submit the Charter to their parliaments, and 3) did not commit parliaments to ratify the Charter."

Judging from the language of these adopted proposals there seems to be no doubt that the delegates signing the Final Act did not thereby bind their Governments to adhere to the Final Act or any of the documents annexed.

The resolution on the establishment of an Interim Commission for the International Trade Organization was approved by the Conference on a roll-call vote.19 It is doubtful that a resolution adopted by a conference of representatives of Governments is, ipso facto, binding upon their Governments. In the present case, however, it appears that the question can be answered on the basis of the available evidence concerning the genesis of the resolution.

The Conference established several committees, among which the Sixth Committee was to consider organizational matters including the question of establishing an Interim Commission. In a report by the Working Party concerned20 it is explained that the Interim Commission was established by a resolution rather than a draft arrangement to save the parties from possible legal difficulties. It may be assumed that the "legal difficulties" invoked by "certain delegations" covered limitations in the powers vested in them by their Governments. Delegates may not have been empowered to commit their Governments to an arrangement of a legally binding character and, thus, could only agree to vote for a resolution which would not bind their Governments. It appears that even dele-

19. 48 delegates were in favor, 4 abstained, 1 reserved his position and 4 were absent; ECOSOC Conference on Trade and Employment, I, E/CONF.2/SR.16, here the number of countries approving is only 47, but in E/CONF.2/67 Brazil is included to make 48. Before the Conference adjourned, two of the absentees and one of the abstaining also approved the resolution; E/CONF.2/67/Add. 1 & 2.
1970|Gatt and the UN

It may be of interest to record the intended relationship among the three bodies: the General Agreement, the International Trade Organization, and the Interim Commission. By Article XXIX of the General Agreement, the Contracting Parties recognized "that the objectives set forth in the preamble of this Agreement can best be attained through the adoption, by the United Nations Conference on Trade and Employment, of a Charter leading to the creation of an International Trade Organization." The parties to the Agreement undertook, pending the acceptance of such a Charter, "to observe to the fullest extent of their executive authority the general principles of the Draft Charter submitted to the Conference by the Preparatory Committee." They further agreed that when the proposed Charter of the International Trade Organization entered into force, "Article I and Part II of this Agreement (GATT) shall be suspended and superseded by the corresponding provisions of the Charter." Article I contains the "most-favored-nation" clause and Part II the agreed procedures, substantive rules and principles for trade liberalization. The concessions made in Geneva from April to November, 1947, and at subsequent meetings would remain operative under the GATT even after the Charter. The provision in Article XXV for the Contracting Parties acting jointly as the CONTRACTING PARTIES would also remain, but it was stated that "the Contracting Parties will also agree concerning the transfer to the International Trade Organization of their functions under Article XXV.\textsuperscript{21}

The intention to uphold the tariff concessions connected with the General Agreement seemed particularly appropriate considering Article 17 of the Havana Charter. According to that Article, Members of the International Trade Organization were to undertake to carry out on the request of any other Member or Members "negotiations to the substantial reduction of the general levels of tariffs and other charges . . . on a reciprocal and mutually advantageous basis. Non-compliance with this obligation could—pending a complaint and examination procedure—lead to a decision by the Organization\textsuperscript{22} to allow withdrawal of concessions vis-à-vis the Member violating its obligations. As the negotiations leading to the General Agreement should be deemed to be negotiations pursuant to Article 17,\textsuperscript{23} the effect would be that Members of the International Trade Organization which had not been Members of

---

\textsuperscript{21} Art. XXIX, para. 2 (b).

\textsuperscript{22} Presumably, by the organ called the "Conference" in which each Member was given one vote and which was to reach decisions by a majority vote.

\textsuperscript{23} Art. 17, para. 3 of the Havana Charter.
the Preparatory Committee, or who had not later adhered to the General Agreement, were to be obliged to match the concessions embodied in the General Agreement. One may wonder if the price for membership was not in this way set rather high for developing countries which were not able to derive the same benefits from free trade as could the industrialized nations. For States with centrally planned economies similar observations may be applicable in spite of the existence of special provisions in the Charter for them.24

The Interim Commission, which came to supply a secretariat for the Contracting Parties, was clearly intended as a temporary measure.25 The Commission's functions were — with one exception to be discussed below — all temporary in anticipation of the ratification of the Charter of the International Trade Organization. Finally, it was intended that the Interim Commission should cease to exist upon the appointment of the Director General of the International Trade Organization, and that its property and records should be transferred to the International Trade Organization at that time.26

The intention that the International Trade Organization should become a specialized agency of the United Nations is also of interest. This intention was first expressed in the ECOSOC resolution27 establishing the Preparatory Committee. Consequently, while the General Agreement contains no reference to specialized agency status, there is an express provision in the Havana Charter to this effect.28 Due to the non-ratification of the Havana Charter, however, none of the intended developments took place. The actual development has, in the formal legal sense, been based on the resolution establishing the Interim Commission, and in particular on an understanding reached at the Havana Conference concerning the interpretation of paragraph 3 of the annex of that resolution. According to paragraph 3, the Interim Commission was to elect an Executive Secretary to be its chief administrative officer. He was em-

24. The questions raised concerning the effect of art. 17 are further substantiated by the proposal in the Draft Charter that a Tariff Committee be established as an organ of the International Trade Organization. Its functions were to be to initiate the negotiations and make the decisions called for by art. 17, and the membership were to be initially the Parties to the General Agreement which were also Members of the International Trade Organization. Subsequently other Members of the International Trade Organization, which successfully carried out negotiations pursuant to art. 17, would become Contracting Parties to the General Agreement and Members of the Tariff Committee.

25. This was reflected in the constitutive resolution which used the expression: "Considering that pending the establishment of the Organization certain interim functions should be performed."


27. ECOSOC, Sess. 1/13, operative para. 3 (e).

powered to appoint the staff of the Commission paying due regard to
the recruitment of staff on as wide a geographical basis as possible29 "and
using, as he considers desirable, such assistance as may be extended to
him by the Secretary-General of the United Nations."30 In addition to
the functions mentioned expressly, the Executive Secretary also was to
"perform such other functions and duties as the Commission may de-
termine."

It was this last sentence of paragraph 3 which embodied the result
of an understanding reached at the previously mentioned Working
Party of the Sixth Committee at the Havana Conference.31 The im-
portance of this understanding will become clear in the following section,
which explains how, in fact, the Interim Commission provided a secre-
tariat for the Contracting Parties.

Paragraph 4 of the annex of the resolution on the Interim Commission
is equally relevant. It provided that "the expenses of the Commission
shall be met from funds provided by the United Nations, and, for this
purpose, the Commission shall make the necessary arrangements with the
Secretary-General of the United Nations for the advance of such funds
and for their reimbursement."

These provisions of Paragraphs 3 and 4 afford the authority under
which the co-operation between the Interim Commission and the Con-
tracting Parties has been carried out. The steps by which the provisions
were implemented are as follows:

Soon after the adoption of the resolution on the Interim Commission,
the Commission met and elected 18 Members to the Executive Committee
of the Interim Commission.32

An election procedure paper circulated by the Executive Secretary
contained the observation that "the third State which would qualify
according to the criteria of largest population in the world and potential
importance in international trade would be the Soviet Union." The
paper then continues: "As, however, the Soviet Union is not a member of

29. The language of art. 85, para. 2, of the Charter is nearly identical to that for
the recruitment of U.N. staff. U.N. CHARTER, art. 101, para. 9.
30. The Interim Commission did borrow three officers from the United Nations
Secretariat against reimbursement; see ITO/Interim Commission, Docs. 1948-1950,
ICITO/EC.2/5. The arrangement was terminated at the end of 1948 "in the view of
the considerable period which appears likely to elapse before the convening if the
first ITO Conference and of the limited programme of work." See ITO/Interim Com-
31. The relevant part of the report reads: "4. It was agreed that under the second
sentence of para. 3 of the annex to the resolution the Executive Secretary of the Com-
mission might for example, be authorized to make available to the Contracting Parties
to the General Agreement on Tariffs and Trade acting jointly in accordance with
art. XXV thereof at their request the services of the staff upon terms to be agreed." U.N.
the Interim Commission, it is suggested that only seven places should be filled by designation . . . and that an additional place should be filled by election. . . ." Thus the Soviet Union's abstention from participating in the Interim Commission had barred it from direct influence in the new machinery for trade co-operation as its nonparticipation in the General Agreement barred it from direct influence in the GATT.

At the same meeting Mr. E. Wyndham White was elected Executive Secretary of the Interim Commission, and it was agreed "that the Interim Commission should delegate all its powers to the Executive Committee including the power to replace the Executive Secretary if such action should become necessary."33

A Working Party of the Executive Committee proposed that the Executive Secretary be authorized to employ up to nineteen persons in the Secretariat of the Interim Commission and to gradually move the seat from Lake Success to Geneva. This proposal was adopted.

In his report34 to the second session of the Executive Committee, the Executive Secretary stated how he had proceeded with the recruitment of a staff.35 Concerning financing, the report stated that after the Executive Secretary had applied to the Secretary-General of the United Nations for an advance for the second quarter of 1948,36 "the Secretary-General . . . agreed to this advance subject to an undertaking for the reimbursement of this and all subsequent advances by the ITO when established." The Executive Secretary in reply referred to paragraph 4 of the Commission's terms of reference and expressed confidence that the Commission would accept the position that any advances to the Commission should be reimbursed to the United Nations by the ITO.37

To complete the account of this first phase of the relationship between the Interim Commission and the Contracting Parties, only Chapter III of the Executive Secretary's report remains to be mentioned.

35. Some positions were borrowed from United Nations Secretariat. This was done to carry out work for the Interim Co-ordinating Committee for International Commodity Arrangements, — a subsidiary organ of ECOSOC, see note 30 supra. The Executive Secretary of the Interim Commission had also become Executive Secretary of the General Agreement.
36. The Secretary-General had covered the expenses of the Preparatory Committee, the Havana Conference and the Interim Commission by making advances out of the Working Capital Fund.
37. ITO/Interim Commission, Docs. 1948-1950, ICITO/EC.2/5. The commitment made by the Executive Secretary was clearly within the terms of reference of the Interim Commission. Para. 4 of the annex provided that "the expenses of the Commission shall be met from funds provided by the United Nations and for this purpose the Commission shall make the necessary arrangements with the Secretary-General of the United Nations for the advance of such Funds and for their reimbursement."
Chapter III reads as follows:

At the First Session of the Contracting Parties, in Havana, it was agreed, as a provisional arrangement, to request the Executive Secretary to provide secretariat services to the Contracting Parties to the General Agreement on Tariffs and Trade. In consequence the Secretariat has been handling the day to day administrative work arising out of the General Agreement on Tariffs and Trade as well as preparing for the Second Session of the Contracting Parties . . . . In the view of the Executive Secretary, any work done by the Secretariat in relation to the GATT may properly be regarded as within the general authority contained in paragraph 2 (i) of the terms of reference of the Commission. Accordingly, no claims should be made on the Contracting Parties for payment for services rendered by the Secretariat of the Commission.

This part of the report of the Executive Secretary was approved by the Executive Committee at its second session.38

Since it appears that the resolution establishing the Interim Commission was not binding on39 the Governments whose representatives voted for it, the Executive Committee, consisting of duly empowered representatives of the Member-Governments, was apparently entirely free to reach the decision to provide the services of its Secretariat to the Contracting Parties free of charge.

Rule 15 of the rules of procedure for sessions of the Contracting Parties may offer a clarification of the issue. Rule 15 provides that "the usual duties of the Secretariat shall, by agreement with the Interim Commission for the International Trade Organization, be performed by the Executive Secretary of the Interim Commission on a reimbursable basis."40

Hence, based on a series of agreements among representatives of Governments an arrangement was arrived at, whereby the United Nations advanced funds to the Interim Commission to cover the expenses of the Secretariat of the Commission. The Members of the Interim Commission reimbursed the United Nations, and the Executive Committee of the Interim Commission agreed to extend the services of the Secretariat to the Contracting Parties who, in turn, accepted these services and agreed to reimburse the Interim Commission.

The Secretary-General of the United Nations co-operated in the arrangement in the anticipation — at the outset, at least — of the early establishment of the International Trade Organization as a specialized

---

39. See p. 55 supra.
agency of the United Nations. When it became clear that the Havana Charter would not be ratified in the foreseeable future an initiative was taken at the Sixth Session of the Contracting Parties to find a more formal and permanent arrangement. But it appears from the documentation made available by GATT that the initiative was frustrated and that no change has occurred in the arrangement established in the period 1948-1950. From United Nations records, it can be seen that there has been a close working relationship between the Interim Commission Secretariat and sections of the United Nations Secretariat, especially to prevent the overlapping of work. This co-ordination has been carried out primarily through the Administrative Committee on Co-ordination, in which the Executive Secretary participates as an observer. Invitations to send observers to each other's meetings have been exchanged between the United Nations (Department of Social and Economic Affairs) and the Interim Commission. The staff of the Interim Commission Secretariat participates in the United Nations Joint Staff Pension Fund and their employment is regulated in accordance with the Staff Regulations of the United Nations Secretariat.

III. ANALYSIS AND CONCLUSIONS

A. THE INTERIM COMMISSION

To determine the legal status of the Interim Commission, it may be expedient first to analyze the facts surrounding the establishment and early activity of the Commission. Concerning this first phase, certain arguments may be advanced indicating a close relationship with the United Nations. It may thus be mentioned that 1) the Interim Commission was established at a conference called and financed by the United Nations; 2) it was intended as an interim body for the International Trade Organization which was in turn intended as a specialized agency of the United Nations; and 3) the United Nations provides the funds to cover the expenses of the Commission.

On the other hand there are circumstances suggesting the independent character of the Interim Commission. It may thus be maintained that 1) the debate at the Conference on whether the Havana Charter was binding on the represented Governments was a debate concerned with the powers of the delegates as representatives of their Governments and


42. Advisory organ to ECOSOC to which it submits annual reports. Members are the administrative chiefs of the international organizations within the "United Nations family." The Secretary-General of the United Nations is permanent chairman.
not as members of a United Nations organ; 2) both Members and non-members of the United Nations participated in the conference; 3) the Interim Commission from the outset had an independent source of finance evidenced by the pledge to fully reimburse the United Nations; 4) the Executive Secretary of the Interim Commission was at the same time Executive Secretary of the General Agreement; and 5) the Interim Commission Secretariat came gradually to carry out more work for the Contracting Parties to the General Agreement after having completed its interim functions.

Considering these arguments it appears that the Interim Commission was not established as an organ of the United Nations, but was set up as an independent body. After it became apparent that the Havana Charter was not going to be ratified, the original purpose of the Interim Commission was abandoned and replaced by that of obtaining a mutually advantageous agreement by establishing close working relations with the Contracting Parties to the General Agreement. Considering this change from the first to the second phase, it appears that the Interim Commission became even further removed from the United Nations.

The relationship between the Interim Commission and the General Agreement soon became a very close one in view of the fact that 1) the Interim Commission Secretariat came gradually, and at least from January 1, 1951 to work exclusively for the Contracting Parties; 2) the Executive Secretary of the Interim Commission since 1948 has also been the Executive Secretary of the General Agreement; 3) the Interim Commission or its Executive Committee apparently did not meet after having held an emergency session in July 1949;43 and 4) the Contracting Parties de facto exercised full authority over the Secretariat as if it were a secretariat employed and financed directly by them.

Nevertheless, it must still be recognized that the Interim Commission was established as a body that was separate from the General Agreement, and that the Contracting Parties have since 1952 reimbursed the United Nations through the Interim Commission upholding the original distinction.

Therefore, it appears that the Interim Commission still exists de jure. While de facto it has ceased to function, thereby lending persuasion to the impression that the Secretariat is that of the Contracting Parties,

43. The Chairman of the Executive Committee "summarized the various opinions and pointed out that since they were largely personal opinions, nothing final could be decided as yet. There was general agreement to postpone the date of the next meeting of the Executive Committee and that whatever new date was decided upon [it] should be shortly before entry into effect of the Charter so that there would be time to prepare an up-to-date report." Emergency Session of the Executive Committee in Annex, July 1949. See ITO/Interim Commission, Docs. 1948-1950, ICITO/1/18 at 6.
it still possesses the two de jure functions of being the employer of the Secretariat's staff and of receiving and transmitting to the United Nations the reimbursement from the Contracting Parties.

B. RELATIONSHIP BETWEEN THE GENERAL AGREEMENT AND THE UNITED NATIONS

Finally, concerning the relationship between the General Agreement and the United Nations, there is no doubt that the General Agreement is not a specialized agency. This follows from the one fact that no agreement to this effect has been concluded with the Economic and Social Council as required by Articles 57 and 63 of the United Nations Charter. Furthermore, it is doubtful whether such an agreement could be concluded, since the General Agreement per se probably is not, in the meaning of Article 57, a "specialized agency, established by intergovernmental agreement." This follows from its character of being only a provisionally applicable agreement among the executive branches of certain governments.44

Attempting to further define the relationship, there are certain grounds indicating that the General Agreement is closely related to the United Nations.

In support of this view, it may be maintained that 1) the General Agreement was negotiated and concluded by the Members of the Preparatory Committee; 2) the preamble to the General Agreement states this was, "in accordance with the Resolutions adopted at the first session of the Preparatory Committee;" 3) it was intended that essential parts of the General Agreement should be replaced by the Charter for the International Trade Organization upon ratification of the Charter; 4) the United Nations provides the funds for the secretariat working for the Contracting Parties; and 5) there has been a certain measure of co-operation and co-ordination largely carried out through the Advisory Committee on Co-ordination, such as (a) mutual representation in meetings, (b) application of the United Nations staff regulations to the staff of the Interim Commissin Secretariat, and (c) participation by the Interim Commission Secretariat's staff in the United Nations Joint Staff Pension Fund.

While not denying the validity of these arguments, it should be recalled that there are important reasons for considering the General Agreement to be a separate body independent of the United Nations. It may be maintained that 1) the Members of the Preparatory Committee acted outside their mandate from the Economic and Social Council

44. See pp. 66-67 supra.
when they negotiated and concluded the General Agreement; 2) the text of the General Agreement envisions ratification, thus indicating that it is not a subordinate organ of the United Nations because in the latter case ratification would not be called for; 3) the mutual representation at meetings—including those of the Advisory Committee on Co-ordination—is only on the level of observers with speaking but not voting rights; 4) the Contracting Parties do not submit regular, periodic reports on their activities to the Economic and Social Council, as do the specialized agencies; and 5) the Contracting Parties fully reimburse the United Nations through the Interim Commission.

Taking into account the arguments for and against assuming a close relationship between the United Nations and the General Agreement, it appears that despite cooperation in practical matters, the General Agreement was established as, and has remained, a body separate from the United Nations and not subject to directions from the United Nations.

In effect, the General Agreement came to function as an international organization with its own secretariat. It is this complex that comes to mind when reference is made to "GATT". Barring formal, legal criteria, it seems natural to refer to "GATT" as if it were an international organization. As has been seen, the conclusions to be drawn on the legal aspects do not allow for a description of GATT as an entity. Here then is an example of the limits posed by the methods of the lawyer and the political scientist.

The realization that GATT worked so well very likely was a principal reason why the United States Government decided not to resubmit the Havana Charter for ratification. The decision was made public on December 6, 1950.45 Prior to that, the State Department Bulletin had contained a very approving evaluation of the achievement of GATT.46 One encouraging fact was that 32 Governments had now become Contracting Parties to the General Agreement, and 7 more were expected to join. Thus, from the point of view of the United States Government, there was great satisfaction with GATT.

Another principal reason for not asking for ratification may have been that business groups had taken a very unfavorable view of the proposed International Trade Organization. It was feared both for its anti-protectionist and its internationalist features and also for its concessions to the concept of overall direction of international trade. There was much less opposition to GATT which was attacked mainly on protectionist...
grounds. The GATT arrangement did not require ratification, and it would have been very difficult to obtain ratification of the Havana Charter.

Along with these reasons came the change in the international situation; by 1950 the Cold War was no longer only latent. West-Germany had become a party to the General Agreement, and a special agreement was under preparation to include Japan among the GATT group. The situation did not seem to require the establishment of a specialized agency of the United Nations. A less internationalist path, based more on political and less on legal concepts, was chosen.


48. The only countries which had ratified were Liberia and Australia. The Australian ratification was conditional upon similar action by the United States and the United Kingdom.