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UNITED NATIONS  
ECONOMIC & SOCIAL COUNCIL  
PREPARATORY COMMITTEE

of the  
INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

FIFTH MEETING

of the

SUB-COMMITTEE OF COMMITTEE II

on

QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROL

held in

Room 230

on

Monday, 18th November 1946

at 10.30 a.m.

CH. IRMAN: DR. H.C. COOMBS (Australia)

(From the Shorthand Notes of  
W.B. GURNEY, SONS & FUNNELL,  
58 Victoria Street,  
Westminster, S.W.1.)

THE CHAIRMAN: Before we commence our discussions, I will ask the Rapporteur to tell us how his work is going, so that we can plan our programme accordingly.

THE RAPPORTEUR (Mr. Meade): You will remember that when we started, I think six days ago - it seems like a century to me! - we decided to start on the balance of payments part, which is really articles 20, 22 and 23, and I think they have come on quite a lot. There are no doubt particular points which delegations will want to raise on them as we go through them, but they presented a very difficult problem because we started with very widely divergent views on these articles which were put in by a large number of delegations. I have tried, completely on my own responsibility, to put in a draft of these articles, which I hope may prove a basis for a general agreement, with due changes here and there. You will see that in Article 22, in 2a, there is one very important point on which I have not felt sufficient confidence to put in a single draft, but have put in three alternatives, the last one being a compromise. One of them - whether we should take that article or the sub-paragraph 2 (a) today or this morning, or have another shot at it out of school first of all - is a matter for the Committee to decide. That is a point we might consider.

Then we are left with Articles 19 and 21, which are less the balance of payments and more the commercial policy side of it. On 21, as you know, the Rapporteur has really not done anything. There was a discussion, you will remember, at which two points of view were put forward, and a compromise was suggested, and it was agreed that the United States and the United Kingdom delegations should put in a joint draft, which is here, and which was looked at, you will remember, on Friday night; and I have incorporated the few changes which were suggested, but there were certain global reservations where the people would want second thoughts on it. Article 19, which is the remaining one, I think, is in a less satisfactory position, and I expect your Rapporteur's work has been less satisfactory on this Article than on the others. The procedure which I attempted to adopt was to put in an Article for discussion which was practically the same as the United States draft, with a few changes in it, which in my judgment I thought would meet with general approval, and my idea was that the Article should come forward for discussion so that the other delegations could bring up in turn their points and they could be thrashed out here. I found it a very difficult Article as Rapporteur because it is quite impossible for me to decide myself which points meet with general assent and which do not, apart from having a meeting of the whole Sub-Committee to discuss it; and I am afraid the procedure I have adopted has caused inconvenience to a number of delegations, and I think in particular to the Brazilian delegation, and I apologize to them for any inconvenience I may have caused in this way; and I hope I have already apologized to the Chilean delegation for this sort of procedure. What I would suggest - the only thing I can suggest - is that we should have another "go" at Article 19: take this text, I suggest, as it stands now, get together all the delegations which have an interest in it, and go through it, and then the Rapporteur could be told by the Committee which were the points which had general approval and should be put in the text, which were the points which delegations were prepared to drop, and which were the points on which delegations wished reservations to go in. I find that in the short time at my disposal it would be quite impossible for me to do that "out of school", because I should have to ask every delegation about their points, and I think it can only be done in general Committee. I apologize if

I have wasted the time of the Committee by trying to adopt this other procedure, and I hope we might be able to fix up another meeting after dinner tonight to go through 19 again.

MR RODRIGUES (Brazil): As far as the Brazilian delegation are concerned, there is no reason for apology. We understand all the difficulties of reporting.

THE CHAIRMAN: I think we can agree with the Rapporteur that there are a number of issues affecting Article 19 upon which the views of the Committee collectively have not been formally stated, and I agree that it is desirable that we should have a further meeting for the express purpose of considering those points item by item and disposing of them, either by incorporation in the revised draft or by their being dropped or by their being reserved by the country concerned; and if it is acceptable to the Committee I would suggest that we adopt the Rapporteur's proposal and meet this evening at 8.30 and that we invite to the meetings the representatives of the delegations which have submitted specific proposals on this matter in so far as they are not members of the Drafting Committee. Is that agreeable? (Agreed.) Regarding the other Article, 22, to which Mr Meade referred, where he had found difficulty in attempting a reconciliation by compromise of alternatives that have been submitted, I understand that delegations have during the weekend been giving some consideration to this, and that it might be possible out of school, as Mr Meade puts it, to reduce the number of alternatives at present before the Committee on draft Article 22, paragraph 2(a); and I suggest, therefore, that we defer consideration of the draft Article 22 also to this evening, by which time perhaps we may have made further progress. Is that acceptable? I suggest, then, that we turn now to Article 20.

THE RAPPOREUR: That is what I should propose. I would like to make a very short remark on it. Paragraph 1 is the general proposition that countries can use restrictions to safeguard their balance of payments. Paragraph 2 is the guiding principles or criteria or whatever one likes to call them. They have caused some difficulty. I hope that this is an acceptable compromise of the different views. 3 is a rather new article which attempts to resolve many difficulties. I think we must take it as it comes along. I have attempted to

meet the Australian point about having certainty in advance. Paragraph 4 is a very important one. We have had a communication from the Joint Committee as well as suggestions from many delegations here - the French, the Indian, the Brazilian and others, I think - that one must be able to use these restrictions selectively, and 4 is made to cover that point. 5 and 6 are more or less the same as the United Kingdom draft from which we started, but I believe that is all that remains.

THE CHAIRMAN: Then we take paragraph 1 of Article 20. Perhaps the Rapporteur might read this one.

(Paragraph 1 was then read by the Rapporteur.)

Are there any comments?

MR BARADUC (France)(Interpretation): Mr Chairman, at our last meeting I had made a reservation concerning the first sentence of this first paragraph, but after thinking it over the French delegation at this Conference has decided that it could accept this paragraph. We may have some suggestions of modifications to be submitted to the Drafting Committee or at our next meeting of the Preparatory Conference in Geneva, but at any rate the French delegation intends to recommend this text to its Government.

THE CHAIRMAN: Any further comments on this paragraph? Is it accepted? (Agreed.)

(Paragraph 2 was then read by the Chairman.)

Are there any comments?

MR RODRIGUES (Brazil): Mr Chairman, I should like to have inserted in 2(a)(i), after the word "in" in the second line of (i), the words "the level of".

THE CHAIRMAN: Paragraph 2(a)(i) would then read: "to stop or to forestall the imminent threat of a serious decline in the level of monetary reserves or".

Is that amendment agreed? (Agreed.) Are there any further comments?

MR CLARKE (U.K.): I would like to raise a point, if I may. I think it is covered in the draft, but I would like to make certain of it. Supposing a country was adopting import restrictions under this paragraph and wished to reduce the quota on one product but increase the quota on another product, leaving the net effect the same, I take it that that would not be regarded as intensifying the present restrictions? That is to say, one treats the existing restrictions in this context as covering the effect of the whole field of restrictions which

countries apply under this Article rather than the individual items? I think the text amounts to that. If it did not mean that, it would no doubt say "an existing restriction" instead of "restrictions".

MR GUNTER (USA): That would certainly be my interpretation.

THE RAPporteur: That was in my mind, and I feel it is completely safeguarded in view of paragraph 4; because paragraph 4 says that in doing this you can select imports. It seems to me that that makes it doubly certain.

THE CHAIRMAN: Is there anything else on paragraph 2 (a) ? May I take it then, that paragraph 2 (a) is accepted ? (Agreed)

We pass to paragraph 2 (b).

(Paragraph 2 (b) was read)

THE RAPPOORTEUR: There was a question about the words "relax them progressively".

THE CHAIRMAN: I think we shall have to give the delegate for Brazil a Portuguese text of this paragraph which makes it sensible in Portuguese as well as in English.

THE RAPPOORTEUR: I think it is all right in English.

MR BARADUC (France) (Interpretation): May I make a suggestion ? We might, perhaps try to make a French translation of Article 20 and maybe then the translation from French into Portuguese might present less difficulty.

THE CHAIRMAN: May we take it that in English, at any rate, paragraph 2 (b) is accepted ? (Agreed). We pass to paragraph 2 (c).

(Paragraph 2(c) was read).

THE CHAIRMAN: Are there any comments ?

MR BARADUC (France) (Interpretation): This means the definition of what we mean by "token imports".

THE CHAIRMAN: May I take it that paragraph 2 (c) is accepted? (Agreed).

We pass to paragraph 3 (a).

(Paragraph 3 (a) was read).

THE RAPPOORTEUR: The problem arose of an attempt to compromise, really, between the extreme view (I am not sure that it is held by anybody in this extreme form, but I am pointing the issue ) that no action should ever be taken without prior consultation and the other extreme view that such prior consultation is in all cases difficult, if not impossible. What the draft says is that members who are imposing restrictions under this article for the first time, as it were - bringing themselves under this article, not having been under it before - shall as a general rule consult the organisation and through it the International Monetary Fund, before imposing restrictions, on these questions of the nature of the difficulties and the

various alternatives, corrective measures and the effects of these measures on other countries, <sup>but</sup> that in cases where such prior consultation is impracticable they should consult, as soon as possible after imposing the restrictions - the idea being that there may be cases in which you have to take action so quickly that it would be impossible to consult first. I hope this will prove an acceptable compromise of the views.

THE CHAIRMAN: Are there any comments on paragraph 3 (a) ?

MR PHILLIPS (Australia): There might be other circumstances than the urgency of the crisis which make consultation impracticable. I have not anything special in mind.

THE RAPPORTEUR: I imagine it would be the urgency of action that would be most likely to cause prior consultation to be impossible.

THE CHAIRMAN: Is there any further comment ? May I take it that this paragraph is accepted ? (Agreed). We pass to paragraph 3 (b).

(Paragraph 3 (b) was read).

MR LOKANATHAN (India): Mr. Chairman, I should like to suggest a small amendment here. I would suggest that the first line of (b) should be changed. It now reads: "The organisation may at any time invite any member" etcetera. I suggest it should be amended to read: "Any member imposing import restrictions under paragraphs 1 and 2 of this article shall enter into consultation with the organisation within 30 days after the imposition of such restrictions. The organisation shall consult the International Monetary Fund and any other appropriate International specialised agencies in particular in regard to the alternative methods available" etcetera, etcetera. The reason I suggest this amendment is that it seems to me we shall be taking a very grave step if, when a country imposes quantitative restrictions, nothing is done about it, because it seems to me that this is the most crucial matter in the whole document. Quantitative restrictions are supposed to be undesirable. If they are undesirable then we ought to use them as the last resort, and I suggest that when a country is forced by circumstances to have recourse to

quantitative restrictions, when being permitted to do so it must certainly enter into negotiation with the organisation in order to see how far the quantitative restrictions may be removed. I may also point out, in this connection, that in the original American draft Charter, in article 20 paragraph 3 (b), that idea was put in and I think there is some sense in it because there should be nothing automatic in the idea of quantitative restrictions. I think, in their preoccupation with their balance of payments difficulties, the British delegation perhaps have not realised that this is going to open the door to many abuses and we are likely to have the same situation which developed after 1931, and if Britain, because of a difficulty does this, other countries, with less justification, will follow, and we are going to be again in the same situation with which we were confronted in the 30's. I therefore suggest that there should be some regulation by which, when a country employs quantitative restrictions which it is allowed to do without reference to the organisation in the first place, having done so it must seek consultation immediately. Of course, the article as drafted here simply permits the organisation to invite any member to consult with it; it says: "may at any time". I am not satisfied with that. I think it is necessary that the world should know that here is a very difficult situation and therefore that once you open the door to quantitative restrictions every country will follow.

MR GUNTER (USA): There are really two situations. This article, as it now stands, gives the organisation the right to invite any member to come in and consult it at any time the member thinks appropriate. I believe the delegate for India has in mind a situation in which a country is intensifying those restrictions and there is nothing----

THE CHAIRMAN: Or putting on restrictions - and presumably where prior consultation has not taken place.

THE RAPPORTEUR: That point is taken care of in paragraph 3 (a).

MR GUNTER (USA): That is right. The position with regard to new restrictions is taken care of in paragraph 3 (a). It is on the question of intensifying restrictions where there is no automatic consultation unless the organisation

invites it. I think that is the point of view the delegate for India really has in mind, and I wanted to limit it down to what I believe he had in mind.

THE CHAIRMAN: Is there any comment on this point?

MR HELMORE (UK): I think we might meet part of the Indian delegate's point by going back to article 3 (a), which deals with the imposition of new restrictions where there is first of all a requirement that a member should consult as soon as possible after imposing such restrictions. We might tighten up the words "as soon as possible". If it is any help we might say "within 30 days" instead of "as soon as possible" there. That would meet one half of the argument.

I should have thought that the words "as soon as possible after imposing restrictions" were in practice likely to be tighter than "within 30 days".

MR LOKANATHAN (India): That is right. I was thinking only of the second part because I want the organisation to know that it is really getting into a difficult situation. I would say "as soon as possible" here also, instead of "30 days". I do not want the matter to be left to the organisation; it is rather that the members should be called upon to go to the organisation so that the rest of the world might know.

THE CHAIRMAN: That is where the restrictions are being intensified?

MR LOKANATHAN (India): Yes.

MR. HELMORE (UK): I suggest we do not want to drop the first sentence of paragraph (b). That sentence is very valuable in that it gives the Organisation the right to institute consultation at any time when these things are being used, lest people should drop into the bad habit of saying, "we had them last year, so we will have them this year." It is really the intensification of existing restrictions which is the only situation not covered.

MR. CLARK (UK): I think the point of the Indian Delegate could be met by adding at the end of the first sentence of paragraph 3(b) the words: "and shall invite a member to consult as soon as possible after a member makes a substantial intensification of its existing restrictions." I do not know what the English would be, but that is the idea.

MR. HELMORE (UK): Would this drafting be all right: "and shall invite a member substantially intensifying any such restrictions to consult accordingly within 30 days." I am not quite sure whether we ought not to add "after such intensification has taken effect," but it would make the sentence clumsy, and I think the meaning is clear.

MR. CLARK (UK) We regard that as an improvement.

THE CHAIRMAN: Is there any comment on this suggested amendment to meet the Indian Delegate's point? As there are no comments, I take it that the words to that effect are to be included. Are there any other comments on paragraph 3(b)?

MR. HELMORE (UK): I have a very minor comment which I do not think need be taken into account by the Rapporteur. I want to point out that this is the fifth way of referring to "international specialised agencies" I have come across in various parts of this draft Charter. We havered a long time whether it should be "competent international specialised agencies". Now it is "appropriate international specialised agencies." It is a point which indicates that these four words should not be regarded as sacrosanct. I hasten to suggest that the word "competent" was suggested to us by the French Delegate.

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THE RAPPORTEUR: The Legal Adviser has just been through the Report of Committee I on employment, and has removed the word "international" which precedes "specialised".

MR. HELMORE (UK): This is obviously a point to which the Interim Drafting Committee will have to pay attention.

THE RAPPORTEUR: I suggest we leave it to them.

THE CHAIRMAN: I take it, then, that paragraph 3(b) is adopted.  
We come to paragraph 3(c).

THE RAPPORTEUR: The paragraph reads as follows:

"Any Member before it imposes new or intensifies existing restrictions on imports under paragraphs 1 and 2 of this article may, if it so desires, consult with the Organisation with a view to obtaining the previous approval of the Organisation for restrictions which it intends to impose or for the conditions which would justify it in applying restrictions in the future. The Organisation shall invite the International Monetary Fund to participate in the consultations... as a result of such consultations, the Organisation may approve in advance the imposition or intensification of import restrictions by the member in question or the conditions which would justify it in applying restrictions in the future insofar as the general extent, degree and duration of the restrictions are concerned; and to the extent to which such approval has been given, the action of the member imposing restrictions shall not be open to challenge under paragraph 3 (d) of this article."

Perhaps I might add that this is, of course, the place where I have tried to take account of the desire of the Australian Delegation to be able not merely to get prior approval for a particular set of restrictions, but to get prior approval for conditions in which restrictions might be justifiable in the future. Under this Article, my idea is that it would be possible for a country, but not necessary for a country, to go to the Organisation, and in consultation with the Fund, to get an agreement between that member and the Organisation, that if ever its reserves fell below such and such a specified figure, it would be justified in putting on restrictions to keep them up to that figure.

MR. HELMORE (UK): I have a purely drafting point. I doubt whether it is good English, good French or good Portuguese to ask the Organisation

to express its approval of conditions. I should have thought that conditions which justified the imposition of restrictions could only meet with the severe disapproval of the Organisation. I do not know what effect it would have anyway. Could I suggest that after "or" we should make it read "or for the imposition in the future of restrictions under specified conditions" -- in line 7?

MR. BRONZ (USA): There is the same constructions about seven lines further down, which will require to be altered.

THE CHAIRMAN: I think that in the second part it can be left out. I do not think it is necessary to repeat it there, because it reads "as a result of such consultations, the Organisation may approve in advance the imposition or intensification of import restrictions by the Member in question."

THE RAPPORTEUR: That would mean leaving out the next part?

THE CHAIRMAN: Yes, and go on "insofar as...."

THE RAPPORTEUR: That would greatly simplify the drafting.

MR. HELMORE (UK): May we have the exact words?

THE RAPPORTEUR: The last sentence would read: "As a result of such consultations, the Organisation may approve in advance the imposition or intensification of import restrictions by the member in question" ... we would then leave out the words "or for the conditions which would justify it in applying restrictions in the future".... and go on "insofar as the general....etc."

THE CHAIRMAN: I take it those two drafting changes are agreed.

MR. LOKANATHAN (India): I have another difficulty. While I endorse fully the last part of the sentence "to the extent to which such approval has been given the action of the Member imposing restrictions shall not be open to challenge under paragraph 3 (d) of this Article," I feel that paragraph (d) of this article has really two aspects, the challenging aspect and the suffering aspect. I quite endorse that no country should

be allowed to challenge, but I fail to see how the Organisation should be prevented from giving some relief to the suffering country. Therefore, I feel that either in (d) or in (c) we should make it possible for the member to appeal in such cases for relief. This is important because you do not even provide for consultation of the affected countries in (c). It is only the Organisation that takes a decision. It may be it is the right decision, but the affected country may not have been consulted. Therefore, I have a feeling that some provision should be made whereby, while the action of the member should not be challenged, the effect of that action should be open to consideration in so far as that particular member is injuriously affected.

THE R.PORTEUR: I do not think it entirely meets the Indian Delegate, but I would like to make the point clear. Previous approval under paragraph 3 (c) of the general extent, degree and duration of the restrictions would not relieve the member from the challenge that it was imposing them in a manner which unnecessarily damaged the commercial interests of another member. In other words, the approval is only for the general extent of the restrictions. If they were being applied, even within that extent, in a way which caused unnecessary damage to the interests of any other member, the other member could still challenge them. I am not sure that meets the whole of the point of the Indian Delegate, but I think it meets part of it.

MR. HELMORE (UK): Would an amendment to this effect help? I think the intention of the Rapporteur in putting in the words "to the extent to which such approval has been given" was to meet precisely this point; that is to say, the Organisation would only say, "We agree that you are in difficulty with your balance of payments, and restrictions are justified. We give you a certificate in advance that your situation complies with the conditions expressed in paragraphs 1 and 2, but the words "to the extent" were meant to safeguard unnecessary damage to commercial interests."

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MR. LOKANATHAN (India): My difficulty comes in here. How would the member justify that action on the grounds of being injuriously affected?

MR. HELLMON (U.K.): I suggest, as an amendment, that at the end of 3(c) we should add: "shall not be open to a challenge under paragraph 3(d) of this Article insofar as it relates to conformity with paragraphs 1 and 2 of this Article, or Articles 21 and 22." And I am not quite sure that we need leave in "Articles 21 and 22." Perhaps the Rapporteur could tell us to what extent the approval of the Organization was given. Was it only to relate to paragraphs 1 and 2 of this Article?

THE RAPPOURTEUR: I should imagine so. I did not have in mind, and I certainly think we should not have here in mind that the Organization could give advance approval to break the rules against non-discrimination being laid down, but merely advance approval of the general degree of the restrictions. What I had in mind was that a member could say, "Would you agree that I am in balance-of-payments difficulties and that I should be justified in restricting my imports in June to 95 per cent of what they were last year, say for the next year or 18 months?" The Organization might say yes to that, and, if it said that, then another member could not challenge that part of the decision but it could challenge any other part. Within that it could challenge the member by saying, "You are restricting by more than 95 per cent." In other words, "You are doing more than you have approval for." It could also challenge the member by saying, "You are only restricting to 95 per cent but you are doing it in such a way that it causes unnecessary damage."

MR. LOKANATHAN (India): When the Organization gives that sanction, would it take care to ensure that no unnecessary damage to the commercial interests of any country will be inflicted?

MR. GUNTER (U.S.A.): I believe that the words suggested by the United

Kingdom delegate meet the point, and I think they are an improvement on the draft.

MR. HELMORE (U.K.): That is to say, add the words "insofar as it relates to conformity with paragraphs 1 and 2 of this Article" at the end of 3(c)?

MR. LOKANATHAN (India): That meets my point.

MR. GUNTER (U.S.A.): Yes.

MR. HELMORE (U.K.): Then on this side of the table, at any rate, (including the Rapporteur) there is agreement on adding those words, Mr. Chairman.

MR. PHILLIPS (Australia): I doubt whether they are necessary, but I have no objection. That is certainly the intention.

THE CHAIRMAN: Are there any other comments on that amendment?

M. BARADUC (France) (Interpretation): The French delegation agree.

THE CHAIRMAN: If there is nothing further on paragraph 3 (c), I will read paragraph 3 (d). This is as follows:

"(d) Any Member which considers that any other Member is applying import restrictions under Paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of paragraphs 1 and 2 of this Article or of Articles 21 or 22, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organisation; and the Member imposing the restrictions undertakes to discuss the reasons for its action. The Organisation may, if it is satisfied that there is a prima facie case, consult with the International Monetary Fund on any matter falling within the competence of the International Monetary Fund, and may thereafter recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 of this Article or Articles 21 or 22, or in a manner which unnecessarily damages the commercial interest of another Member. If restrictions are not withdrawn or modified in accordance with the recommendation of the Organisation within sixty days, other Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions, as the Organisation may specify."

Are there any comments?

MR. BRONZ (U.S.A.): I am afraid we may have some difficulties with the prima facie phrase. We appreciate that the delegate who

presented it was trying to clarify the situation, but this provides that the Organisation must be satisfied that there is a prima facie case before it consults with the I.M.F. Now the information about the state of a member's balance-of-payments is frequently known only to that member and to the Fund. The information may be given to the Fund on a confidential basis. The complaining member may, therefore, not be in a position to know with sufficient precision how to make out a prima facie case. The International Trade Organization, not having the confidential information, could similarly not find there is a prima facie case, and the case might be dropped simply because the only organisation with the information had not been consulted up to that point.

THE CHAIRMAN: Can the Rapporteur tell us why this phrase was included?

THE RAPPORTEUR: At our meeting on Friday night, the suggestion was made by the delegate of Chile, and I have put it in for the consideration of the Committee. I think the Delegate of Chile had in mind that the member making the complaint ought<sup>not</sup> to be able to make a frivolous complaint, but should have a general prima facie case and establish its case before action was taken.

SEÑOR VIDELA (Chile): We felt it would follow the general rule that the burden of proof shall be on the accuser. But if there is not agreement on this, I will reserve it as a suggestion made by my delegation.

THE CHAIRMAN: The point of the U.S. delegate is that it might not be possible for the accusing country to have the information on which to base a case.

MR. BRONZ (U.S.A.): Perhaps we should draw some distinction as Mr. Helmore's phrase in paragraph (c), by saying that the complaining country should make out a prima facie case as to its commercial interests being damaged, but not necessarily as to the balance-of-payments situation, on which it may not be in a position to make out such a prima facie case. Perhaps something to that

effect would meet the point?

THE CHAIRMAN: That would mean - if it were satisfied that there was a prima facie case that the complaining country's commercial interests were being unnecessarily damaged. That would not do.

THE RAPporteur: Not "unnecessarily" but "being damaged".

MR. PHILLIPS (Australia): The case might be met by moving the phrase down three lines, and making it read: "The Organisation may consult with the International Monetary Fund on any matter falling within the competence of the International Monetary Fund and, if it is satisfied that there is a prima facie case, may thereafter recommend...."

MR. HONZ (U.S.A.): No, you want more than a prima facie case; you want a real case.

MR. PHILLIPS (Australia): That is true. I am sorry.

THE CHAIRMAN: Supposing we said, "provided that the Organisation, if it is satisfied that there is a prima facie case that the country's interests are being affected, considers the complaint" and then go on to say, "the Organisation may, in its consideration, consult the International Monetary Fund"?

THE RAPporteur: That would get it.

MR. LUTHRINGER (I.M.F.): I think it is very important in this section there there should really be no limitation on the discussion of this balance-of-payments situation with the Fund, and I am not sure that even this amended version would not do it. So far as the Fund is concerned, it would much prefer, if feasible, to have in this section a right on the part of the Organisation on its own initiative to take these questions up with the Fund, because you are dealing with this general balance-of-payments situation. The only effective enforcement which you have is complaint by an injured country, and if you restrict that right in any way, it greatly weakens the application of this section.

THE CHAIRMAN: I do not think the last suggestion which I made would in any way prevent the Organisation from consulting the International

Monetary Fund but would merely limit the obligation of the Organisation to consider a complaint. It would mean that it could ignore a complaint or dismiss a complaint without any further consultation if it were satisfied that no prima facie case had been made. It is true that could not apply - because of the possible inability of the complaining country to have the facts - to the state of the restricting country's balance of payments, and would therefore have the effect of limiting the right of a country to complain about somebody else's restrictions to cases in which it was adversely affected. They could complain on a number of grounds that the restrictions were not necessary, or not necessary at all, or even if necessary, were being applied in a way in which it was unnecessarily harmful to their own interests, but they could not complain on either ground unless they were adversely affected. I am not quite sure whether the Committee would consider that to be a reasonable limitation, but I think there is something equivalent to that in law. Do you not have to show some equivalent?

MR. BRONZ (U.S.A.): Yes.

MR. CLERK (U.K.): If it is that the country's commercial interests are affected; not "unnecessarily".

THE CHAIRMAN: Adversely affected. Unless the country is adversely affected, it has no right. If adversely affected, it has the right of complaint, and that seems to me to be fairly useful, but it prevents the Organisation being flooded with frivolous complaints, and does place, as the Chilean delegate suggested, some obligation on the complaining member to establish something of a case at that.

What would the precise words be then?

THE RAPporteur: I would suggest simply "if it is satisfied that there is a prima facie case that the complaining member's commercial interests are adversely affected".

THE CHAIRMAN: We want to link that with the consultation. That was the point of the representative of the Fund. So that perhaps we might say that "if the Organisation is satisfied that there is a prima facie case that the complaining member's commercial interests have been adversely affected", and so on.

MR LUXFORD (International Bank): Does that mean that if the country cannot establish that its interests are adversely affected the Organisation would have no jurisdiction to consider the case, even though it was satisfied that there was no justification for a balance of payments remedy?

THE CHAIRMAN: It is right back in paragraph 3(b).

MR LUXFORD (International Bank): That is only consultations; there are no sanctions.

THE CHAIRMAN: Apart from that, I think your interpretation is correct.

MR LOKANATHAN (India): It should be consistent with the principles of paragraphs 1 and 2, and under that any member's actions can be challenged.

MR GUNTER (USA): I think the point of the Fund representative is this: that there is nothing in this that would allow the Organisation to initiate action under the complaint procedure, 3(d). That is their point. Is that right?

MR LUTHRINGER (IMF): That was the first part of the point, and since it does not appear feasible to have that in this section it seems to me that anything that may restrict the right of a member to complain is likely to weaken the force of this quite considerably. I suppose no member would have really grounds for complaint unless it could show that its exports were being restricted as a result of this action; but if "prima facie" means anything more than that I think it is difficult to see what it accomplishes.

MR LOKANATHAN (India): As regards the first point, we have to take note of the fact that the Organisation in some way or other is constantly brought into the question. We have it in 3(a), 3(b) and 3(c). Every time it is open to the Organisation either on its own initiative or on the initiative of a member to consider these questions, and therefore the fact is that the

Organisation is always apprised of the fact of a balance of payments difficulty. It is only with regard to the second matter that the question arises whether there should be a prima facie case established.

THE CHAIRMAN: If you assume that a country is applying quantitative restrictions for the protection of its balance of payments it is hard to imagine, however justifiable that may be, circumstances in which it would not be easy for any country which has commercial relations with it to show that its commercial interests were adversely affected. As I see it, the chief virtue (I agree it is not a very large one) is that it does exclude purely frivolous complaints; and the fact that you had to state a case would perhaps deter a country from making a complaint in a case where they thought it likely that the Organisation would uphold the action that had been taken; so that that seems to me to be the issue. I do not feel myself that the limitation expressed in that way is really any limitation on the right of countries to make a complaint; it is largely a procedural thing, which would have the effect of excluding frivolous complaints and of obliging countries to document a case to some extent.

MR LUTHRINGER (IMF): As I understand the explanation, you would feel that so long as a complaining member could establish that it had been adversely affected by this, even if it were not some question of discrimination or harsh application, it would still have the right to complain. I think that would meet my point. I think it would be particularly desirable to avoid anything which would limit the right of complaint. Is not that necessarily correct?

THE RAPPORTEUR: I would agree with your interpretation. I would agree with that solution.

THE CHAIRMAN: Would you read the words as they now stand?

THE RAPPORTEUR: "The Organisation may, if it is satisfied that there is a prima facie case that the complaining member's commercial interests are adversely affected, consider the complaint." Should we not say "it shall then consult with the IMF"?

MR PHILLIPS (Australia): "The Organisation shall, if it is satisfied that there is a prima facie case", and so on. I think you should have a "shall" in there, and then "it may" or "in this consideration it may".

MR CLARKE (U.K.): "It may then, after consultation with the IMF on any matter falling within the competence of the IMF, recommend the withdrawal or recommendation..." I think it should be required to consult with the Fund on matters falling within the competence of the Fund. There should be no "may" about it.

THE CHAIRMAN: Yes.

MR PHILLIPS (Australia) I think that does leave the position, does it not, that the Organisation has got to consult with the Fund even if the case is perfectly clear? As you said earlier, there would be no difficulty in establishing that the complaining member's interests are affected, but it might be a very clear-cut case where the restrictions were perfectly justified or where they were completely unjustifiable. Do we want, then, to require the Organisation to consult with the Fund and to consider the complaint? I suppose it has actually got to consider the complaint to decide whether it is a prima facie case or not. My impression was that you were unnecessarily elaborating.

THE RAPporteur: I do not understand the draft quite that way. As we have it now it would mean that the Organisation, if it was satisfied that there was a prima facie case that the complaining member's commercial interests were adversely affected, would have to consider the complaint. It could stop there. It could consider it and say it is not going any further, if it was not going to recommend against any restrictions. If it is going to recommend against the restrictions it has got to consult with the Fund. It may then, after consultation with the Fund, recommend the withdrawal of the restrictions. So the procedure would be this: the member would complain, the Organisation would have to be satisfied that there was a prima facie case that the complaining member's commercial interests were adversely affected. If it were so satisfied it would have to consider the complaint. If it wanted to recommend the withdrawal or modification of restrictions it would have to consult first with the Fund on the balance of payments. That would be the effect of the draft we now have before us.

MR CLARKE (U.K.): I should have thought that was right, Mr Chairman. I do not think the ITO should be allowed to say a country is saying it is in balance of payments difficulties when it really is not and make a recommendation

accordingly of a very serious character without consulting the Fund first.

As the draft is now, that would be clear.

THE CHAIRMAN: There is consultation in the other case.

MR CLARKE (U.K.): If it decides it wants to turn down the complaint straight away there is no reason why it should consult the Fund.

THE CHAIRMAN: It may still want to consult the Fund and then turn the complaint down.

MR CLARKE (U.K.) Certainly.

THE RAPPOORTEUR: Yes.

MR CLARKE (U.K.): But that would not be cut out by this draft.

THE RAPPOORTEUR: May I read it as it now stands? "The Organisation shall, if it is satisfied that there is a prima facie case that the complaining member's commercial interests are adversely affected, consider the complaint. It may then, after consultation with the International Monetary Fund on any matter falling within the competence of the International Monetary Fund, recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent," etc.

MR VIDELA (Chile): I think it is quite sufficient. The idea of the Chilean delegation is to protect in the same way the other side, because in this paragraph only the right of the complainant is considered.

THE CHAIRMAN: Yes. Is that amendment acceptable? Any further comments on that paragraph?

MR PHILLIPS: I would like to ask the Rapporteur whether "other members shall be released" in the fourth line from the bottom may be taken as including a single member - the possibility of releasing any one member.

THE RAPPOORTEUR: I should take it to be so.

MR PHILLIPS (Australia): I think it should allow that possibility.

THE RAPPOORTEUR: I am not sure; I should have thought this left it to the discretion of the Organisation almost entirely.

THE CHAIRMAN: That, I take it, is what you want?

THE RAPPOORTEUR: Otherwise I think you would have to say "all other members"; "other members" would surely mean that the Organisation could decide.

MR PHILLIPS (Australia): And the decision might be that it was one member.

THE RAPPORTEUR: I should have thought so.

THE CHAIRMAN: To say "other members shall be released" rather suggests that.

It says then "as the Organisation may specify", and whether that applies also to members as well as to restrictions or to obligations I do not know.

You might make it clear by saying "other member or members shall be released", and so on.

MR PHILLIPS (Australia): Yes; something like that.

MR CLARK (UK): How would that read now ?

THE RAPPORTEUR: "and other member or members".

MR PHILLIPS (Australia): "the other member".

THE CHAIRMAN: "the other member or members".

THE RAPPORTEUR: Yes.

MR CLARK (UK): I think this is dangerous. The implication of this is that other members would have had to complain first to be released. The implication of it as amended would be that it would be only complaining members whereas our idea is that it should apply to all members potentially.

THE RAPPORTEUR: "such other members shall be released from such obligations incurred under this Charter as the organisation may specify" - inserting the word "such".

THE CHAIRMAN: Yes. Is there anything else on (d) ?

MR BARADUC (France): Mr. Chairman, I apologise for calling your attention to a matter which is not entirely within our competence as a drafting committee, or even within the competence of Committee II. However, we must consider the fact that we are giving very extensive powers to the organisation. We quite agree to that, but it is necessary to know how this procedure will work and how it will be put into effect, and in order that all members may really trust the organisation I think we should qualify this procedure. I wonder whether we could not set up within the organisation itself a Supreme Court; it would be a kind of Court of Appeal. It would have to see to it that the final decisions of the organisation were impartial, objective and independent. This is not our task, but I believe that as a drafting committee we could submit a resolution along those lines to Committee II which would itself forward it to Committee V.

THE RAPPORTEUR: This sub-committee is dealing only with quantitative restrictions and exchange control, and there are, in a large number of the other parts of the commercial policy provisions of the Charter, references of this kind. I wonder whether it is really the task of this sub-committee to draft such a resolution. It is laziness on the part of the Rapporteur, perhaps, but I feel my hands are very, very full and I wonder whether this is really a matter to be brought up to Committee II for them to forward to Committee V.

THE CHAIRMAN: Would the French delegate repeat the resolution he suggests ?

MR BARADUC (France): Mr. Chairman, I was suggesting that our committee should consider a resolution which would be submitted to Committee II, which would forward it to Committee V, in order that we may study the setting up of a procedure within the organisation and the eventual setting up of a kind of Court of appeal which would make it possible for members to have full confidence in the decisions of the organisation. I quite agree with the Rapporteur that this is not perhaps a matter for our sub-committee, but I should like to call your attention to the fact that we are going to raise this question in the Plenary Meeting of Committee II and most probably Committee II will decide to forward a resolution along those lines to Committee V. Therefore I think we might have anticipated the task of Committee II by working out such a resolution.

MR CLARK (UK): I feel in some difficulty about this, because it does raise very wide questions which go far beyond the sort of thing with which I can deal on this committee. I really am not sufficiently in touch with all that is going on in Committee V, on the other parts of the discussion, to be able to contribute very much to the drafting of such a resolution in this committee. I should have thought it much better to take it to Committee II fully. Our view on this is that in this particular field, at any rate, we favour a strong organisation with strong powers for the organisation. We do feel this is a matter running right through the work of the Conference.

THE CHAIRMAN: I think this question of the powers and constitution of the organisation and the question of special organs for dealing with special functions is a very complex question. It does affect the work of every committee. It raises problems about the structure and methods of the organisation and I think it would be unwise for us to embark upon consideration of it here. It may be that it will be very difficult for us to deal with it, even at Committee II, in full. My own feeling, for what it is worth, is that we shall probably be obliged to leave these questions of organisation pretty substantially untouched at this meeting, because there will be so many issues raised by the various proposals affecting the organisation that I think a good deal of work will need to be done in reviewing the various parts of the

revised articles to see what type of organisation will be required to carry it out. I would suggest to the French delegation that they leave the matter here and perhaps consider the form of resolution which might be considered in Committee II.

MR BARADUC (France): I agree.

THE CHAIRMAN: Is there anything further on (d) ? We pass to paragraph (e).

(Paragraph (e) was read).

THE RAPPORTEUR: One small drafting change will be necessary there. It is the same point as was raised by the United Kingdom delegation on 3 (c) - that the organisation will not approve the conditions which justify the restrictions.

MR PHILLIPS (Australia): Could we say "has previously issued with approval under paragraph 3 (c)" ?

THE RAPPORTEUR: Yes, because it is already covered at the end of paragraph 3 (c) and we need only the barest reference back. "has previously approved such restrictions in advance under paragraph 3 (c)". That would cover it.

MR HELMORE (UK): Yes.

THE CHAIRMAN: It is suggested that it should read "in so far as the organisation has previously approved such restrictions in advance under paragraph 3 (c) of this article".

MR HELMORE (UK): We shall not require "previously" and "in advance" shall we ?

THE CHAIRMAN: We can delete "previously" and leave it "has approved such restrictions in advance".

MR LUTHRINGER (I.M.F.): Does this mean that even though the conditions which justify the application of these restrictions have greatly changed, that merely because some time previously the organisation approved them, it cannot suggest that the restrictions be withdrawn ?

THE CHAIRMAN: There is no suggestion that they cannot suggest that the restrictions be withdrawn. Having been given to the organisation under paragraph 3 (b), that would apply irrespective of the circumstances in which the restrictions were imposed. The purpose of this article is that if a country and the organisation agree that if a country's balance of payments position conforms to certain objective criteria, it will be permitted to apply restrictions, and those conditions subsequently develop and it does apply them, the organisation shall not

recommend the withdrawal or relaxation as provided for under paragraph 3 (d)  
- that is, that it cannot support a complaint from another country.

H.1

E/PC/T/C.II/CR/PV/5.

MR. HELMORE (UK): Surely we can leave the whole of Paragraph 1 (e) out, because it is already covered by paragraph 3 (c), in the last few words "shall not be able to challenge under paragraph 3 (d) of this article."

THE RAPporteur: I suggest that is the solution.

THE CHAIRMAN: Is that acceptable to the Australian Delegation? The suggestion is that it is not necessary to include subparagraph (i) of (e), since it says in paragraph 3 (c) at the end "shall not be open to challenge under paragraph 3 (d) of this article."

MR. HELMORE (UK): Paragraph 3 (d) provides for a challenge procedure. That is limited in two ways; first of all, by paragraph 3 (d) which says you cannot operate paragraph 3 (b) except to the extent that you have previous approval. Paragraph 3 (e) is a further limitation on the action of the Organisation and the Fund which relates to domestic policies; that is to say, the limitation on the action under paragraph 3 (d) is expressed first of all before, and secondly, after; and it is unnecessary to repeat paragraph 3 (c) again here.

MR. BRONZ (USA): I agree that it is wise to drop this language from paragraph 3 (e), but I am not sure we have wholly met the point of the Fund in this regard. I have always felt from this language that if the Fund gives prior approval under (c), if it were wise it would probably specify in the conditions that it reserves the right to alter, amend or approval any approval that it might have given at some future time. Possibly it would clarify things to specify the things that the Organisation could review in regard to its prior action if the conditions had changed.

THE RAPporteur: I thought that was covered, particularly as it is now drafted, because the member has to obtain previous approval of the Organisation for the restrictions it intends to impose. The Organisation, after consulting the Fund, can give its approval with any conditions that it likes. It might say "you can restrict to this amount for one year, and thereafter you can go on doing it if the conditions are the same."

H.2

E/PC/1/C.II/CR/PV/5.

MR. BRONZ (USA): Of they could say, "You can do it for one year, but we reserve the right to review it during the year if conditions change."

THE RAPporteur: It is perfectly open to the Organisation. It is a bargain between the Organisation and the Member, and the Organisation can attach to it any condition that it likes.

MR. LUTHRINGER (LUX): I think the point could be taken care of administratively under this language; that is, the advance approval of certain restrictions, I think, would be contingent upon the continuance of certain conditions, or a worsening of conditions. In other words, as I understand these provisions now, it would not be necessary to make the only condition a given level of reserves, but it might easily be a given level of reserves and certain other related circumstances. I think that clarification of this would follow from the dropping of paragraph 3 (e) (i).

THE CHAIRMAN: Is it agreed that we delete subparagraph (e) (i)?

I take it that is agreed. Is there anything else on paragraph (e)?

MR. BARADUC (France) (interpretation): I suggest that we insert before the words "lasting equilibrium" in the last line but one the words "sound and".

THE CHAIRMAN: Is there any objection to that? I think it would read better if we referred to "equilibrium in their balance of payments" rather than "to their balance of payments". We will now take paragraph 4, which reads:

"In giving effect to the restrictions on imports imposed under this article, a Member may select imports for restriction in such a way as to promote its domestic employment, reconstruction, development or social policies; but the member shall avoid all unnecessary damage to the commercial interest of other members and will accept an invitation to consult with any other member which considers its interests to be damaged."

MR. HELMORE (UK): I think we ought to insert "unnecessarily" before "to be damaged."

H.3

E/PC/T/C.II/QR/PV/5.

THE RAPPORTEUR: A word has slipped out here in typing. It should have read "to be so damaged."

MR. HELMORE (UK): I would prefer that drafting.

THE CHAIRMAN: Is there anything else on paragraph 4? If not, we will pass to paragraph 5, which reads:

"If there is persistent and widespread application of quantitative import restrictions under this article, indicating the existence of a disequilibrium which is restricting international trade, the Organisation shall seek consultation with the International Monetary Fund. The Organisation may then in collaboration throughout with the International Monetary Fund, initiate discussions to consider whether other measures might not be taken, either by those countries whose balances of payments are under pressure or by those countries whose balances of payments are tending to be exceptionally favourable, or by any appropriate international institution or institutions, to remove the underlying causes of the disequilibrium. Members agree that they will take part in such discussions."

THE RAPPORTEUR: I should like to bring to your attention the fact that while yesterday I had a note from the Legal Adviser saying that in the Report of Committee I "international specialised agencies" should be called "specialised agencies", a note has been sent in to me to say that they should be called "intergovernmental specialised agencies." I think this point might be left to be sorted out.

THE CHAIRMAN: "appropriate specialised agencies" is more inclusive than either of the others.

MR. HELMORE (UK): Is it intended to mean something different?

THE CHAIRMAN: That is what I was wondering.

THE RAPPORTEUR: It should be "any appropriate intergovernmental specialised agency or agencies." Should I include that?

THE CHAIRMAN: I think so. It would then read "or by any appropriate intergovernmental specialised agency or agencies."

MR. HELMORE (UK): I would point out that by using the word "specialised" there you deny the Economic and Social Council an opportunity of taking part.

THE RAPPORTEUR: In view of the duties which are going to be on the Council as a result of Committee I's work, that is perhaps not wise.

THE CHAIRMAN: I think we should exclude "specialised".

MR. GUNTER:(USA): I have a minor drafting change to offer in the third line before the word "disequilibrium"; I would suggest we include the word "general". We have used "disequilibrium" in talking about individual countries, and here we are talking about a general disequilibrium.

MR. CLARK (UK): This is something entirely different from fundamental disequilibrium.

THE CHAIRMAN: Would not "general" be too restrictive in this sense? Presumably disequilibrium would not have to be so general as to be restricting international trade on a large scale to warrant the action of this sort. There might be a group of countries which for special reasons would be affected by the disequilibrium.

I.1. E/PC/T/C.II/QR/PV/5  
MR. LOKANATHAN (India): Disequilibrium in a country like the United Kingdom will have a much greater effect than disequilibrium in a number of other countries

THE CHAIRMAN: What about "widespread"?

MR. CLARK (U.K.): I think "general" is a good word in this context.

THE CHAIRMAN: You do not think it implies that it has to be completely general?

MR. GUNTER (U.S.A.): No.

M. B. RADUC (France): Shall we put in "general" then?

THE CHAIRMAN: Yes. Is there anything else on paragraph 5? When paragraph 5 is agreed. Paragraph 6. reads:

"Throughout this section the phrase 'quantitative import restrictions' includes the restriction of imports by State Trading Organisations to an extent greater than that which would be permissible under Article 27 of this Charter, provided that no Member shall be required to disclose information which would hamper the commercial obligations of such a state trading organisation."

MR. HELMORE (U.K.): There is a typing error in this - the word "obligations" should be "operations".

MR. GUNTER (U.S.A.): I want to ask the United Kingdom delegate a question. I was discussing this with Mr. Hawkins before the meeting, and he said he thought there was something which had come up in the state trading chapter that would take care of this. He was not sure, but he thought you would know about it, Mr. Helmore, and he thought it was unnecessary here.

MR. HELMORE (U.K.): If it is unnecessary here, I am delighted, but what troubles me is that the subsequent Article (I think it is 21) which refers to the obligations in administration when you are restricting imports for balance of payments, for instance, refers to prior publication in certain circumstances. I agree that the general safeguard for state trading organisations is contained in the state trading Article, but if a state trading organisation was being directed by the state to operate, under this Article I believe that the prior disclosure provision would apply by virtue of Article 21. Therefore I would like to leave these words here, with the suggestion that if the Interim

Drafting Committee finds them unnecessary, when it looks at the whole of the chapter together, of course they can be withdrawn at a later stage.

MR. GUNTER (U.S.A.): I will accept that tentatively, but I would like to talk to Mr. Hawkins about it.

THE CHAIRMAN: We could put a note to that effect in our instructions to the drafting committee. .... The delegate for Chile has just drawn my attention to a draft message from Committee II. I am not quite sure what stage this has reached but I think it has been dealt with by the originators from the Joint Committee on Industrial Development and has, I think, been approved by the drafting committee of that body but not by the Joint Committee itself. It is a request to this Committee to provide in Article 20:

"The Joint Committee also requests that in Article 20 provision should be made to cover the position of a Member who, as a result of its plan for industrial development or reconstruction, anticipates that its accruing international monetary resources will be inadequate to finance the needed imports of capital goods unless it imposes regulations in respect of certain classes of consumer goods."

I. 3.

Quite apart from the fact that we have not got this message officially, and it has not yet been approved, I think I am right in saying that that that request would be met by a combination of the paragraphs included under 20.

THE RAPporteur: Yes, 2 and 4 I think meet it fully, because 4 says 4 says that when you are imposing these restriction, you can select what imports you restrict. That means it will be possible to restrict consumer goods and not capital goods, and under 2(a)(i) restrictions can be imposed to forestall the imminent threat of a serious decline in monetary reserves, so that I think both points are covered.

THE CHAIRMAN: I think we can leave that matter at this stage. If we do get this message formally, then we shall be in a position to advise the Joint Committee that their request contained here has been adequately provided for in Article 20. Will the Committee agree with that interpretation of the situation?

MR. HELLMORE (U.K.): I do not want to overload the Rapporteur, but in view of the time table, it might be as well if he will prepare a draft answer to the draft message! When we receive the message officially, we can deal with it quickly.

MR. LOKNATHAN (India): I agree that it is fairly reasonably covered, but I am not sure that it may not be desirable to bring it in a little more positively. Personally I am satisfied, but delegations not represented here may not feel that the point is adequately met and may have some difficulty.

MR. HELLMORE (U.K.): That is precisely the point I had in mind in suggesting that the draft answer to this request should be prepared with the idea that it may be incorporated in the report of this Committee, pointing out the effect of 4 and 2.

MR. LOKINATHAN (India): I would suggest explaining it a little.

THE CHAIRMAN: Yes, I think that would be very useful, to make it quite clear in the reply precisely how this request has, in fact, been met by paragraphs 2 and 4 of Article 5.

MR. HELMORE (U.K.): I take it that it would appear in the report of Committee 2, and would in that way be published?

THE CHAIRMAN: Yes. Is there anything else on Article 20?

MR. LOKINATHAN (India): May I make a suggestion before we conclude? Article 20, which we have been considering, is so intimately bound up with the I.M.F. that I am wondering whether it would be possible, or desirable, for us to send these things formally or informally to that body. Part of our difficulties arise on account of our own diffidence in meeting the balance of payments difficulty under the provisions of the Fund itself. Apart from their opinion on these clauses which we have drafted, it will also be desirable to get to know if the Fund is likely to consider certain other matters which are obviously inadequate. Then there is the question of a reasonable waiver of interest and principle. I see that the United Kingdom delegate smiles, but, as you find in the Anglo-American financial agreement, when there is a balance of payments difficulty in a trade year, the country is entitled not only to be excused from payment of interest or principle in that year, but it gets a permanent waiver. I think that is a very important principle, and I think it is the duty of the International Bank to provide for such cases that, when a country is in balance of payments difficulties it should not be called upon to repay at all for that year. I would even say it should be excused from the agreement. There are several other directions in which I feel that the Fund should be in a position to make use of Article 20, though they are less important. My point is that we ought to ensure that the Fund offers much more facilities to make this Article

less necessary. I do not know whether it is proper for me to make such a suggestion?

THE CHAIRMAN: I take it your suggestion is that these Articles, when we have agreed them, should be forwarded to the Bank and the Fund, perhaps with a request that they consider the action which could be taken in order to make dependance upon this type of provision in the ideal Charter less necessary?

MR. LOKANATHAN (India): Yes.

MR. HELMORE (U.K.): May I suggest that the most appropriate way to achieve that object would be, in the report of Committee II, to refer to the assistance we have had, particularly from the representative of the Fund, on these Articles, and to express the hope that at the next meeting in Geneva, the observers from the Bank and the Fund will be able to present us with the views of those bodies on these things as they stand?

MR. LUMBRINGER (I.M.F.): I think the suggestion of the U.K. delegate would be the best way to meet this point. This Article contemplates very close working relationships between the two institutions, and I feel that it would be very helpful if the Directors of the Fund could have a meeting to study this draft very closely and make any suggestions which they might have on it to the drafting committee in the later stages. I am not quite clear; is the next meeting to be in Geneva or is the drafting committee to meet there?

MR. HELMORE (U.K.): The suggestion is that the drafting committee meets in New York to tidy up, mainly, sitting from about the 20th January to the 28th February. I would not suggest that the observations of the Fund, for instance, should be communicated to that body since it seems hardly appropriate that in tidying up a draft, the observations of another specialised agency should be brought in. It would be much better if they came to the next substantive meeting of the preparatory

committee itself at Geneva in April.

MR. W. HELL (International Bank): We also like the suggestion of the United Kingdom delegation. I would also mention to the Indian delegate that while the Bank has clear power, in a given case, to make arrangements for deferring a country's commitments in foreign exchange, nevertheless it must be kept in mind that the Bank is not free itself from the obligation of paying in foreign exchange, and that therefore, any widespread use of the formula of deferring payments in foreign exchange would mean that the Bank could not meet its obligations, or that it would have to call on all members to make good that failure of the one country to make payments in foreign exchange.

MR. LOKANATHAN (India): It was far from my intention to go into the merits of the matter, Mr. Chairman.

THE CHAIRMAN: Can we take it that it is agreed to recommend in our report that the attention of the Fund and the Bank should be drawn to the relevant Articles, and that they should be invited to be represented at the second session of this Conference in Geneva, and that it would be helpful to the Committee to have the formal expression of their views presented to them at then?

MR. LUTHRINGER (I.M.F.): Thank you, Mr. Chairman.

M. BARADUC (France) (Interpretation): I apologise for returning to a question which has been settled, but I would suggest a slight modification of sub-paragraph (c) of para. 3 of this draft. I hope this will not mean additional work for this Committee and the Rapporteur. This sub-paragraph (c) gives a member who imposes new restrictions, or intensifies old ones, a chance to consult with the Organisation. We would like the same procedure to be applied to a member who maintains existing restrictions.

MR. HELMORE (U.K.): The United Kingdom delegation would not object to such a provision. It could be done by inserting at the end of the first line "or maintains", after "imposes new or intensifies".

THE RAPPORTEUR: I suggest the simplest way is to say, "any member applying or intending to apply restrictions under paragraphs 1 and 2 of this Article".

MR HELMORE (U.K.): And there is a consequential amendment to be made in the third sentence.

THE RAPPORTEUR: The first sentence could then stand, because the restrictions it would intend to impose would include the one it was already doing but which it was intended to carry on.

THE CHAIRMAN: How would it read?

THE RAPPORTEUR: "Any member applying or intending to apply restrictions on imports under paragraphs 1 and 2 of this Article."

MR BARADUC (France): That is all right.

THE RAPPORTEUR: The last bit of the sentence would be "may, if it so desires, consult with the Organisation with a view to obtaining the previous approval of the Organisation for restrictions which it intends to impose or to maintain or for the imposition or maintenance in the future of restrictions under specified conditions".

THE CHAIRMAN: This is in the sixth line?

THE RAPPORTEUR: Yes. Then there was previously an amendment which read, "or for the imposition in the future of restrictions under specified conditions"; so that amendment would be further amended to read, "or for the imposition or maintenance in the future of restrictions under specified conditions". The whole sentence would then, I think, read like this: "Any member applying or intending to apply restrictions on imports under paragraphs 1 and 2 of this Article may, if it so desires, consult with the Organisation with a view to obtaining the previous approval of the Organisation for restrictions which it intends to impose or to maintain or for the imposition or maintenance in the future of restrictions under specified conditions." . . . It has been pointed out to me that "the imposition and maintenance" has got out of order: "maintenance" should come before "imposition".

MR HELMORE (U.K.): And there is a further amendment required where the same phrase comes again later on.

THE RAPPORTEUR: Yes: "maintenance or imposition or intensification".

THE CHAIRMAN: Are there any further comments on Article 20? . . . Now, I

understand that we are obliged to postpone the meeting of Committee II scheduled for this afternoon, and that raises the question of whether it would be desirable for this Sub-Committee to continue its discussion this afternoon. We necessarily must leave until tonight draft Articles 22 and 19. That leaves for consideration this afternoon Articles 21 and 23, I believe.

MR BRONZ (USA): Article 21 was completed on Friday, I think.

THE RAPPORTEUR: Yes, we did approve that on Friday, but some sort of global reservations were made then. Can they be withdrawn now?

MR HELLGREN (U.K.): We can withdraw ours now.

THE CHAIRMAN: If the reservations on 21 are merely global we could probably deal with them also tonight, since it appears likely that most people will withdraw them. Then could delegates meet this afternoon to discuss 23? (Agreed.)

THE RAPPORTEUR: I understand the Secretariat will give notices to all the delegations interested in Article 19.

THE CHAIRMAN: Then we will meet here this afternoon at 3 o'clock and then again at 8.30.

The meeting rose at 12.55 p.m.

(For Verbatim Record of Afternoon Session see  
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PART 2.

THE CHAIRMAN: We come now to Article 23. First, there is the question of the global reservations on Article 21. That Article was adopted at our last meeting, subject to the right of Delegates to have a look at it. Does anyone want to raise anything with regard to this Article?

MR. HELMORE (UK): I am now in a position to translate my global reservation into something more specific, unless the Rapporteur can show me that the amendment which has been put into my hands has already been covered by the wording.

THE CHAIRMAN: If you have anything to raise, I think we will leave Article 21 a little, as two Delegations are at the moment represented by deputies. We will consider now Article 23.

THE RAPPORTEUR: This article turns on the problem of common membership and the solution which I am putting forward tentatively is the ingenious one of saying that there shall be common membership except in those cases in which there is not common membership, in which case the Member who is not also a Member of the Fund shall enter into a specific exchange arrangement with the Organisation, after, of course, the consultation with the Fund, and that this special agreement shall become part of its obligations under the Charter. I do not know whether the UK are, or are not, prepared to accept the bit in square brackets in my present draft. The bit out of square brackets was really their draft, which said that there should be common membership, except in the case of a country which, being a Member of the Organisation, exercises its right to withdraw from the Fund; and if you required common membership and said to the member of the ITO that it had to remain a Member for three years, you would, of course, have removed from that country the right to withdraw from the Fund, which is one of the important clauses of the Fund, that you can withdraw at a moment's notice.

The suggestion was that you should have common membership, but that if you withdraw from the Fund, you would make a special exchange agreement with ITO. I have inserted words which say that you need not even become a Member in special cases. In general, there is membership of both, but in special cases, <sup>if</sup> you joined the Organisation and did not want to join

the Fund, it would be possible to make a special exchange agreement with the Organisation which would become part of your obligations under the Charter.

Of course, I personally feel that this is the right way to go about it; this way of having a special exchange agreement if you do not have common membership, because obviously, I feel that you cannot leave a Member who is not a Member of the Fund completely free to do what it wants in exchange matters, since exchange depreciation, multiple currency practices, and exchange control can offset practically every other obligation. On the other hand, if you tried in this Article to spell out in detail the exact exchange obligations which a country not a Member of the Fund would have to undertake, you would be so seriously duplicating the Articles of Agreement of the International Monetary Fund that you would have to spell a lot out again, and that is duplication that we want to avoid.

Therefore, I recommend to the Committee this solution of having a special exchange agreement which might differ from country to country, but which would satisfy the Organisation and the Fund in those cases where there is not common membership. If that were accepted, the problem that would remain is whether or not you should only have the special agreement possibility for a country which, having become a Member of the Fund, then withdraws, or have it as a possibility for a Member of the Organisation which never became a Member of the Fund.

MR. HELMORE (UK): In general, as the Committee knows, and as we have said before, we are in favour of a requirement of common membership. That seems to us to be justified on logic. On the other hand, we recognise there may be special arguments against it. So, the general form of this Article would meet our views. On the question whether the passage in square brackets should be included or not, and whether we should provide from the start for a country which joins the ITO and refrains from joining the Fund, I am <sup>not</sup> quite so certain, and before I say any more about that, I would like to hear the views of other Delegates.

MR. GUNTER (USA): As you all know, when we first got out the proposals, we provided for common membership. Later, in writing the draft Charter, we dropped the idea, for a number of reasons. At that time there were a number of countries that had not come into the Fund. At the time of the Charter, a number of countries had not come into the Fund which we had hoped would be in the Fund and the ITO, and we felt it very desirable not to preclude countries from joining the ITO just because they were not members of the Fund. We recognise, however, that there are many advantages in having common membership. Specifically, since two countries that are participating in this Conference are not Members of the Fund, and in view of the fact that certain other countries which we hope will come into both Organisations are not present at this Conference, we would like not to close the question entirely until the Spring meeting. At the present time we hope that the two Members that are present at this Conference and not Members will become Members by that time, and also the general situation with regard to countries that are not participating in this Conference may be somewhat clearer. We would prefer not to close the question entirely before next Spring.

MR. KAFKA (Brazil): I would like to join in the suggestion made by the USA Delegate, and I should like also to raise another question. Since you allow here that a Member who has withdrawn from the Fund can then enter into an exchange agreement with the ITO, that really implies that if a country withdraws from the Fund in order to be able to devalue, it can then come into the Organisation and have a special exchange agreement. That gives it an advantage over all other Members. I think there should be a proviso regarding the unloyal use of this possibility.

MR. HELMORE (UK): The last point is one about which we have naturally had to think in considering what the content of an exchange agreement should be, and it says that the Member must enter into an exchange agreement with the ITO. The looking-glass version of that is that the

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ITO must enter into an agreement with the member. I do not see how you could lay down in advance what the provisions should be. It must be left to the determination of the Organisation in consultation with the Fund and the member who has just left the Fund to work out what the answer is. Any attempt to lay it down in advance would, I think, defeat the main object of this type of clause, which is not, as it were, to frighten countries off joining both Organisations.

MR. PHILLIPS (Australia): We would still prefer separate membership of the two Organisations, but we realise we are in a minority on that issue, and I think that if there is to be common membership, this is a very skillful attempt to get over the difficulties involved in it. In the circumstances, we think it is probably the best solution, seeing that there is to be common membership. We would have to reserve our decision on this point.

MR. HELMORE (U.K.): I wonder if we could deal fairly quickly with this by suggesting to Committee II that they say in their report that the majority of people think that common membership is the ideal solution? If that is accepted, then we suggest this is the right way to do it, and then I think we should go on to say that whether it is necessary to provide in this clause for a country to be able to join the I.T.O. when it is not a member of the Fund depends on who is going to join I.T.O. at the time, and we should suggest some words that would provide for that contingency if it arises but, as we do not know what the circumstances will be at the time I.T.O. is set up, we leave them in square brackets. I think that meets the various points of view that have been expressed.

MR. KAFRE (Brazil): Mr. Helmore's explanation of the point I raised has cleared up my doubts, but I do not think the draft exactly expresses that, especially in the last phrase of paragraph 4, which provides that the agreements shall provide for the future, but it does not say anything about a country not being admitted if it has acted disloyally before.

MR. CLARK (U.K.): I wonder if this is not looked after in paragraph 2? The purpose of paragraph 2 was to look after that situation.

MR. KAFRE (Brazil): Yes.

THE CHAIRMAN: I think the suggestion made by the U.K. delegate is the only way we can deal with this. Record the majority view and indicate that if there is to be common membership, then clearly the problem of withdrawals has to be faced, and this is probably the best way of dealing with it. On the other hand, if there is not common membership, then some provision will have to be made for the terms of admission covering matters which would clearly be dealt with by the International Monetary Fund. A form of words will have to be worked out to deal with this as satisfactorily as possible, putting them into square brackets until the situation of the membership of the I.T.O. is established and clarified.

THE RAPPORTEUR: I am sorry to be a nuisance and to throw some doubt on the draft, but a doubt has been raised in my mind by the remarks of the Brazilian delegate. What happens if a member withdraws from the Fund and cannot reach an agreement which is satisfactory to both parties?

MR. KAFRE (Brazil): Then a member is under an obligation to remain a member of the Organization, but cannot do so unless there is agreement, and the agreement has to be accepted by both sides.

MR. HELMORE (U.K.): I think it is an entirely theoretical issue; that is to say, either the Organisation and the member who has just left the Fund would come to an arrangement, or they would not. If they came to an arrangement, then the question falls. If they fail to come to an arrangement, it would be because the member who has just left the Fund was, let us say, determined to do something in exchange matters which would just be a breaking of the obligation in paragraph 2 of this Article. That could be the only reason.

THE CHAIRMAN: Yes.

THE RAPPORTEUR: But not in the opinion of the member.

THE CHAIRMAN: That is the issue, quite clearly. You could have a situation in which a country might resign from the I.T.O. because it could not approve of a certain action, and it might then find that the nature of the agreement which it requires to enter into with the I.T.O. would also preclude that form of action. In that case it would be obliged to resign from both, it would seem to me. At least, if it did not resign, the Organisation would have to expel it for failing to enter into an agreement.

MR. BRONZ (U.S.A.): The Organisation might invoke one of the penalty clauses, like Article 30, or a member might invoke a general clause for violation of any of the obligations in the Charter, and a withdrawal of benefits accordingly.

THE RAPPORTEUR: That, I presume, is the answer. If you could not

agree, and the Organisation believed that you were impairing the Charter, the impairment clause would be brought into operation and you would, in effect, be expelled.

THE CHAIRMAN: Or at any rate sanctions would be exercised against you. Expulsion, presumably, is the ultimate action.

M. CALVET (France) (Interpretation): Does it not mean that under those circumstances, for all members who wish to enter the Organisation but not the Fund, it will be necessary to make a special agreement with the Organisation, and should not this agreement be of a uniform type for all the members? The position would be rather difficult if the Organisation had to approve a series of agreements of different types with their members for there would be the danger that each member would try to have special treatment of his own, and would try to get advantages over the other members.

THE CHAIRMAN: It is rather difficult to decide in advance that the terms of any such agreement would have to be absolutely uniform from country to country. It seems to me, and it is fairly clear, that the Organisation would develop certain principles which it would seek to apply in each case, but I think it would be unwise to attempt to prescribe in advance the nature of the principles, for you would be getting into a field which is already covered considerably by the Monetary Fund. Secondly, it would perhaps tend to tie the hands of the Organisation unduly in handling what will, in any case, be a fairly delicate situation.

MR. CLARK (U.K.): It seems to us that one could not have a uniform type of special agreement because this is, of its nature, a very individual affair. We are only thinking of this applying to a few countries at the very most, and our general thought here would be that the country which did not want to join I.M.F. would start its negotiations with I.T.O. and I.M.F. by explaining why it did not want to join I.M.F. An attempt would be made to meet it on that particular point, and it would assume the other obligations of I.M.F. which it was prepared to meet. There might be a country

which wanted a little more freedom from depreciation than the I.M.F. allowed because it had not got the I.M.F. quota to help it, but that some country might be prepared to go the whole way with a full I.M.F. obligation about multiple currency practices or exchange control.

M. CALVET (France) (Interpretation): This would weaken the importance and authority of the Bretton Woods Agreement, because it might mean that some members would be granted special facilities.

MR. CLARK (U.K.): But those countries would not be members of the Fund and would not, therefore, be getting advantages from the Fund, drawing rights, and so on. So it would not be unreasonable. All we are trying to do here is to meet their position, to prevent their relative freedom of action in such matters from frustrating the purposes of the Organisation. However, I think only two or three countries could possibly be considered in this connection.

MR. GUNTER (U.S.A.): I think it is important to remember that the International Organisation will be under great pressure to see that privileges do not go to particular members as opposed to the majority of members, and that there will be pressure on both organisations, the Fund and the I.T.O., because the whole procedure is in collaboration with the Fund.

MR. LOKANATHAN (India): I think that any member who wants to take advantage of Article 20 and the I.T.O. has necessarily to incur certain obligations under the Monetary Fund, whether he is a formal member of the I.T.O. or not. Even if the draft is revised so as not to provide for common membership, it is of the utmost importance that we should ask the members of the I.T.O. to take <sup>on</sup> certain obligations which are relevant and appropriate for this purpose. Therefore we must have an alternative draft. Common membership should be provided for or, if that is not possible, we must provide that persons who wish to take advantage of various Articles must also take on the minimum

responsibility necessary to ensure that Article 20 is properly administered.

MR. HELMOLE (U.K.): That is, in effect, what is done here with the square bracket. Without the square bracket, we provide for common membership, with a provision to keep the instant right of withdrawal from the Fund alive by saying, "If you get back into that position, then you must accept those Fund obligations which are relevant to the I.T.O." The only question is whether we admit that position from the start, and that, we suggested, following the U.S. delegate, we should leave over until we see whether, in fact, it is a real question or not.

MR. LOKNATHAN (India): Then we draft something to the effect that we recognise the desire to have common membership, but it may be that some member is unable to be a member of both, and in that event we suggest that such and such a procedure should be followed?

MR. HELMOLE (U.K.): Yes, that is it.

THE RAPporteur: It will be covered in the report.

THE CHAIRMAN: Shall we take this Article paragraph by paragraph? I think that would be the best way. Will you read it, Mr. Meade?

THE RAPporteur: "The Organisation shall respect the authority and jurisdiction in respect of exchange matters assigned to the International Monetary Fund by the Articles of Agreement of the International Monetary Fund, and shall seek co-operation with the Fund to the end that the Fund and the Organisation may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organisation."

THE CHAIRMAN: Are there any comments on that?

MR. LUTHRINGER (I.T.O): I wonder whether the words "in respect of exchange matters" could not be omitted from the second line? I am sure it would make the legal staff of the Fund a great deal happier if they could be omitted. As it stands it seems

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to suggest that the jurisdiction of the Fund is only in respect of exchange matters, but it may be other matters as well. I do not think it would make a great deal of substantive difference, but it would improve the thing from the Fund's point of view. if it read simply: "jurisdiction assigned to the International Monetary Fund by the Articles of Agreement."

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THE CHAIRMAN: Any comments on that?

MR GUNTER (USA): The wording as suggested by the representative of the IMF is all right as far as we are concerned.

MR HILMORE (U.K.): I think the general question of co-operation between the ITO and the Fund is covered somewhere in the chapter on Organisation and Functions.

MR LUTHRINGER (IMF): I think it is as much the appearance of the thing as anything else which is important here. It seems to suggest a limitation, and I cannot see that it would affect the sense of the paragraph from the ITO point of view materially.

THE CHAIRMAN: Any comments?

MR LOKANATHAN (India): Is it suggested that we delete the first two or three lines?

MR LUTHRINGER (IMF): That was not the idea, so far as I am aware.

MR LOKANATHAN (India): Only to say what I think is suggested would be a little strange, would it not, because we always have respect for every international organisation; therefore I think there is no point in putting it in in that way.

THE CHAIRMAN: Would it be better to leave out the whole of that and say, "The Organisation shall seek the co-operation of the International Monetary Fund", with the hint that they may pursue co-ordinated policy in relation to exchange matters?

MR LOKANATHAN (India): In other words I suggest we should say "The Organisation shall act in respect of exchange matters in conformity with the...."

THE CHAIRMAN: I think that raises very serious difficulties.

MR LOKANATHAN (India): The best thing is to delete those three lines, I think.

THE CHAIRMAN: Would you see any objection to paragraph 1 reading, "The Organisation shall seek to co-operate with the International Monetary Fund to the end that the Fund and the Organisation may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organisation" ?

MR LUTHRINGER (IMF): That would be entirely satisfactory to us.

THE CHAIRMAN: Would that be acceptable to the Sub-Committee? (Agreed.)

Now we come to paragraph 2. (Paragraph 2 was then read by the Chairman.)

Are there any comments?

MR KAFKA (Brazil): Instead of the words "trade action" I would prefer the words "restrictive trade practices".

MR HELMORE (U.K.): It might not be restrictive; it might be positive.

MR KAFKA (Brazil): That is true. It is not very important - as long as we all understand it.

THE CHAIRMAN: Is paragraph 2 acceptable as it stands? (Agreed.)

Now we have paragraph 3. (Paragraph 3 was then read by the Rapporteur.)

I notice in the second line the word "of" has crept in: "exchange of techniques". It should, of course, be "exchange techniques".

THE RAPPORTEUR: Yes; that is right.

THE CHAIRMAN: I see that in one case we say "may" and somewhere else we say "and shall forthwith". Can you explain that?

THE RAPPORTEUR: I think the idea was (I do not know whether the drafting was right) that the country which is not a member of the Organisation may do so if it wants to. If it is already a member of the Organisation it has then got to.

THE CHAIRMAN: Could not we say "may be admitted to the Organisation if it enters into a special exchange agreement", otherwise you do not get it?

THE RAPPORTEUR: Yes: "may join the Organisation if it is willing to enter into..."

THE CHAIRMAN: We had better say "if it enters".

THE RAPPORTEUR: Yes.

MR CLARKE (U.K.): "may become a member of the Organisation if it enters into".

MR PHILLIPS (Australia): I hope this will be taken as a drafting point and not as the point of view of Australia. What is the position of a member of the Organisation who is compelled to withdraw from the IMF by the Fund? Would this wording cover him? Ought it to cover him?

MR CLARKE (U.K.): We could say, "...a member of the Organisation which ceases to be a member of the International Monetary Fund..."

MR PHILLIPS (Australia): Yes.

THE RAPPORTEUR: "...that a member of the Organisation which ceases to be a member of the International Monetary Fund..."

THE CHAIRMAN: Is there anything else on that? .

MR GUNTER (USA): I believe that the change we have now made makes the last clause unnecessary in the square brackets, that is, "and which would release it from its obligation under this Article to join the International Monetary Fund..."

MR CLARKE (U.K.): Yes.

MR GUNTER (USA): That is just by way of shortening it.

THE RAPPORTEUR: Yes; so that it would read "...which would become part of its obligations under this Charter", and then "and provided further that", and so on.

MR GUNTER (USA): You would leave in "and provided further"?

THE RAPPORTEUR: Oh, yes.

THE CHAIRMAN: Is there anything else on that? Is that agreed? (Agreed.)

Now we have paragraph 4. (Paragraph 4 was then read by the Chairman.)

MR PHILLIPS (Australia): This is a matter of drafting. Would "the common purposes of the Organisation and the Fund" imply that you would have to find identical purposes?

MR LUTHRINGER (IMF): The purposes have a great deal in common but they are not identical. It would seem to me that the "common purposes" would be the right emphasis on it here.

THE CHAIRMAN: I think there is some danger in cutting it out, although I see what is in your mind. After all, it would not be proper for the exchange agreement to be phrased in a way which would impose upon the country entering into that agreement obligations which might conflict with purposes of the International Monetary Fund with which the International Trade Organisation had no concern. I do not know whether there are any such, but the purpose of this is to prevent the exchange action defeating the purposes of the Organisation primarily, is it not; and it would at the same time therefore be proper to prevent it from frustrating the same type of purpose in the International Monetary Fund; but if the Monetary Fund has other purposes then it is no concern of this Organisation whether a country which is not a member of the Fund acts in a way which tends to frustrate those purposes. I am not quite sure myself, just looking at it at first glance, whether it would not be proper to delete the reference to the Fund.

THE RAPPORTEUR: That is what I was going to propose, Mr Chairman.

MR CLARKE (U.K.): I think there is a point here. In the field of this Article

when we are thinking of making exceptions to the principle of common membership, we are raising quite serious potential difficulties of conflicts of jurisdiction between the ITO and the Fund. At the moment they look as if they might be rather difficulties on paper, but in actual fact, as these Organisations develop, issues might arise, and I think there is great advantage throughout this Article in stressing the common work and the joint work of the Organisation and the Fund in relation to these special agreements; and although from a pure drafting point of view it might be the right thing to say "the purpose of the Organisation" here I think there is great strength in saying "these common purposes" and that running/home again in that Article and in the subsequent Articles.

THE CHAIRMAN: You have got the words "in collaboration throughout with the International Monetary Fund". That does protect the common working of the two organisations. After all, the Organisation has not got the function of protecting the purposes of the International Monetary Fund.

MR CLARKE (U.K.): I do not think we are talking here of the purposes of the Organisation and the Fund separately so much as of the common purposes of the two - of the general purpose of setting up these two international organisations.

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MR PHILLIPS (Australia): You could leave out the words "and the Fund", because they are objects of the Organisation too.

MR LUCHRINGER (IMF): It is suggested to me that we should say "those purposes which are common". I agree with Mr Clark's observations. I think it is useful to have it in here as putting it in the right context. I think if you omitted the word "common", then there would be a great deal more force in the question that the Chairman has raised.

THE CHAIRMAN: I confess I cannot see what is added by the insertion of "common" and "and the Fund", except to suggest that you want to protect some purposes other than the purposes of the Organisation.

MR LUCHRINGER (IMF): This is a very difficult subject. It may not be one of the purposes of this Organisation to assure the achievement of the purposes of the Fund, but I think there is a very real danger that something done here might weaken the Fund indirectly. It has been pointed out that it is assumed that this would be an exception which would be very limiting in its application. If it were not, I can certainly foresee a great deal of confusion with the Fund - if, for instance, this thing were set up in such a way that people could withdraw from the Fund and then work out a more favourable or looser arrangement with respect to exchange depreciation and that sort of thing. I think that a provision of this kind might have a rather serious effect on the Fund.

MR LOKANATHAN (India): I thought that was the very reason why the words "common" and "the Fund" here are very appropriate.

MR LUCHRINGER (IMF): Yes, I think so.

MR LOKANATHAN (India): Because it seems to me that the matters that we are concerned with are so much part of the International Fund arrangements also that it is desirable to keep that point constantly in mind, and therefore I think it is but right that we should say "the common purposes of the Organisation and the Fund" in relation to exchange matters should not be frustrated. I agree that there is some appropriateness in keeping the word "common" and the words "the Fund" here.

MR BELMORE (UK): Does it help to substitute a less technical word like "objectives" for "purposes"? "Purposes" has a rather technical meaning in connection with the Fund, because Article 1 of the Fund is headed "Purposes".

MR LUCHINGER (IMF): I should think the substitution of the word "objectives" would be satisfactory. It is the principle rather than the particular word that I have in mind.

THE CHAIRMAN: Have you any comments to make, Mr Rapporteur?

THE RAPPORTEUR: I am afraid I have no comment. I am rather inclined to agree with you. I was thinking of it from a rather legalistic point of view.

THE CHAIRMAN: So was I. I am not concerned about the argument here. My sole reason for making the point is that I do think there is a danger of some confusion, and I take it what is meant here is those purposes which are common to the Organisation and the Fund.

MR BELMORE (UK): Yes.

THE CHAIRMAN: The ones that appear in both, so to speak.

MR CLARK (UK): Yes. We do not mean, for example, the Fund should have something available under adequate safeguards. It is the sort of ideological and philosophical side of the thing that we are thinking of here.

MR LUCHINGER (IMF): I am not so sure I agree with that - that, for instance, the use of quantitative restrictions instead of reliance on that aspect of the Fund's operations might not really be regarded as something in conflict with the common purposes of the Organisation.

THE CHAIRMAN: That is the point I have in mind, that if there is any danger, as there appears to be, of this being interpreted as placing an obligation on the Organisation in its agreements to protect the purposes of the Fund which are not common to the Organisation, then it does seem to me that this goes further than a provision of an Organisation which will include countries, or possibly include countries, that are not at present members of the Fund, ought to go.

MR CLARK (UK): If one took this to the extreme and imagined a state of affairs in which a member was making an agreement and that agreement proved satisfactory to the Organisation, but the Fund did not regard it as

satisfactory, how would you view the situation?

THE CHAIRMAN: It would depend entirely on the grounds on which the Fund objected to it. As it seems to me, if the Fund objected to it on the grounds that it was inconsistent with a purpose which was a purpose of the Organisation, but about which the Fund was in a better position to judge because it was a matter concerned with exchange or some such matter, then I should say the Organisation should accept the judgment of the Fund that the agreement was an unsatisfactory one because in relation to one of the purposes of the Organisation about which the Fund was in a good position to judge it was unsatisfactory, I say in that case it should be quite clear that the Organisation should accept the judgment of the Fund and reject the agreement. If, on the other hand, the Fund said: "This is not satisfactory to us because it conflicts with one of our purposes which has nothing to do with the field of activity of the International Trade Organisation", then I think the Organisation should reply: "We are very sorry, but this is consistent with the purposes of our Organisation, and therefore since the only objection you can raise to it is that it conflicts with a purpose which it is not our intention to further, we must accept the agreement." If you could imagine each organisation with five purposes, three each in common and two each not in common, and if the Fund's objections arose from one of the two, then I think they should be overruled. If the Fund's objections arose from one of the three which they held in common, then they should be supported.

MR HELMORE (UK): I think you are right in logic. I doubt very much whether any of us could very easily think of a purpose of the Fund which had not something in common with the purposes of the Organisation, but I think you are quite right to safeguard the point that there might be one, and I believe we might all agree just by changing the order of the words and saying "purposes common to the Organisation and the Fund".

THE RAPPORTEUR: Mr Chairman, I think that means your three and not your two.

MR HELMORE (UK): Yes, it does - only I do not believe there are two.

THE RAPPORTEUR: No - but if there were.

"the purposes common to the Organisation and the Fund".

THE CHAIRMAN: I think that is all right.

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MR LOKNATHAN (India): We should not ignore the fact that in this paragraph we are concerned with the Exchange Agreement. We are not concerned with all the purposes of the Fund or with all the purposes of the Organisation. We are really concerned with the Exchange Agreement, and therefore there are certain purposes common to both. That is really the point. We are not concerned with any of the other purposes. We are concerned with exchange matters. I accept Mr Helmore's suggestion.

THE CHAIRMAN: Is there anything further on paragraph 4?

We pass to paragraph 5.

(Paragraph 5 was read.)

THE CHAIRMAN: Are there any comments on paragraph 5?

MR CALVET (France) (Interpretation): Is there not an inconsistency between paragraph 5(i) and paragraph 4? Although paragraph 4 deals with the prior purposes of the Special Agreement and paragraph 5 deals with the application, it seems to me that there is some kind of inconsistency between paragraph 4, in which the Organisation has to judge upon the merits of the agreement, and paragraph 5, in which the International Monetary Fund decides if the action of a member is contrary to the terms of the agreement.

THE R.ÉPORTEUR: It seems to me that the draft is not inconsistent in this respect for the following reasons. If I may take just one example - take exchange depreciation. Paragraph 4 says that the rules in the Special Agreement about exchange depreciation must satisfy the Organisation that they will not frustrate its objectives - of course, having collaborated throughout with the Fund in drawing them up. That is to say there is a rule in there (this is, of course, a fantastic rule I am instancing) saying that the country must not depreciate the exchange by more than 70 per cent in any one year. Under paragraph 5(i) the member accepts the decision of the Fund as to whether it has depreciated its exchange rate by 70 per cent or 80 per cent, whereas under paragraph 4 it is the Organisation in consultation with the Fund which has to make up its mind whether if it confines itself to a 70 per cent depreciation in any one year it will in fact not frustrate the objectives of the Organisation. That is, I think, the distinction intended, and I think it is a real one.

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It is the Fund which would have to look up the quotation of the country's currency and so on, and decide whether it had depreciated it by so much. In making the agreement the Organisation has to be satisfied whether the rules are such as to be consistent with the objectives of the Organisation.

MR. CALVET (France) (Interpretation): It seems rather strange that the Organisation has nothing more to say when the special exchange agreement has been concluded, an agreement to which it has been a party, and regarding the application of which it has nothing more to say.

THE CHAIRMAN: I think there is some point in that difficulty, and it must also be looked at in connection with the situation contemplated in the latter part of paragraph 3 -- the case of a country withdrawing from the Fund. It does seem to me that it might be, to put it mildly, embarrassing if a country, having withdrawn because of a serious disagreement about its exchange policy, had then, in order to retain membership of the Organisation, ostensibly to accept the judgment of the Fund as to whether it was in fact conforming to an agreement it had entered into in relation to these things. While it would seem to me to be completely reasonable that the Organisation should rely upon the Fund in making its mind up in these matters, I would suggest for the consideration of the Committee that it might be wise, in the light of the possible feelings on the situation at the time, to make the actual decision embodied in Paragraph 5 the function of the Organisation, at least nominally, however much it may be clear that it will rely upon the International Monetary Fund for advice as to the nature of the decision it should make.

MR. LUTHRINGER (International Monetary Fund): It seems to me there is nothing improper about the two parties to the agreement asking the third party to decide a matter of this sort, particularly since I think most of the questions will be of a pretty technical nature. I doubt whether Members would contemplate open evasions of or departures from this agreement. I think that in many respects, of course, these provisions will be close to the pertinent provisions of the Fund, and I think there might be a good

deal of difficulty if you had both bodies interpreting action in the light of the agreement. I think the psychological point which has been mentioned would perhaps be equally applicable to the making of the agreement.

THE RAPPORTEUR: May I make a suggestion, and see whether it is agreeable to all the Delegations, or not? Could one turn paragraph 5 into two parts, the first of which would say, "The Organisation will seek and accept the opinion of the International Monetary Fund whether action by the Member in exchange matters is contrary to the terms of the special exchange agreement." That means that the Fund does in fact decide, but the Member posts the letter to the International Trade Organisation, and receives the decision from the Organisation.

MR. HELMORE (UK): Could I suggest one further amendment? Instead of the words "contrary to", I suggest we might have "permissible under". I think that very often these will be questions of whether, having agreed to do so and so except in types of circumstances, the circumstances are now such that the contingent freedom should be applied. I think the word "permissible" is better. It is less of an implication that anybody who has one of these exchange agreements is likely to abuse it.

THE RAPPORTEUR: As a matter of drafting, I suggest, as a consequential change, that paragraph 5 should start.... "A Member which has made a special exchange agreement under paragraph 3 of this Article undertakes to furnish the International Monetary Fund....etc." Article 6 would start off.... "The Organisation shall seek and accept the opinion of the International Monetary Fund whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement, and shall act in collaboration with the International Monetary Fund on all questions which may arise." That assumes that paragraph 5 (ii) is accepted.

THE CHAIRMAN: I am not sure whether paragraph 5 (ii) ought not to be altered in the same way, to require the information to be furnished to

to the Organisation rather than to the Fund, provided that the Organisation can do what it likes with it.

THE RAPPORTEUR: I must say that if in (ii) you change the International Monetary Fund to the Organisation, I do not believe it would make any difference, in fact, to what would happen.

MR. HELMORE (UK): It is awkward internationally to address a letter to a body of which one is not a Member.

THE CHAIRMAN: It is particularly difficult if it is an Organisation of which you have been a Member and have withdrawn.

MR. CALVET (France (Interpretation)): Would it not be better to say that Members in such a position would send the necessary information to the Organisation, which would forward it to the International Monetary Fund?

THE CHAIRMAN: I think that is the idea. The Rapporteur could probably work out a form of words.

THE RAPPORTEUR: ...."to furnish to the Organisation for transmission to the International Monetary Fund such information..."

THE CHAIRMAN: Is it necessary to say "for transmission to", provided it is clear that the Organisation can do so?

MR. HELMORE (UK): I should have thought the point about transmission to the Fund was amply covered by the present paragraph 6.

MR. GUNTER (USA): In the last line but one, you might say "its functions and the functions of the Fund", which would imply that the information goes to the Fund, without quite saying it.

THE RAPPORTEUR: ..."to furnish the Organisation with such information in order to carry out its functions and the functions of the International Monetary Fund..."

MR. HELMORE (UK): That would mean that the Organisation was going to carry out the functions of the Fund.

THE CHAIRMAN: If paragraph 6 stands, and if the Organisation "shall act in collaboration with the International Monetary Fund on all questions which may arise on the working of a special exchange agreement under this Article," I think that is clear authority for the exchange of necessary information.

THE RAPPORTEUR: I should have thought, after that opinion, that all that is necessary really is to change, in paragraph 5 (ii), the International Monetary Fund to the Organisation. One of the functions of the Organisation is to consult with the Fund, having shown it all the information. It is clear that the information will go on to the Fund. Would it be acceptable, therefore, simply to change paragraph 5 - "A Member which has made a special exchange agreement under paragraph 3 of this Article undertakes to furnish the Organisation with such information...." The rest would stand.

THE CHAIRMAN: What would you do with what was previously paragraph 5 (i)?

THE RAPPORTEUR: Paragraph 6 would read: "The Organisation shall seek and accept the opinion of the International Monetary Fund whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement, and shall act in collaboration with the International Monetary Fund on all questions."

MR. LOKANATHAN (India): In the last but one line of paragraph 5 (ii), the "its functions" obviously refers to the International Monetary Fund.

Does it still refer to the International Monetary Fund?

MR. HELMORE (UK): It is the Organisation's function of mailbox in this context.

THE RAPPORTEUR: It is part of the function of the Organisation to consult the Fund.

MR. LOKANATHAN (India): The meaning of the phrase "its functions" has been altered.

MR. HELMORE (UK): The Organisation's functions relating to the special exchange agreement are to act in collaboration with the International Monetary Fund/<sup>on</sup>all questions which may arise in the working of the agreement.

THE RAPPORTEUR: And to seek and accept the opinion of the International Monetary Fund whether the action is permissible.

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THE CHAIRMAN: Is there anything else on paragraphs 5 and 6? ..... Then draft Article 23 is agreed, subject to the general statement regarding the problem of common membership, which presumably will stand over until April.

THE RAPporteur: That matter will be referred to in the Report. In regard to this article, I shall state that Australia reserved its general position, but can make the ifs and buts clearer in the Report.

THE CHAIRMAN: We will now adjourn until 8.30 p.m., and unless otherwise advised, we will meet in this room.

(The meeting adjourned at 4.30 p.m.)

(For verbatim report of evening session, see E/PC/T/C.II/QR/PV/5  
Part 3).

E/PC/T/C.II/OR/PV/5

(The meeting resumed at 8.30 p.m.)

THE CHAIRMAN: I propose we now deal with Article 19. This has been discussed before, but there were a number of propositions put forward by individual Delegates which still require final decision in that the Drafting Committee has not formally decided whether they met these points by inclusion of appropriate words, whether they are to be dropped, or whether the countries concerned will reserve their position in relation to them.

MR. HELMORE (UK): Could I, for the convenience of Delegates, ask you, Mr. Chairman, about your intention with regard to the remainder of the business tonight, assuming we sit that long and succeed in finishing Article 19?

THE CHAIRMAN: I think we still have Articles 19, the global reservations on Article 21, and Article 22. I think that Article 22 was the one on which there were several alternatives. It was hoped that we would perhaps by this evening be in a position to reduce the number of alternatives but I gather we have not quite reached that stage yet. I suggest that we dispose of Articles 19 and 21, and then decide whether it would be wise to defer consideration of Article 22 a little longer in the hope that those alternatives might yet be removed.

MR. HELMORE (UK): I would hate to suggest that we do anything out of order, and still more out of the order which you have suggested, but in the interest of the prevention of cruelty to animals, I wonder whether we could decide whether we are going to deal with Article 22 or not, because if we do not decide to deal with it, there is at least one person in the room, for whom I feel responsible, who might be allowed to go home.

THE CHAIRMAN: Perhaps the Rapporteur can tell us whether we can deal with it with advantage this evening.

THE RAPPORTEUR: There is no doubt that a very great advance has been made on Article 22. We have narrowed the field of conflict to one main issue and a second issue which may or may not come up. It is a frightfully important point. We have had a shot at running the provisions about

inconvertible currencies and the provisions on the transitional period into one. We have got a general line of attack on that, and I believe that if we are given another half a day, we might get agreement on it, perhaps, in which case an enormous work would have been done. I think this is so important that it is worth taking that extra time.

When I say "we" have got agreement, I will explain what I mean. I have been consulting the United States, the United Kingdom and France on this, because they are typical of the three groups of countries which are concerned. The United States has a convertible currency and no QR, the United Kingdom under the Loan Agreement will soon have convertible currency, but will have QR; and France has inconvertible currency and QR. The point of dispute centres round those three types of countries, and what should be the position.

I believe that the right procedure, if it can be managed, is this, that the Rapporteur, tomorrow, should be free to write a report on Articles 19, 20, 21 and 23. Unless I have some time to write that report, I do not see how it is going to be done. What I should like to do tomorrow would be to write that report, and I suggest that we ask the Delegations of the three countries which I have named in the course of tomorrow morning to have another solid crack at Article 22 and try to put forward, not as the Rapporteur's draft, but as a joint draft of those three Delegations, either an agreed Article, or an Article with the alternatives. Then we must see that. It could be seen at the same time as my reports on the other Articles, so I am not sure that <sup>we</sup> I should be losing an awful lot. It is such a big issue that I feel it is worthy having one more attack on it. Also, in my opinion, the prospect of agreement is reasonably good.

THE CHAIRMAN: Is it the view of the Committee that we accept the recommendation of the Rapporteur in this matter? . . . . We will not consider Article 22 this evening, and we will invite the representatives of the United States, the United Kingdom and France to consider this matter further tomorrow, and prepare for us a revised draft Article, with or without alternatives.

MR. CLARK (UK): This is a mandate to prepare something by midday tomorrow? There will be a discussion of it by this Committee tomorrow afternoon or evening; whatever it may be.

THE RAPPORTEUR: Something must be produced - if not agreement, then disagreement.

THE CHAIRMAN: I take it that is agreeable to the Committee.

MR. CLARK (UK): Could Mr. Baraduc and Mr. Gunter have a meeting tomorrow in our Delegation's room?

MR. BARADUC (France): That would be all right with me.

MR. GUNTER (USA): Yes.

THE RAPPORTEUR: I shall have no duties tomorrow morning, except to write the report.

THE CHAIRMAN: We will now proceed with Article 19. I think that in dealing with this Article it might be wise for us to take the points as recorded in the Rapporteur's note, and decide for each one of them whether it is proposed to incorporate appropriate words in the Article, and when we have dealt with it in that way, we could then pass to the various paragraphs of the draft Article itself as amended in that form.

I think we have dealt with the question of the Chilean Delegation's reservation relating to agriculture and fisheries, and that has been recorded here. It has resulted in the Chilean Delegation reserving its position on that matter, and similarly the matter dealt with in sub-paragraph (ii). There Report then goes on: "There remain the following matters for consideration:-"

"(i) The Chilean delegation proposed that Article 19 2 (e) should be so worded as to make it clear that the restrictions should not be so operated as to permit restrictions on imports of a product which were already en route at the time of the imposition of the restrictions. I understand that it is unlikely that Article 15 (3) will be so drafted as to make this certain. The matter, therefore, needs reconsideration by the sub-committee."

Would you like to speak, Mr. Videla?

MR. VIDELA (Chile): We have here the draft report of the Technical Sub-Committee in regard to Article 15 (3). There was not agreement on these questions, and therefore, in accordance with our discussion

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of the other day, we would like to add the following words: "and shall admit all supplies of the product in question which were on route at the time at which the public notice was given." I think that amendment would cover the point.

THE CHAIRMAN: That amendment would follow the sentence in the middle of Article 19 (e) which begins... "any Member imposing restrictions on the importation of any product,....etc."

MR. HELMORE (UK): I would prefer not to comment for the moment on whether this precise amendment is acceptable, but to say what the policy of the UK would be in the application of any such restrictions. In general terms, it would be as follows. There are two cases to consider. One is where there is a total prohibition. I cannot conceive that it would ever be likely to arise under this, since, according to the rest of the Article, it would mean a total prohibition of the production of the product in question. I suppose in the case of fisheries it might arise in the sense that there would be such a glut on the market that you decide that fishing must stop for a fortnight, but in that theoretical case of the total prohibition, we should admit products that were enroute. In the more normal case of the imposition of a limit on the amount of the products to be admitted, which might be expressed perhaps by saying that 100 units would be admitted during the next month, if there were 20 units en route we should count those against the 100; that is to say, the products would not be excluded, but they would be counted against the total amount to be admitted in the period in question. I do not know whether that explanation of what UK policy would be is at all acceptable to the Chilean Delegation. If it were, I should hope that words could be found to give expression to it, or that that way of looking at it could be recorded in the report, with an injunction to the Drafting Committee to seek to provide us with an acceptable form of words.

MR. VIDELA (Chile) As far as concerns fishing, I do not think Chile will send fresh fish to England, but we are interested in whaling. We have signed the agreement on whaling, and that Whaling Convention is against the UK policy.

I have not studied that point but I may suggest there is something there. I cannot say now. I shall need to study the question of the whaling.

MR HELMORE (U.K.): On the question of whaling, I gather that that is already covered by the international convention, and in any case I do not think the domestic product whale oil arises here.

THE CHAIRMAN: Does anybody else care to comment on this?

MR HAWKINS (USA): Mr Chairman, I think this gives us no difficulty. In fact, our general position was that there should be not advance notice but that supplies en route should be admitted under any of the provisions involving changes in duties or the abolition of restrictions. It strikes me as a little strange that a provision of this sort should be inserted in this one place.

THE CHAIRMAN: I think perhaps I could explain that when this matter was raised earlier it was suggested to the Chilean delegation that this was a question which would properly be dealt with by the Technical Sub-Committee of Committee II, but that Committee has substantially completed its work - at least, it has stopped work, and has left that question quite unresolved. The record of their deliberations merely records differences of opinion upon this matter, so that it is therefore quite uncertain as to whether the appropriate Article of the Charter which deals with this does in fact ensure that in the application of quantitative restrictions in the way contemplated all supplies en route would be admitted, and we did give an assurance to the Chilean delegate at that time that if the position was not clearly covered in the report of the Technical Sub-Committee then he would be entitled to raise the matter here again. So that I suggest there is no difficulty about our dealing with it. If we deal with it and make a decision here which subsequently becomes unnecessary because of a decision recorded by the Technical Sub-Committee on the appropriate clause of the Charter, then the Drafting Committee will presumably delete this because it is covered more appropriately elsewhere; but it seems to me to be proper in the circumstances for us to attempt to deal with it here in its limited application to quantitative restrictions.

MR HAWKINS (USA): I have no objection to it except on purely formal grounds.

I should think it would be desirable, however, to indicate in some way that the Drafting Committee should give consideration to it in connection with the general provision.

THE CHAIRMAN: Yes. Is there any other comment on the proposal?

MR VIDELA (Chile): I would like to explain the position of the Technical Subcommittee. At first we were doing the same as the other Committees - I mean discussing things word by word - but then two weeks ago the direction was given about the date of the 20th November and we were advised to change our procedure. Then, as the matter was very very long and difficult and a highly technical matter, we decided to adopt the new procedure, and that was why we had only a general discussion, taking note of what had been agreed and what had not been agreed; and a general recommendation on Article 15 was made, and a note was made to the effect that the delegations of Australia, France, Belgium-Luxembourg, Netherlands, Canada, India, New Zealand, Norway, South Africa, Czechoslovakia and United Kingdom were unable to accept the paragraph in question; and Canada gave notice in case of an administrative ruling. We did not take a vote because we were forbidden to do so under the new procedure. That is the explanation of it.

MR HELMORE (U.K.): May I make a concrete suggestion on the form of our report?

I suggest that the Rapporteur might be instructed to record that this point was raised and that, on the assumption that this point cannot be provided for in Article 15(3), it was thought possible to provide for it in this paragraph by the insertion of an amendment on the following lines - and then would follow the amendment read by the Chilean delegate. Now, from the United Kingdom part, if that were put in, as it is perfectly right and proper that it should be, we should have to say that we could not accept it; but we could accept it if the Chilean delegate were prepared to have it read as follows:- "Provided that any supplies of the product in question which were en route at the time at which the public notice was given shall not be excluded, subject to their being counted, so far as practicable, against the quantity permitted to be imported in the period in question."

THE CHAIRMAN: Could I make a minor suggestion - that that would make it obligatory for a country to count a commodity against the quota; and that, it seems to me, might be left open. Your position would be met if it were provided that the goods en route should be admitted, but maybe counted against the quota for the ensuing period?

MR HELMORE (U.K.): Shall not be excluded but may be counted, as far as practicable in case the quantitative rate was greater than the quantity to be imported, which is unlikely. May I read it again? "Provided that any supplies of the product

in question which were en route at the time at which the public notice was given shall not be excluded." That means they must be permitted to be imported, but may be counted, so far as practicable, against the quantity permitted to be imported in the period in question.

MR VIDELA (Chile): Supposing a boat is arriving and then it is found that it has all the quantity which is allowed on board, and then the next day another boat arrives —

MR HELMORE (U.K.): If the second boat-load was en route at the time, the goods cannot be excluded and the country in question would go over its quota. The only point is that after notice has been given then an account has to be taken of the goods en route at the time in the quota.

MR VIDELA (Chile): I think it is something to consider. While you cannot change your legislation you deny the right of considering the goods en route. That is something to consider.

MR HELMORE (U.K.): It means the goods en route must not be shut out.

MR VIDELA (Chile): I think all these countries are not affected by this in the same way. It may result in a modification of our own loss. I do not see why the British law is consolidated, however. I think you may also make an alteration afterwards if it is reasonable.

MR HELMORE (U.K.): I do not want to get into a discussion which really ought to have taken place in the Technical Sub-Committee, but I think there is a real possibility of drawing a distinction between the application of duties to goods en route and the application of quantitative restrictions to goods en route, and in general, speaking without notice and subject to confirmation, I would have thought personally that this sort of clause would satisfy the general point of goods en route which suddenly become subject to a quota - that is, that they must be admitted, they cannot be dumped in the sea, but they do count against the quota. But that would want further consideration before I could accept it.

MR VIDELA (Chile): For my part, I quite agree with this, but it is not a matter for the Technical Sub-Committee to decide on.

THE CHAIRMAN: There is no question that we can discuss it here. I think this point is now fairly clear. There are two alternatives - or three alternatives, if you can have three. One is that there should be no undertaking in relation to goods en route. The second is that at the other extreme, so to speak -

admitted without being taken into account. The third one is that they must be admitted but they may be taken into account against any quota fixed for the ensuing quota period. I think the best thing would be if we could just get the views of the individual delegations on that point, and then perhaps we could decide how we are going to deal with this matter. Would the United States delegate say something on this?

MR HAWKINS (USA): Mr Chairman, I feel quite safe in saying that we could accept the provision that goods en route would be admitted without charging against the quota. I say that subject to the need for further investigation, but I think that is so. Certainly we can accept the second, that is to say, that they would be admitted -- definitely would not be excluded but would be charged against the quota. I think we could accept the first one.

MR PHILLIPS (Australia): I think we would prefer the United Kingdom draft. We might on further consideration, go the whole way. I certainly think the United Kingdom draft would be acceptable.

MR KAFKA (Brazil): I agree with either draft.

MR BARADUC (France)(Interpretation): I have no particular opinion on the question.

THE CHAIRMAN: It is clear that we could, if the second alternative (or the middle one, if I can call it that) was acceptable to the Chilean delegation, get unanimous agreement on that. It is equally clear, I think, that we could not get unanimous approval of either of the other two alternatives; that is to say, that they should be capable of being excluded or necessarily admitted without being recorded against the quota. Would you be prepared to accept the compromise alternative of the United Kingdom?

MR VIDELA (Chile): I think so, because this very useful discussion will be taken into consideration before anything is decided on.

Then they would have an assurance that you would cover that shipload.

THE CHAIRMAN: Could we ask the Rapporteur then to record a note of this decision in relation to quantitative restrictions with a request to the drafting committee that they should include provision, if it is not covered in the general articles, in the appropriate place relating to quantitative restrictions. Is that agreed?

THE RAPPORTEUR: On the middle compromise.

THE CHAIRMAN: Yes, the middle compromise.

The next point I think we should deal with is the first point raised by the Brazilian delegate. The Rapporteur's note reads "They desire that there should be provision for the use of restrictions during a post-war transitional period for the orderly liquidation of uneconomic industries created by the war. This point might be met by the insertion of the words:- 'or of industries developed in any Member country owing to the exigencies of the war which it would be uneconomic to maintain in normal conditions' after the words 'orderly liquidation of temporary surpluses of stocks owned or controlled by the Government of any member country' in Article 19 2 (a) (iii)." Would the Brazilian delegate care to add anything to his previous remarks on this?

MR KAFKA (Brazil): No, thank you, Mr. Chairman.

THE CHAIRMAN: The suggestion is open to comment.

MR HAWKINS (USA): May I ask a question? Is this intended to refer to Government-owned enterprises or to private enterprises?

MR KAFKA (Brazil): I think it might refer to private enterprises principally.

THE CHAIRMAN: I think perhaps we had better record our views country by country, if nobody has any further comments to make or queries to raise. The delegate for France?

MR BARADUC (France) (Interpretation): I am not particularly concerned by this provision.

THE CHAIRMAN: Australia?

MR PHILLIPS (Australia): I take the same position as France.

THE CHAIRMAN: The United Kingdom?

MR HELMORE (UK): I will try to be a little more positive and say we have no objection.

THE CHAIRMAN: The delegate for U.S.... ?

MR HAWKINS (USA): I have definitely a question about it. I am not quite sure.

The justification for the exception is that it is very similar to the preceding ones - that is the restrictions facilitating the disposition of surpluses and which I think is fairly justified, because property is being liquidated. You would have it imported in large quantities without spoiling the market. I am not quite clear how this would work - whether this would include private enterprises built up during the war which are said to be uneconomic. The purpose is to liquidate them and I cannot understand how you can liquidate them by this means.

MR KAFKA (Brazil): If I might endeavour to explain the process envisaged, it is that you establish a quota beginning, say, in 1947, and you tell your manufacturer that this quota will be progressively released after the provisional period fixed in the Charter. In that way you would force the manufacturer either to go out of business in an orderly way, without provoking bankruptcies and their consequences, which might be quite serious in countries where a large number of such industries has been created, or to increase the efficiency of his industry so that at the end of the period he would be able to compete. What we are afraid of is that if we have no such disposition, then we might, when imports of such products start on a large scale, have a whole series of bankruptcies which would badly upset our economy. In that case we should then invoke article 29 and possibly also the financial assistance, which might complicate matters.

MR HAWKINS (USA): I will accept this for the time being, subject to the possibility of raising it in full committee again, after further consideration.

THE CHAIRMAN: I take it then, that it would be at this stage generally agreeable to the committee to include it, subject to the right of any delegation to raise the matter in full committee after further thought. I take it that the words undefined in paragraph 2 (a) on the first page "or of industries developed in any Member country owing to the exigencies of the war which it would be uneconomic to maintain in normal conditions" are accepted for inclusion in article 19 2 (a) (iii) ?

THE RAPPORTEUR: In the draft report which I shall be working on tomorrow, I shall work on the assumption that it is acceptable, and then my report can be altered

as well as the article if necessary.

THE CHAIRMAN: Yes. On the second point submitted by the Brazilian delegate, would the Rapporteur like to read this?

THE RAPPORTEUR: I will read the whole paragraph. "They desire that there should be provision, with due safeguards against misuse, for the use of restrictions as an anti-dumping measure against intermittent dumping which it would be inappropriate to meet by means of anti-dumping duties under Article 11. This point might be met by the addition of a new sub-paragraph 2 (g) of Article 19 on the following lines:- Import restrictions necessary to prevent sudden and intermittent dumping of products, which it would not be practicable to prevent by means of anti-dumping duties under Article 11. Such restrictions shall be imposed only in conditions in which anti-dumping duties would be permissible under Article 11, and shall be subject to discontinuance if the Organisation, after consultation with the Member imposing them, so recommends."

THE CHAIRMAN: Would the delegate for Brazil like to add anything on this?

MR KAFKA (Brazil): Not at the moment.

THE CHAIRMAN: The suggestion is open for comment.

MR HELMORE (UK): We do not like this suggestion very much, as opening yet another door to somewhat uncontrolled use of import restrictions. I appreciate the spirit in which the safeguard of requiring a Member to discontinue has been put down, but I do not think it would be very valuable in relation to the use of quotas to meet sudden and intermittent dumping, because if it were sudden, the cure would be taken suddenly and if it were intermittent, probably they would be off again by the time the Organisation had required their removal. But I wonder whether in any case the main point of the Brazilian amendment is not met by the provisions for emergency action elsewhere in the Charter?

MR KAFKA (Brazil): If I may comment upon this, I was thinking less of sudden sporadic dumping than of intermittent dumping, which goes on repeatedly over a period of time. In a case like that it is rather complicated to impose and take off duties, so what I was thinking of when I proposed this amendment was that you might construct a quota which would let in <sup>as</sup> much of the product which had been subject to dumping as would come in if it were imported without dumping - that is to say, at the normal export price. If you had a quota of

this kind you would assure the supplying country of being able to import into your country as much as they could without dumping and you would avoid the effects of dumping on your home market price. The basis is that generally costs of production are<sup>a</sup> much more stable affair than the varying duties on dumping which could be imposed. You would have to vary dumping duties.

MR HAWKINS (USA): Would the definition of "dumping" be substantially as in article 11 ?

MR KLEKA (Brazil): I believe so, yes.

MR HAWKINS (USA): Then I am not clear as to the reason for a quota as against an anti-dumping duty. An anti-dumping duty to counteract dumping is defined there and it would be enough to offset the reduced price. It could be put on instantaneously. It could be put on quickly. It could be put on as quickly as a quota and the difficulty I see is that it is hard to adjust it in such a way that it does no more than offset the actual dumping.

MR KLEKA (Brazil): I think I have not made myself clear. The idea is this. For instance, Country A exports motor cars to Country B. You could ascertain the normal export price, based on the normal costs of motor cars and you can then ascertain what quantities would be imported if the product were exported at this price. You could base your quota on that and if your production costs are fairly stable then that would be all right. It might happen that the motor car industry of Country A would dump intermittently to prevent the establishment of an industry in Country B at varying levels so that you would have every time to ascertain in accordance with the provisions of article 11 the exact height of the anti-dumping duty to be imposed, which would be difficult; at least it would consume a lot of time and this would result either in holding up your imports because consular invoices would not be granted while the investigation was in progress, or it would result, if such invoices were granted, in the dumped product entering at the dumped price.

MR HAWKINS (USA): That problem could be met by entering the suspected products under bond pending an ascertainment whether they are being sold at dumped prices. Our difficulty is in seeing how you could apply a quota as against an anti-dumping duty to counteract what is really dumping. I think there is a danger of the quota going away beyond what is necessary merely to offset dumping prices.

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There is the other point (I think the United Kingdom delegate mentioned it) that if there is a sudden flood of imports, action can be taken quickly under article 29.

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MR. KAFKA (Brazil): As there is a possibility of entering the product under bond, that would not really dispose of the question of delay, because the produce entered the home marked by previous delay and there would be the possibility of having to return it, and so on. As to the danger of the quota going way beyond, if you have consultation with the Organisation, that could easily be remedied.

MR. VIDEL (Chile): Really I am looking for something to counter-balance the letter (c). That was the reason why I reserved on letter (c) the position of Chile. I do not see why the agricultural products in a particular country should be protected and not other products as well. The undeveloped countries would be in much more danger than the others. I have not studied this point, but I am in sympathy with the proposal of the Brazilian delegation because I think it covers my point of view.

THE CHAIRMAN: It would be possible to accept your reservation.

MR. HELMORE (U.K.): I wonder whether the Brazilian delegate could explain to us a little more why Article 29 does not meet his point?

MR. KAFKA (Brazil): Precisely because Article 29 is designed to deal with emergencies, and therefore the restrictions imposed under Article 29 would be essentially short-term restrictions. In the case of intermittent dumping, we might have to put on a quota for a relatively long period of time.

MR. HELMORE (U.K.): I would like to ask the United States delegate whether he really agrees with that interpretation of Article 29? It is not my impression of how something like Article 29 has been operated by the United States itself in one particular case.

MR. HAWKINS (U.S.A.): The general purpose of Article 29 is to deal with an emergency situation. In general you would expect that it would be short-term, but it does not necessarily have to be under the terms of the Article.

MR. KLEFKL (Brazil): Perhaps we might come to an agreement on this basis. There is another reason why Article 29 does not altogether satisfy us. That is because it permits the imposition of restrictions under this Article if importations cause or threaten serious injury to the domestic producers. The most important case against dumping is where domestic producers do not exist because of intermittent dumping. If something of that sort could be included in Article 29, paragraph 1 - "threaten serious injury to domestic producers" or "threaten the establishment of domestic producers operating at economic levels" - that might satisfy us.

THE CHAIRMAN: Was not some change made in Article 29 to meet that point? I thought the point was raised in discussion at some point.

MR. HAWKINS (U.S.A.): There was a change made there to protect an interest from injury in another country where it had preferential treatment. It was changed to fit that case.

THE CHAIRMAN: I seem to remember something coming up about this case of an injury to an industry about to be established.

THE RAPporteur: Is it possible to treat it this way: Not to clear it up finally here and now, but in the report to record the proposal of the Brazilian delegate, so that if it were met under Article 29 (1) it would not have to be met here, but if it were not met under that Article, the Brazilian delegation would want it met here and would reserve their position to that extent?

MR. KLEFKL (Brazil): That would do perfectly.

THE RAPporteur: This is really not clearing it up, but recording in the report the terms under which the view of the Brazilian delegation would be cleared up.

THE CHAIRMAN: I think it might be helped if we knew what the views of the delegations were on the possibility of dumping to prevent

the establishment of an industry, which I gather is the situation which the Brazilian delegate has in mind, being permitted under Article 29. Could the words "threaten serious injury to domestic producers of a similar product" be regarded as covering potential producers, or should we have to alter them so that they would cover potential producers?

MR. HELMORE (U.K.): I wonder whether we could postpone this point for a few minutes while we endeavour to obtain a copy of the latest draft of Article 29, and then return to it?

THE CHAIRMAN: There is a third point which has been submitted by the Brazilian delegation, in which they suggest that export restrictions should be permitted for the preservation of scarce natural resources even if there is no restriction on domestic consumption as would be provided by 32 (j). Would you care to add anything on this, Mr. Kafka?

MR. KAFKA (Brazil): Not at the moment.

THE CHAIRMAN: What sort of situation had you in mind?

MR. KAFKA (Brazil): I gave an example when I first raised this point of our having resources of manganese, for example, which are really ample for our present or prospective uses, but if we continued exporting them without limit, as we have been doing in the past, then they might very soon be exhausted. The main objection, which I recognise is a very fundamental objection, raised against this was that such permission might be used in order to prevent the establishment, based on your raw material, in another country of a like industry as we have at home. However, I think that this objection could be met if we made this subject to the supervision of the Organisation. We would submit to the discontinuance of such a restriction if the Organisation so advised because it found it was being abused for monopolistic purposes.

THE CHAIRMAN: What are the views of the delegations on this question?

MR. HAWKINS (U.S.A.): There is a rather fundamental point raised here. The whole question of equal access to resources is absolutely involved. A country with a large national resources could easily take advantage of a general provision like this to deny the access to those resources which other countries ought to have. I know that that is not the purpose of the provision, but there is serious danger of this misconstruction and misuse. I should think that a provision of this kind must be explained a great deal further, and hedged around pretty carefully, and it would probably be regarded with a great deal of misgiving by countries which find themselves poor in mineral and other resources needed in manufacturing industries. Without being able to say that it is definitely objectionable, I think it raises rather serious questions.

MR. HELMOLD (U.K.): I think we should take very much the same view as the U.S. delegation. We already have in paragraph 2(a) provisions to cover distribution of products in short supply. We also have in paragraph 2 (b) provisions to meet a shortage of essential products. I should have thought that goes some way to take care of a situation of this kind, and I would doubt very much if it is desirable to go further, except to the extent that 32 (j) would already allow.

MR. PHILLIPS (Australia): There are difficult points raised here, to which perhaps we have not given adequate consideration, but at first sight it seems possible that it might be better to consider an alteration of Article 32 (j) rather than put something in here. On the whole, we are inclined to favour the Brazilian delegate's argument, but we realise that there are serious difficulties which the U.S. and U.K. delegates have mentioned.

M. BARDUC (France) (Interpretation): I fully support the reservation made by the U.S. delegate, which was repeated by the U.K. delegate. If we do not take a very clear position and say quite specifically what we mean in this article, we shall act contrary to the general spirit of the Charter.

THE CHAIRMAN: Could we deal with this? It seems to me, from what the Brazilian delegate has said, and from what the other delegations have also said, that it is recognised that there are possible circumstances in which acts of this sort might be justified, subject to careful supervision, but it is also clear that none of the delegations have given the precise circumstances in which this action should be taken sufficient thought for them to be very definite about it.

I think that if we ask the Rapporteur in his report to record this question with a note to the effect that the Sub-Committee considered that there were possibly situations which would justify action of this kind, but that the general principle involved would raise serious matters of principle which required further consideration, and suggest that the matter be left over for reconsideration at our second session, when further thought has been given to it, that might meet the Brazilian Delegation's point at this stage.

MR. KAFKA (Brazil): I think that would meet our point, or alternatively we might try to get together with the USA and UK Delegates, and see how we could hedge this round. We do not want to open possibilities for abuse at all.

THE CHAIRMAN: We have a lot of rather major points of principle still outstanding on which consultation is taking place, and since this point is, while important, not a matter of major principle to the subject matter we are considering, I hesitate to push too much on to already overburdened people for private consultation. If the Brazilian Delegate would accept my suggestion, I think we might deal with the matter as I have outlined.

MR. KAFKA (Brazil): We are agreeable to that.

THE CHAIRMAN: The Belgian Delegation suggested that Article 19 2 (e) should read:

"Import quotas on agricultural products, imported in any form whatsoever, when such quotas become necessary because of price depreciation on the domestic market due to the combined effects of national production and the importation of a particular commodity. Quotas may be applied as soon as price depreciation reaches the point where sales on the domestic market are effected below the normal price. By normal price is understood that which covers the cost price of domestic production."

The Netherlands Delegation have proposed the deletion of the word "temporary" at the beginning of 19 2 (e) (ii) and of the provision that the surplus should be made available to certain groups of domestic consumers free of charge. The point of that is that the Rapporteur has not had time to discuss this matter with the Delegations concerned. Are the Belgian or Netherlands representatives here?

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MR. BARADUC (France) (Interpretation): I am not quite certain whether the Belgian Delegation insist on their point of view. I would not like to be very definite about it, but this is the understanding I have gathered.

THE RAPPORTEUR: I have not had time to consult them.

MR. BARADUC (France) (Interpretation): Perhaps the best thing would be to consult the Belgian Delegation again, and to leave discussion of that question open to the plenary meeting of the Committee.

THE RAPPORTEUR: I might perhaps call on the aid of the Secretariat in this matter. Possibly the Secretariat could get in touch with the Belgian Delegation while I am writing my report tomorrow, and see whether they really wish these points to be brought up in the full Committee II or not. If they said they did not wish to press the matter, I could drop the whole thing from the report. If they said they wished the points to be discussed, I could put it in square brackets in some form in the report. I am sorry not to be more helpful myself, but I have come to the end of my time.

THE CHAIRMAN: I think we can leave those two points and ask the Secretariat to make inquiries. They seem to me to be rather difficult questions; indeed, they are quite fundamental to certain sections of this Article.

THE RAPPORTEUR: In case the answer is that these Delegations do wish to press this, would it be possible, for my guidance in writing the report, very quickly to ask Delegations here what their broad reaction would be?

MR. HELMORE (UK): Like a famous President of the United States, we are against it.

THE RAPPORTEUR: Against both?

MR. HELMORE (UK): Yes.

MR. PHILLIPS (Australia): The Australian Delegation oppose both proposals.

MR. KAFKA (Brazil): We have no definite views.

MR. BARADUC (France) (Interpretation): The French Delegation hesitates to take a position against the Belgian Delegation, given the relationship which exists between Belgium and France, but for my part I must say I do

not think this suggestion is a very reasonable one.

MR. H. WILKINS (USA): I would not favour the Belgian proposal, for the following reason. The situation is caused by the combined effects of national production and the importation of a particular commodity. I do not see why it should all be taken out on the imported product. It seems to me a case where the burden of the restriction ought to fall on both in the interests of keeping international trade at the maximum. I should not, therefore, favour the proposal.

THE RAPporteur: I feel that, in view of the opinions that have been expressed, I should be right, should I not, if they do wish this to be reported, to have it as a reservation rather than in the main text?

THE CHAIRMAN: I think so. It does represent a pretty substantial departure from the general outlines of the Article as we have it drafted. I think it would be pretty difficult to incorporate it without a substantial change. I think the best thing would be for the Belgian Delegation to put it in as a reservation.

THE RAPporteur: I will follow those lines.

THE CHAIRMAN: Does the same apply to the suggestion from the Netherlands Delegation? This refers to a suggested amendment of Article 19, 2, (e) (ii) -- the suggestion is that we delete the word "temporary" in the first line so as to remove a "temporary" surplus, and also delete words in the second line about making the surplus available to certain groups of domestic consumers free of charge. The relevant part would then read:  
"To remove a surplus of the like domestic product by making the surplus available to certain groups of domestic consumers at prices below the current market level."

THE RAPporteur: The Netherlands Delegation said: "We are of opinion that the sentence stating that the surplus should be made available to certain groups of domestic consumers free of charge or at prices below the current market level should be deleted. We think a country should have the opportunity to create stocks in order to meet requirements in times of shortage. Also, we doubt whether it would be a wise thing to refer to

only temporary surpluses. In certain countries conditions are such as to make it impossible to curtail production of certain products."

I take it that that means, in effect, that they would like it to read that these restrictions are necessary for the enforcement of governmental measures which operate to remove a surplus of a like domestic product, and it comes almost to the Belgian suggestion, does it not -- that if there is a surplus due to home production and imports, etc. That is why I put them together. I thought they were practically the same suggestion.

MR. HELLMORE (UK): As I now understand the Netherlands proposal, I am still against it, but perhaps when the Secretariat are asking the Netherlands Delegation whether they wish to press this, they could also say that it would greatly assist the Committee if we had the words in front of us as the Netherlands Delegation would like them to read.

THE CHAIRMAN: I think the Rapporteur's report is substantially correct, and that their meaning is to remove a temporary surplus for the like domestic products.

MR. HELLMORE (UK): That is what they said. I find it difficult to believe that they mean it.

THE CHAIRMAN: As far as we understand it, I take it that the Netherlands Delegation's proposal is practically identical with the Belgian proposal, and in the light of the general opinion expressed, we should advise the Rapporteur to recommend the Belgian and Netherlands position on these two proposals as substantially one of reservation, subject to anything that may be decided in the full Committee, when the Delegations concerned have had an opportunity to speak on it again.

There are still a number of more general questions for the treatment of quantitative restrictions, such as those of the Union of South Africa.

MR. HELLMORE (UK): Before we get on to the general points, I am ready now to return to the Brazilian point about dumping, which we postponed in order to obtain a copy of the latest version of Article 29. I believe this to be accurate, but I cannot take complete responsibility for it. I am more ready to produce it because, in so far as it is relevant to this point, it is in the same form as it was in the draft Charter.

The apposite words are: "If as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause, or threaten, serious injury to domestic producers of like or similar products, the member shall be free to withdraw the concession or suspend the obligation....etc." It seems to me that the Brazilian Delegate was ready to accept this as substantially meeting his point in the case of an established industry, but where it was a matter of an industry to be established, he was not satisfied, because he said there would be no domestic producers of like or similar products to be threatened, and I would agree with him in that interpretation. But I want to suggest that the protection against imports of whatever kind and imported under whatever conditions of an industry to be established, is dealt with in the Joint Committee which has been considering industrial development, and that there is ample protection there for action to be taken in advance. After all, it is not a question of sudden dumping when an industry is going to be established. It is a question of making up one's plans and considering what one is going to do, and working out a form of protection which is the most suitable to the particular conditions. There are a great many things which can be done, as set out in the report of that Committee.

Mr. K.E.K. (Brazil): I should like to say that if we accepted this, we should have to make some reference in Article 19, under Chapter 1, on similar lines to the reference that was made this morning in the Procedure Sub-Committee to the Joint Committee's report on Article 18. The second point is that when you draw up your protective arrangements under the provisions of the Joint Committee's recommendations, you base them on a certain stable level of export prices, while here we are dealing with an unstable level of export prices. That does not meet the point, therefore, although it goes a long way towards meeting it.

MR HELMORE (U.K.): I think it is necessary to make a cross reference because the relevant passage of the draft Article attached to the Report of the Committee on Industrial Development reads: "If a member in the interests of its programme of development proposes to employ any protective measures which would conflict with any of its obligations under or pursuant to the charter, it will inform the Organisation", etc.; and then there is a procedure for consultation or negotiation in the case where an undertaking has been given to an individual member; and both the relevant sub-paragraphs end with the words, "The Organisation may release the applicant member from the obligation in question or from any other relevant obligation in the Charter, subject to such limitations as the Organisation may impose." I cannot believe that under those words, if there were a genuine apprehension of dumping, measures could not be taken to deal with it.

MR KAFKA (Brazil): I think that would meet my point. I notice that in order to bring into force the exception in Article 29 the product has actually to be imported in such increased quantities. Again there is some slight doubt, and I think it would be better if that could be amended. It might be better to say, "if there is a threat of increased quantities being imported", or something like that; because when you take an anti-dumping measure what you really do is not to take your measure after the commodity has been imported but prior to its being imported, when you see that conditions in the country of origin are such that they will be importing in increased quantities.

THE CHAIRMAN: Do you wish to pursue that point here? It does seem relevant rather to a discussion in the appropriate Sub-Committee. If you want to open the question of the protection provided in 29, it would, I feel, be preferable to raise it there. If you feel that your main point about the protection of a potential industry is met by the section in the chapter on Industrial Development which Mr Helmore has just read, I think we could leave it at that point.

MR KAFKA (Brazil): Yes. Perhaps we could just make a note that in respect of the potential industry my point is met but in respect of the established industry there is this doubt I raised just now; and I think some reference might be made in the report that unless that doubt were met under Article 29 I should like it met under the Quantitative Restrictions section.

THE CHAIRMAN: Will you note that?

THE RAPPORTEUR: Yes, I think I have got that.

MR HELMORE (U.K.): If that is going to be noted - and I agree it should be - I hope the note will also show that other delegations thought the point was already sufficiently covered.

THE RAPPORTEUR: I shall put it this way, that the Brazilian delegation are not sure whether it is covered and want to be reassured on that, and other delegations - without specifying them - express the view that it is adequately covered.

MR HAWKINS (USA): That is my view.

MR BARADUC (France)(Interpretation): I agree.

MR PHILLIPS (Australia): It would not imply that all delegations necessarily thought that.

THE CHAIRMAN: The South African delegate is here. Have you any points to put before the Sub-Committee on this Article?

MR BEYLEVELD (South Africa): Is it referring to the suggestion that there should be general rules?

THE RAPPORTEUR: I was thinking of the paper E/PC/T/C.II/14 and wondering whether there were points there that ought to be taken into account in our examination of Article 19.

MR BARADUC (France)(Interpretation): I think there is also a proposal from the Chinese delegation which we have to deal with.

THE RAPPORTEUR: I have that in mind.

MR BEYLEVELD (South Africa): After the discussion of Article 20 and the way our thoughts are running about quantitative control in relation to exchange, we do not think it is necessary to pursue our suggestion there.

THE CHAIRMAN: There is a proposal from the Chinese delegation in the document E/PC/T/C.II/FV/W63, I think it is, but I do not think there is a representative of the Chinese delegation here.

MR VIDEA (Chile): Before we turn to that I would like to comment on letter "D" of the South African delegate's notes. I think it is very important.

THE RAPPORTEUR: I will read this out: "Seasonal commodities should not be subject to quota restrictions during periods when some domestic products are not available. The possibilities of storage of some commodities may, however, be taken into account in determining free periods."

THE CHAIRMAN: You would wish to submit that...?

MR VIDEA (Chile): I do not know really the position here.

THE CHAIRMAN: The delegate for South Africa said that in view of the changes that had been made, particularly in relation to the use of quantitative restrictions for balance of payments purposes and other changes made in this section of the Charter, his delegation did not wish to press for the adoption of the suggested rules.

MR VIDELA (Chile): I would only like to put on record the reservation made by the Chilean delegation on this note; that is all.

THE RAPporteur: Should it be mentioned in the report?

MR VIDELA (Chile): I mention it as a reservation of the Chilean delegation to go in the report.

THE CHAIRMAN: Are there any comments on that suggestion?

MR HELMORE (U.K.): I am not absolutely sure that I understand exactly what this is a resolution to or how it would read if adopted eventually.

MR VIDELA (Chile): I suppose that originally the South African delegation made some observations —

MR BEXLEVELD (South Africa): We submitted a whole set of the rules.

MR VIDELA (Chile): Before we leave it, I was waiting to hear from the South African delegate, and before taking note that he is not pressing it I would like to make known our reservation.

THE CHAIRMAN: I think the structure of the Article now is different from the way in which it was conceived by the South African delegate. Apparently his approach to the thing at that time was to lay down the conditions under which quantitative restrictions could be used. The structure now is to provide that they cannot be used except in certain specified circumstances. This proposal I think could only be met by including a sort of overriding provision to the effect that the exceptions referred to below should not permit the imposition of quotas on seasonal commodities during periods when civil or domestic products are not available.

MR VIDELA (Chile): Shall we leave it to the Rapporteur?

THE CHAIRMAN: I do not think it is fair to do that. I think this is quite an important point, really. I think before we leave it to the Rapporteur we should get the views of the delegations on it, unless it is felt that it wants further thought, in which case we could deal with it in the same way as we did with a previous one, when we noted the problem and said that it required further consideration by the delegates and left it to be dealt with in our second session — unless delegates are prepared to express an opinion on it now.

MR HAWKINS (USA): I confess I had the greatest difficulty in following the point.

Could you read it once more?

THE CHAIRMAN: The Union of South Africa submitted a set of rules which should operate to permit the use of quantitative restrictions. The present form of the Article which proscribes the use of quantitative restrictions except in certain specified circumstances makes the form of his proposal inappropriate. I suggested, however, that it could be met by adding a general note - presumably in paragraph 1 - which precludes the use of quantitative restrictions except in the circumstances listed; and to add there a clause which would provide that none of the following restrictions should permit the imposition of a quota on seasonal commodities during periods when similar domestic products are not available. I am not sure what the implication would be,

MR HELMORE (U.K.): I have been trying to look and I find great difficulty in applying it to any of them. I cannot believe it could be meant to apply to equitable distribution of products in short supply, the maintenance of wartime price control, the orderly liquidation of temporary surpluses, the orderly liquidation of industries developed during the war, nor to export prohibitions temporarily imposed to relieve critical shortages of foodstuffs; nor do I think it should apply - though it could - to import and export prohibitions necessary to the application of standards for the classification and grading of commodities. It certainly should not apply to "D", which is export or import quotas composed in accordance with the inter-governmental commodity arrangements concluded under chapter 6; and in "E" I find a great difficulty in attaching any meaning to it since these restrictions are applied in connection with restriction of the quantities of the like domestic product. If there is no like domestic product being produced at that season I do not quite see how it fits there. It seems totally inappropriate to add ---

THE CHAIRMAN: If I may interrupt, I am not quite sure about "E". I think it could quite easily apply there.

THE RAPPORTEUR: I was going to suggest that it should be included as a proviso to "E". It seems to me not to refer to any of these except "E" but in "E" it might be reasonably said that you should not restrict these things when they are not being

produced at home, because you take your proportion as working over a year.

THE CHAIRMAN: You could easily add a domestic limitation of production which would under (c) justify imposing a quota all the year, presumably, whereas at some times of the year there would in fact be no production. I think it is reasonable to say at first glance, at any rate, that the only exception to which this could apply would be (c). Whether it would be desirable in the case of (b) I think requires a little thought, but speaking purely for myself the suggestion does seem to me to be one which is worth a little consideration. May I suggest that we leave it as we did the other one. We note that it has some possible relevance in the case of (c) and that delegations should give the matter some further thought.

MR HELMORE (UK): May I say after attempting to show that it could not apply, that the Rapporteur might consider the suggestion that if this is to be adopted, it could best be adopted by saying that the specified period in article (b) should be chosen with due regard to seasonal changes in production. I believe that would meet the point.

THE RAPPORTEUR: Could not one leave it in this way: . . . without trying to draft it into the thing at this time, note the point, as you say, and say that it might have some relevance to 2 (c) and that it is a matter which should be brought up at the next round to see whether delegates as a whole want it put in and, if so, in what form. So perhaps we may leave it as I suggest, saying that it has a possible reference to (c), we have not thought out an exact draft but it is a matter which should be borne in the minds of delegates for consideration next round.

THE CHAIRMAN: Is that acceptable to the delegations? (Agreed). There remains I think, the proposal put forward by the Chinese delegation. I understand it has been submitted.

THE RAPPORTEUR: When I studied this it immediately occurred to me that a good deal of it is covered in the joint committee work. Again, I am afraid, as I have been working on the other articles so hard, I have not had time to ask the Chinese whether they still wish to press it. It came informally after the work on the joint committee had progressed a good deal. I am still not sure whether it was actually put in before they fully realised the outcome of that. As the Chinese

delegation are not represented here tonight may I again, as Rapporteur, ask the Secretariat to inquire whether the Chinese wish to press it, in the light of the outcome ?

THE CHAIRMAN: In doing so, would it be reasonable to inform the Chinese delegate that, while we have not had a chance to hear his views on this, it was the general feeling of the sub-committee that a good deal of the substance of these propositions had been met in the proposals put forward by the joint committee, particularly in reference to the message to Committee II, to provide by the selection of imports to give predominance to capital requirements and so on, where there is a shortage of international exchange for all purposes.

MR HELMORE (UK): That applies, I think, to the second of the two suggestions by the Chinese delegation. I am not sure that it applies to the first.

THE CHAIRMAN: No, I do not think it does.

MR VIDELA (Chile): We made a suggestion on those lines.

MR HELMORE (UK): I think it is a little wider than the suggestion previously made by the Chilean delegation, because if I were playing poker I would suggest that the last two lines of this amendment contained two jokers.

THE CHAIRMAN: I think you underestimate the number.

MR HELMORE (UK): I never indulge in games of poker where there are more than two jokers.

THE CHAIRMAN: I feel we do have to reach some sort of view on this question. The proposal in the first paragraph does appear to be drafted in terms that are so general in their implications that it is difficult to see how they could be fitted into the type of draft article which we are now considering without very greatly increasing the range of the exceptions. So far as the second paragraph is concerned, I think there is some reason to believe that the main substance of that is cared for already. If the committee agrees with that general view of this we may ask the Secretariat to inform the Chinese delegation that at a preliminary glance that was the feeling of the sub-committee, and ask them whether in those circumstances they wish to record a resolution or to re-submit their views on this question. Is that agreeable ? (Agreed).

MR VIDELA (Chile): May I call attention to Paper 3/2/34 where the Chinese delegation made some wide remarks on this ?

(Document was handed to the Chairman).

THE CHAIRMAN: I think it is perhaps desirable that I should read this note from the Chinese delegate which sets out his view of this particular point so that we can be clear as to where we stand.

(The Chairman read the document).

(I fols)

That provides the background against which we can view the two later paragraphs submitted, in which the Chinese delegation put forward their proposals in more specific terms, but I do not think there is anything in it which would change the general summing up that I made earlier. Is that the view of the Committee?

MR. VIDELA (Chile): Except to change the country! We brought forward the same arguments.

THE RAPporteur: I thought the Chinese argument was more like the Indian argument, of which a note is to be made in my covering note to the effect that the Indian delegation do not want to make a formal reservation but would like it mentioned in the report. As I understand this particular point of the Chinese delegation, it is nearer the point of the Indian delegation than to the Chilean delegation. I may be wrong, but I thought that was the sense of it.

THE CHAIRMAN: I certainly think the extract from that statement referred particularly to the problem of the proportion between the importers and the domestic produced product, which is substantially different from the two points covered in this paragraph. Can we leave it at that? The Secretary will consult the Chinese delegation and make certain whether they wish to reserve their position on these points. I think that covers all the specific submissions. I do not know whether there are any representatives of other delegations here who would wish to submit proposals in relation to Article 19? Can we decide, then, that, subject to the points to be covered in the Rapporteur's report, which has been mentioned during the discussion, that Article 19 is approved?

M. BARRUDUC (France) (Interpretation): I do not want to raise a question of substance, but it seems to me that at the beginning of Article 19 there is a question of import licences as a means

of protection. I think we are all agreed that as far as import licences were concerned, they were not exactly restrictions but a sort of administrative protection -

Here M. Baraduc said in English:

Not "protection". You understand, Mr. Helmore, what I mean. We have very often spoken of the use of import licences as an administrative mean in order to know what is exactly the amount of imports. If we say "restrictive import licences", I agree.

MR. HELMORE (U.K.): I think that is what it means as it is now drafted, without the addition of the word "restrictive", because the Article relates not to quotas or import licences but to prohibitions or restrictions.

M. BARADUC (France): Through quotas.

MR. HELMORE (U.K.): Made effective by import licences. If a licence makes effective a prohibition or licence, it is a prohibitive or restrictive licence.

THE CHAIRMAN: And if it is not, it is not affected by this Article.

THE RAPporteur: I think it is all right.

THE CHAIRMAN: I think so. Can we take it that Article 19 is agreed? Article 21 we went through the other night and it was agreed subject to a general reservation on the part of members that they would like a little time to read it through more carefully, on the understanding that they could raise any points again. Have delegations any matters to raise in connection with Article 21?

MR. HELMORE (U.K.): As one of the global reservers, may I say that we withdraw our global restriction but have a couple of suggestions to make relating to the drafting of paragraph 2(c), to which perhaps we could come in order. They are not very significant, they are purely drafting changes.

THE CHAIRMAN: Seeing that we have been through Article 21 paragraph by paragraph before, unless delegates particularly wish it, I suggest that we take this as adopted unless delegates wish to raise any particular points, in which case we will deal with them point by point rather than taking the whole Article again. Is that agreeable?

M. BARADUC (France) (Interpretation): I want to state that we have made a general reserve as regards Article 21, but now we agree to adopt it as it is without any restrictions.

MR. SHECKLE (U.K.): The point is quite a small one. At the beginning of (c) of paragraph 2, we talk about import licences and permits. If you do have a quota allocated among supplying countries, you may need to administer it by means of licences. Naturally, in those cases those licences will have to contain an indication of the source from which the imports may be drawn. To get this straight, I think the best way is to make it read like this:

"(c) Import licences or permits which may be issued in connection with import restrictions (whether or not within the limits of global quotas) shall not, save for purposes of operating quotas allocated in accordance with sub-paragraph 2(a), require or provide that the license or permit be utilised for the importation of the product concerned from a particular country or source.

(d) In cases where these methods of licensing are found impracticable or unsuitable, the Member concerned may apply the restrictions in the form of a quota allocated among supplying countries."

And then as before, with some consequential changes in the lettering of the following sub-paragraphs.

THE CHAIRMAN: Is there any comment on this?

MR. HAWKINS (U.S.A.): I accept it.

M. BARADUC (France): I think it is an improvement.

MR. SHECKLE (U.K.): I think the word "subsequently" in the last line but one of sub-paragraph (c) - now (d) - could possibly come out

without any damage, and possibly that would be an improvement.

MR. HAWKINS (U.S...): I think it was intended to leave it out to begin with, and it got in by mistake.

MR. SHECKLE (U.K.): I think so.

THE RAPporteur: I hope the U.K. delegation will excuse me if I pull their leg, but I would like to point out to the Committee that the only delegation which found any trouble with this was one of the two delegations that submitted the draft! And that the draft previously had a new sub-paragraph starting at (d) and that it was the leader of the U.K. delegation who, at our last meeting, said we should remove that and put in "provided". Otherwise I think the U.K. delegation have been a great help!

MR. HELMORE (U.K.): If I may be provoked by the Rapporteur, I would say, Mr. Chairman, this just shows how right you were in not having any more private consultations with the U.K. delegation!

THE CHAIRMAN: Can I take it that all global reservations have been removed, and that Article 21 is approved?

THE RAPporteur: I can now do articles 19, 20, 21, 23 and report on them, I hope tomorrow. Then that draft report will have to be duplicated and circulated, and we await the redraft of Article 22 from the U.S. and U.K. and French delegations. Have we any timetable we can give ourselves?

MR. LECARTE: What are you proposing to do?

THE CHAIRMAN: We cannot meet tomorrow.

MR. LECARTE: You have Committee 2 tomorrow afternoon. Will you have a meeting on Wednesday?

THE CHAIRMAN: The most appropriate time seems to be to meet on Wednesday at a time and place to be notified to you in the Journal. If the private consultation group of representative characters could advise me or the Rapporteur, or the Secretariat, tomorrow of the state of their consultations, we could then plan to have a complete set of propositions to put before the Committee when it meets on Wednesday. I take it the Committee agrees to that course.

MR. BARRADUC (France) (Interpretation): May I ask a question regarding the French translation of the Articles. As far as I understand the position, the Rapporteur will submit these articles in the English text for translation into French, and the Secretariat will remain in touch with the French Delegation. I would very much like to have the French translations checked before the final text is submitted in the full Committee meeting.

THE DEPUTY DIRECTOR (Mr. Lacarte): We have already had a similar request from the French representative on the Procedure Sub-Committee, and what we have done has been to advise the Documents Section and the Translation Section that that Delegate would like to see the French texts before they are run off. A similar arrangement can be made here. We hope it will not delay things unduly, but we can do that.

(The Committee rose at 10.48 p.m.)