is premature. If the House accepts the proposition for which my Friend Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

**Shri R. K. Sidhwa :** The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

**The Honourable Dr. B. R. Ambedkar :** We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

**Mr. Vice-President** (Shri T. T. Krishnamachari) : The question is:

"That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104. The following new proviso be added:

'Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the Judges of the Federal Court.' "

The amendment was negatived.

**Mr. Vice-President :** The question is:

That for article 104, the following article be substituted:—

Salaries etc. of Judges. "(1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

The motion was adopted.

Article 104, as amended, was added to the Constitution.

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## New Article 148-A

**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

That after article 148 the following new article be inserted :—

**Abolition or creation of Legislative Councils in States.**

" 148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

[The Honourable Dr. B. R. Ambedkar]

As honourable Members will see, this new article 148-A provides for two contingencies: (i) for the abolition of the Second Chamber in those provinces which will have a Second Chamber at the commencement of the Constitution; and (ii) for the creation of a Legislative Council in a province which at the commencement of the Constitution has decided not to have a Legislative Council, but may subsequently decide to have one.

The provisions of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

**Prof. Shibban Lal Saksena :** Sir, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A.—

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution' be deleted;

(ii) to clause (1), the following proviso be added:—

"Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be, discussed in Parliament unless at least 14 days' notice of the same has been given.' "

Sir, I was one of those who was opposed to the formation of Upper Chambers altogether. But, the principle has been accepted by this House when it passed article 148 and we have provided for Second Chambers in some provinces—Madras, West Bengal, etc. Therefore, I welcome this provision which enables the Assemblies to abolish those Chambers. In my amendment, I have only provided that once a resolution under this article is brought before the Assemblies, due notice of it must be given. I have therefore said that no such resolution shall be considered by the Legislative Assembly in any State, nor any corresponding Bill shall be discussed in Parliament unless at least fourteen days' notice of the same has been given. It is quite possible that a resolution may be passed without adequate notice. It may be within the knowledge of Members that some times in Parliament, the order papers are received only a day in advance and it is quite possible that unless a fortnight's notice of such a vital amendment is given, some Members may be absent during its consideration for want of notice. I therefore think that it would be better if this principle is accepted; no harm would be done thereby. In fact, I would have wished that we had not made any provision at all for Second Chambers and left it entirely to the Assemblies to decide whether they wanted to have one. What we have done is, we have provided for Second Chambers and also for their abolition.

I commend my amendment for acceptance by the House.

**Shri H. V. Kamath :** Mr. Vice-President, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A, the words 'or for the creation of such a Council in a State having no such Council' be deleted."

Sir, the new article which by way of an amendment has been just now brought before the House by Dr. Ambedkar deals with the vexed question of second chambers. It provides that the future Parliament may by law provide for the abolition of the Council in a State which has such a Council or provide for the creation of the Second Chamber where there is none.

The House will recollect that we have adopted article 148, I believe some time during last year in the November or January session of the Assembly, and after the adoption of this article by the House, the representatives of various provinces were called upon to meet separately and decide for themselves whether their province will have a second chamber or not. I now stand before the House as a representative of a province which happily, voted against a Second Chamber.

*(At this Stage, Mr. President resumed the chair)*

I believe, that of all the provinces in our country, only three, namely, Central Provinces and Berar, Assam and Orissa have voted against the creation of a second chamber in their provinces. The other provinces, I think, have asked for a second chamber. Now, this article which has been brought before us by Dr. Ambedkar seeks to provide for the creation of a second chamber where there is none, of course, if the Assembly of that State decided upon such a course. I personally feel that to this extent this is a reactionary, a retrograde proposal. To provide for the creation of a second chamber where there is none already seems to me to be by no means a progressive measure. We are proud of asserting that ours is a democratic, progressive State. We are now living in the twentieth century when powers of second chambers have been drastically curtailed, where they have not been completely abolished. Even in Great Britain, from whose Constitution we have borrowed so much, the wings of the House of Lords have been clipped to a considerable degree, and the House of Lords today is not what it was twenty or thirty years ago. Here, Dr. Ambedkar wants this House to pass this article which provides that the future Parliament may provide for the creation of a second chamber where there is none. I agree with him in so far as Parliament is empowered to abolish the second chamber where there is already one; but I cannot subscribe to this proposal of his that where there is no second chamber, you might as well create one.

What after all are the arguments for the creation of second chambers ? There are three or four main reasons adduced by the protogonists of second chambers. Firstly, there is the force of tradition in some countries. Happily for our country we have no such tradition. The British, for their own convenience perhaps, introduced this system of second chambers and I hope with the quittal of the British this system also will leave our shores. There is no tradition so far as our country is concerned. There is another reason given *i.e.,* for the adequate representation of interests not sufficiently represented in the Lower House. In this Constitution we have already dispensed with any special representation in the Lower House which obtained in the Government of India Act and earlier enactments. We have provided for a uniform mode of representation and from this new standpoint there is no reason whatever for the creation of second chambers. Another reason given is that it is a check on hasty legislation. Do we really want checks now a days at all ? After all we are well aware that legislation in the modern world is a very cumbrous and elaborate affair—in a democratic world I mean—and a very dilatory process at times. Every Bill has got to pass through various stages, the introductory stage, select committee stage, second reading, third reading, etc. and so many months lapse. We have already experience in this House sitting as Parliament that some Bills have taken as much as more than a year for their enactment and during this period which is prolonged to one year or so, the public at large—not only the House—have got adequate time at their disposal

[Shri H. V. Kamath]

to reflect on the Bill. So there is no necessity for any check on hasty legislation because in a democracy legislation is always well thought out and deliberated upon and has to pass through many stages before a Bill becomes law. Then there is also a fourth argument *viz*., it is a sort of protective armour for the vested interests. We certainly are not going to allow vested interests to influence our economy and to that extent I feel the creation of second chambers is a retrograde proposal. In short, I feel that the second chamber is either superfluous or pernicious as the French politician-philosopher Abbe Sieyes once observed : he said that "if the second chamber agrees with the first chamber it is superfluous and if it disagrees with the Lower House, then it is pernicious." In either case to my mind there is no case whatever for the creation of second chambers and therefore, I plead with this House that this part of the proposed article 148-A which provides for the 'creation of second chamber in a State where there is none may be deleted and the article without that portion be adopted. I move therefore Amendment No. 86 of List III (First Week) and I hope that the House will see its way to accepting the same.

**Shri R. K. Sidhwa :** Mr. President, the amendment in my name reads thus:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A, the words 'of the total membership of the Assembly and by a majority of not less than two-thirds' be deleted."

The object of this amendment is to delete the words in the original article as proposed by Dr. Ambedkar to the effect "of the total membership of the Assembly and by a majority of not less than two-thirds". My amendment seeks to say that if a bare majority states that there shall not be a second chamber it shall be accepted. When we passed this article 148 the decision was taken in a rather peculiar manner. It was left to the group or each province to decide. The House as a whole did not decide for each province; but whatever that may be the decision has been taken and I am glad therefore that the new article has been added with the object that if the Parliament decides that a second chamber is not wanted, they need not operate upon article 148 which we have passed.

In the country it is the opinion that in the provinces there should not be second chamber and I am very glad that the Drafting Committee has taken note of it, but I am also sorry that they have not got courage to scrap article 148. If they had done so, it would have met the wishes of every one. The second chamber is again a great addition to our finances and it is not in the interests of the country at the present stage to add to our finances which are in a peculiar—I do not use any other word—condition today. Therefore while welcoming this amendment I do not want to fetter the Parliament by two-thirds of the members of the Assembly present and voting or by majority of the total membership. If the members present in the House even by a majority are against the second chamber it will be nullified by the total number of members of the House. I therefore contend that if it is the desire—and it is very clear from this additional article that has been brought by the Drafting Committee that then own views are changed because they are also flabbergasted as to what should be the composition of the second chamber and they could not come to any decision and so they felt 'Throw it to Parliament and let it decide what it likes.' All right, that is the lesser of the two evils. I am prepared to accept it because the House has accepted 148 and we do not want to change the article already passed by the House. It will be a bad precedent. But I do not want them to fetter the Parliament. If the House takes interest, six hundred members will be present; let them decide. Why insist upon two-thirds majority of the total members ? It is very clear that you are not now as strong

as you were before for the second chamber. I can understand second chamber for the Centre. It is very useful and needed. I am in favour of it because all India Bills will be passed and a second chamber is needed; but in the provinces it is an old anachronism and I feel that it should not exist and therefore my amendment seeks that by a bare majority if the House desires that the second chamber should not be there, it should not be there, and it should not be two thirds majority of the total number of members. With these words I move the amendment.

**Sardar Hukam Singh** (East Punjab : Sikh) : Mr. President, Sir, I beg to move :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, for clause (3) of the proposed new article 148-A, be deleted."

Sir, I could not understand why this clause was being added. The explanation that has been given now, that it is to facilitate the procedure that might be required for abolishing or creating Second Chambers, has not convinced me of the utility of this clause. Already provision was made in clause (2) of article 304 that :

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose."

and so on.

In the first instance, I do not see that there is much difference between this provision in clause (2 of article 304 and the one now proposed, except that in article 304, a Bill was to be initiated by the Legislature of the State, and then a majority of total membership was required, and then ratification by Parliament by a majority of total membership was needed. What is desired now is that a resolution instead of a Bill has to be passed by the State Legislature and it should have the majority of total membership, and then again, "law of Parliament" by a bare majority instead of "ratification by a majority of total membership". That is the difference which is now sought to be introduced.

Now, with this clause, we are, I must say, opening out large discretion for the Parliament or for the party in power to use this procedure capriciously, and at any time that it likes. Why should this be left to the whims and caprices of the party that whenever it sees that the Legislative Assembly is suitable to it, it might eliminate or abolish the Second Chamber, and whenever it seems that it is not desired, or when it seems that the Legislative Assembly is not prepared to co-operate with it, then it might create a second chamber so easily as is sought to be done now by a bare majority ? Even if the procedure now laid down in the fresh article 148-A be taken up, that the Bill should be passed by a bare majority, even then, this could be a substitute for clause (2) of article 304, and there is no need for putting this clause (3) that it shall not be considered as an amendment of the Constitution. In my opinion, we should not allow these changes to be made so easily. Once a second chamber is created, it should not be easily abolished. Therefore, my amendment before the House is that clause (3) of this article be omitted, that it should not be left to the discretion or caprice of Parliament to create or abolish it at any time that it likes, this part of the Constitution.

**Dr. P. S. Deshmukh** (C.P. & Berar: General) : Mr. President, Sir, I support the point of view that has been urged by several Members before me, that the provision for second chambers in the States is completely out of date and an anachronism. However, we have to take notice of the fact that certain States have already been given second chambers. Now the question is whether we should legislate and have an article in the Constitution for either

[Dr. P. S. Deshmukh]

the abolition or the creation or introduction of second chambers in the remaining States also. As has been pointed out by Sardar Hukam Singh just now, there was already contemplated a provision in the Draft—article 304 clause (2), by which it was possible to consider this question at a later stage, both by the Legislative Assemblies of the States and then after it was considered by them, a recommendation was to come before Parliament. Now, in addition to the various reasons that have already been advanced by my Friend Mr. Kamath, Mr. Sidhwa and Sardar Hukam Singh, I would only like to say that there are a few additional reasons why this article should not be incorporated in the present Constitution, and one of the principle reasons which I want to advance is that after all, the provision of second chambers was intended for the safeguarding of vested interests. But while this Constitution is being fashioned here, we are not sitting still. We are as a Government pursuing policies and giving effect to our intentions in various ways. The rulers of Indian States have been removed, zamindaries and jagirdaries are on their way to dissolution, and other vested interests are also rapidly being put into the melting pot. The second chambers were intended for some such so-called stable elements in society—some vested interests—which it was considered would work as a salutary check against radical changes in the Government or the policies of the State which would be more harmful and less beneficial to the State as a whole. But my contention is that there is no such person now who will adequately represent this orthodox or so-called stable elements in the society, these vested interests, which would contribute to the stability of the State. That being so, it is not surprising that when we discussed who should compose the second chamber, who should sit as representatives in these second chambers, we were really at our wist end, and all that we could think of were representatives elected by the various local bodies and Assemblies to be given seats in the second chambers. The municipalities, Local Boards, Gram Panchayats, etc., it was proposed should elect on their own behalf, certain representatives and they it was thought, will be proper members to sit in the second chambers. As a matter of fact, we have not, we will progressively have, none of those special interests to sit in the second chambers, as could be deemed proper and desirable. That being so, I think the proposed provisions in this respect in the present Constitution and the policy that we are pursuing should be considered a little more carefully, and I feel that that consideration will lead the House to the conclusion that there is no room anywhere for second chambers. If this is not acceptable, then I would make a second suggestion and that is that let the evil, be allowed to rest where it is, and it should not be allowed to spread and enlarge, and from that point of view, I support the amendment moved by Mr. Kamath, that there should be no provision for the creation of a second chamber where it does not at present exist. Let there be a provision for the abolition of second chambers, but there should not be any provision for their creation. I hope this point of view would be acceptable because otherwise we would probably be accused of taking away by one hand the powers that we are anxious to give to the masses by the other. It may be' argued that the second chambers have not proved detrimental to the cause of the progress of the people so far and since we have had some experience of the second chamber existing in the last twelve years nobody has very seriously complained against them. But I do not think that would be the situation when we work the new Constitution. I am sure every time they will be used for various purposes that will impede the progress of the nation. The one fact which will make this difference is that we are introducing adult franchise. The composition of our Lower House hereafter is going to be totally and radically different from what we have at the present day and the policy that would be pursued by these representatives sitting in the Legislative Assembly will be considered harmful by a certain set of people. If this set of people happen to be in the second chambers there will be a lot

of impediment, lot of harm to the interests of the masses as a whole. I hope therefore that in any case the evil will not be permitted to enlarge itself and that the provision should be confined only to the abolition of those second chambers which have already been provided for.

**Shri Jaspat Roy Kapoor** (United Provinces : General) : Mr. President, Sir, I would like to accord my support to the adoption of article 148-A. I thought the adoption of this article would have gone a long way to satisfy those of us who were opposed to the introduction of Upper Houses in the provincial Legislatures. But I am surprised to find today that such friends of ours are now opposed to the adoption of this article. We have already adopted article 148 laying down that in the provinces which are mentioned therein there shall be a second chamber. Article 148-A gives even to such provinces the liberty at any subsequent date to abolish those chambers if they consider it necessary and desirable in the light of the experience which they may gain in course of time. This article should, therefore, have been welcome to those friends of ours who were opposed to the introduction of Upper Houses in those provinces which have been mentioned in article 148 as providing them another opportunity to move for their abolition in the Legislative Assembly concerned. This article is good and useful even for those provinces who have not so far decided to have an upper chamber. If subsequently, in the light of the experience gained, they consider it necessary and advisable to have for their provinces Upper Houses this article will enable them to have an upper chamber too and come in line with the other provinces which have decided to have an upper chamber. Therefore, from every point of view the incorporation of this article is a useful one. But I do wish that it were possible for the Honourable Dr. Ambedkar to accept at least one part of the amendment which has been moved by my Friend Prof. Shibban Lal Saksena. In part 2 of his amendment (No. 85) he desires that a proviso be added to this article which runs thus :

> "Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given."

What Mr. Shibban Lal Saksena suggests is nothing very novel. We have already, while dealing with several previous articles, accepted the procedures suggested in this part of his amendment. The resolution relating to the abolition or creation of an Upper House in a particular State is obviously in the nature of an extraordinary resolution and as such it is necessary that such a resolution before being made in the Legislature must be given due notice of. In this connection I would like to draw the attention of my honourable Friend Dr. Ambedkar to article 50 which we have adopted and which deals with the impeachment of the President. With regard to that, we have laid it down that a resolution whereby the President is to be impeached must be given notice of at least fourteen days before the date on which such a resolution can be discussed in Parliament. Article 50(2) says:

> "No such charge shall be preferred unless the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice in writing etc."

Similarly, in article 74 we have laid down a similar condition with regard to the moving of a resolution relating to the removal of the Deputy Chairman of the Council of States. Yet again, under article 77 which deals with the removal of the Speaker or the Deputy Speaker of the House of the People it has been laid down that a resolution demanding the removal of the Speaker or the Deputy Speaker must be given notice of at least fourteen days in advance of the day on which the resolution would be discussed. There are other similar

[Shri Jaspat Roy Kapoor]

provisions in the Constitution which we have already adopted wherein we have adopted the procedure contained in part (2) of Mr. Shibban Lal Saksena's amendment (No. 85). It may be said that it is not necessary to provide such a safeguard in this article because even if a resolution to this effect is passed by the Legislature of a State it will have absolutely no effect unless and until legislation to that effect is enacted by Parliament. True, it is so. But then why should we leave a loophole like this ? If by giving only two or three days' notice as an ordinary resolution under the ordinary procedure governing the business of the Assembly of any State such a resolution dealing with this subject on which opinion is considerably divided is brought up and passed by a snatch vote at a time when the House is thinly attended, will it not lead to great squabbles between members of that Legislature? The only remedy open to the losing party will be to approach the Parliament and represent that the recommendation of the Assembly should not be accepted and that no Bill to that effect should be proceeded with in Parliament. Well, Sir, we should not leave such a loophole. We should not fail to make a provision like the one which has been suggested by Shri Shibban Lal Saksena lest we throw open a ground for squabbles and quarrels between the members of any particular Legislative Assembly.

There is no point of principle involved herein, to which my honourable Friend Dr. Ambedkar, should object. I consider that it is necessary and desirable that the suggestion contained in part 2 of Shri Shibban Lal Saksena's amendment should be accepted.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to support the new article 148-A as moved by Dr. Ambedkar. But I am not in favour of the provision that Parliament may by law provide for the abolition of the Legislative Council where it has such a Council. It is all right to vest it with the power to create a Council in a State where there is no such Council. I do not think that the establishment of a second chamber is necessarily a retrograde step. It all depends on what kind of powers you are going to vest in this body. It also all depends on what kind of members you are going to bring into the Legislative Council. Personally, I feel Sir, that having due regard to the political facts of our life, realizing fully well that for the first time in our political history we are going to have an adult franchise which is a leap in the dark, and which I consider to be a complete subversion of all that is good and noble in Indian life, and which I consider to be dangerous to the stability of the State. I consider the establishment of a second chamber as desirable and useful for all purposes.

Sir, it is utter simplification of politics to say that if the second chamber agrees with the Lower House, it is superfluous : if it disagrees then it is pernicious. These two words "superfluous" and "pernicious" do not exhaust the entire universe of discourse in politics. There are other shades which must be kept in view.

Sir, I shall speak more when I come to article 150.

**The Honourable Dr. B.R. Ambedkar :** I do not think any reply is called for.

**Mr. President :** I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

The question is

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A—

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution be deleted;"

The amendment was negatived.

**Mr. President :** The question is:

"To clause (1), the following proviso be added:—

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given'."

The amendment was negatived.

**Mr. President** : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A the words 'or for the creation of such a Council in a State having no such Council' be deleted."

The amendment was negatived.

**Shri R. K. Sidhwa :** Sir, I beg leave to withdraw my amendment.

(The amendment was, by leave of the Assembly, Withdrawn)

**Mr. President :** The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments clause (3) of the proposed new article 148-A be deleted.' "

The amendment was negatived.

**Mr. President :** The question is :

"That new article 148-A be adopted."

The motion was adopted.

New Article 148-A was added to the Constitution.

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## Article 150

**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

That for article 150, the following be substituted :—

"Composition of the Legislative Councils"

"150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five percent. of the total number of members in the Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe."

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not, go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain a principle which has already been abandoned in tile composition of the Upper Chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now, I must confess, that the Drafting Committee could not come to any definite conclusion as to the