

UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE
of the
INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the
THIRD MEETING
of
COMMITTEE III

held in

The Hoare Memorial Hall,
Church House, Westminster,

on

Thursday, 24th October 1946

at

10.30 a.m.

Chairman: M. PIERRE DIETERLIN (France)

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

THE CHAIRMAN (Interpretation): Gentlemen, we are able to meet this morning in the Hoare Memorial Hall, and this will, of course, greatly facilitate our proceedings, as we have the use of the system of simultaneous interpretation. It had been thought that, in view of the meeting of the heads of delegations and the Presidents of Committees which had been foreseen for this morning at 11 o'clock, we would have to suspend our meeting at 11.30. Mr Wyndham-White has been kind enough to agree that Mr. Gonzalez may attend that meeting both as head of the Chilean Delegation and as Vice-President of our Committee, so that it will not be necessary for me to attend that meeting in person. In these circumstances, it will be possible for us to continue our discussions this morning until 12.30, if, gentlemen, you are agreeable. We would then, of course, resume our discussions this afternoon at 3 o'clock. Has any delegate any statement to make on the point of our continuing our discussions until 12.30? . . . As no one seems to have any statement to make, I suppose that you are all in agreement that we should continue our meeting until that hour.

May I remind you that in order to facilitate the clear and correct interpretation of your remarks it will be necessary for you to speak somewhat slowly, in order to enable the interpreters to follow your statements word by word.

I think that most of the delegates who are present today will be making statements the text of which has been prepared beforehand. In order to facilitate the interpretation of these statements I would ask delegates to be kind enough to hand copies of these statements to the Secretariat, and then they will be handed on to the interpreters, and that will greatly facilitate the translation.

Has anyone any questions to ask concerning these procedural matters? . . . As nobody seems to wish to make any statement, we will return to the subject matter of our meeting, and I call upon Mr. Gonzalez, delegate of Chile.

MR GONZALEZ (Chile): Mr Chairman, Article 34 of the Charter prohibits the formation of cartels but permits inter-governmental agreements, as stipulated in Chapter 6, for certain commodities, with the participation of member countries, both producing and consuming.

Chile, in pre-war years, took part in international cartels in special cases when world production of a certain commodity was in excess of consumption and resulted in surpluses which constituted a danger to the stability of world economy. These cartels worked satisfactorily, stabilizing markets at lower prices than those prevailing before.

The Chilean delegation fears that inter-governmental arrangements which provide for the participation of consuming countries would only be successful after a long period of over-production when such services had become too burdensome. The situation might therefore arise that before these new agreements could become effective the commodities concerned would suffer a crisis of over-production, with all the attendant difficulties for the internal economy of the country and for its foreign trade.

With regard to Article No. 40, on "Exceptions to Provisions of Chapter V", the Chilean Delegation suggests that Item No. 1 (c) should read as follows:-

".....agreements or understandings concerning railway transportation, aviation, shipping and telecommunications services, and other services, always providing that such agreements are approved and applied under the control of the International Trade and Employment Organization."

With the object of harmonising the various provisions of the Charter with the observations already made, the Chilean Delegation proposes that Chapter VI should include not only intergovernmental commodity arrangements, but also arrangements in respect of transport and other services, as we believe that such agreements might be necessary and useful in certain circumstances, both for commodities and for services.

In connection with these problems I would like to inform this Committee that the Chilean Delegation has submitted to Committee IV the following proposal:

Article 46, No. 3 - It is here proposed that in the resolutions concerning price regulation, trade, stocks, production and other matters of importance, the producing countries and those which depend to a large extent on their imports, should have equal authority. The Chilean Delegation thinks that it would be advisable to add a paragraph reading:-

".....but such consuming or importing countries should not oppose the adoption of measures necessary to bring about a reasonable price increase in the commodities concerned, when it is evident that such prices have suffered an appreciable reduction compared with prices ruling during a certain former period, or when they do not cover the cost of production and provide a reasonable profit, and so substantially affect the economy of one or more of the member countries, which are responsible for a considerable percentage of the total production of these economics."

I thank you.

THE CHAIRMAN (Interpretation): I thank Mr. Gonzalez for his statement. I think, however, that I should call his attention to the fact - and I make this remark also for other delegates who have not yet spoken, in order to facilitate and clarify the discussion - that the suggestions contained in the second part of his statement concerning amendments refer to the second part of our task, rather than the order of the day which we have provisionally accepted. I think that for the moment we should limit ourselves to the general aspect of the question; that is to say, the practical application, such as that which Mr. Gonzalez has touched upon, should be reserved for the second part of our task.

I now call upon the delegate of China.

MR. DAO (China): Mr. Chairman, China, with her industry still in its early stage of development, is fully aware of the injurious effects of cartel arrangements affecting a number of commodities which she has to import, but she has no experience of her own in this field.

We endorse the purposes set out in the American suggested Charter regarding restrictive business practices, as these purposes conform to one of the basic economic principles laid down by the founder of the Republic.

In the general interests of free flow of international trade and for the protection of consumers of any product which may be subjected to such restrictive practices, we would like to see that an agreement could be reached whereby the undesirable effects of restricting competition and of fostering monopolistic control in foreign trade may be mitigated and abuses suppressed.

It should be pointed out that as these restrictive business practices are generally conducted from countries

which enjoy a higher stage of industrial development, the responsibility for any remedial measures either by government control or international agreement will principally lie with those countries. In the process of industrialization in China the necessity may arise for the government to take a direct interest in the marketing of certain products, in the form of agencies or otherwise, for the purpose of regulating the export of certain commodities in the general interest of their economic development. Notwithstanding inter-government commodity arrangements, they may find it necessary to adopt measures to ensure stability in the important segments of national economy. As we understand it, such measures are not within the category of business practices, as specified in the American proposals, so long as they are not the subject of international agreements entered into between such government agencies of foreign commercial enterprises. As regards measures to prevent monopoly or restraint of trade by private commercial enterprises, the necessity for national legislation and machinery for this purpose will depend upon whether there are such practices in the countries concerned.

These are our general observations on the American proposals, but we are prepared to give consideration to any other proposals which may be put before this Committee.

THE CHAIRMAN (Interpretation): I thank Mr. Dao for his statement, and I now call upon Mr. Guerra, the delegate of Cuba.

MR. J. A. GUERRA (Cuba): Mr. Chairman, Cuba has not really had very ample or very good experience of the effect of cartel arrangements and restrictive business practices, but the experience that we have had so far amply corroborates the

injurious effects of these arrangements in the different fields which the American delegate explained at the beginning of this Committee. Our country has suffered the effects of these practices in different ways. First, they have had the effect of limiting and making difficulties for some of our basic exports, mainly tobaccos. Secondly, we have the experience that these arrangements have produced the result of increasing the cost of our imports, and ^{as} some of the imports which are more affected by these arrangements are some of the basic products for the functioning of our industrial enterprises we see in that corroboration of the fact that these cartel arrangements tend to make difficult or prevent the industrial development of countries which are still in the early stages of that development. Thirdly, while we do not have any aspiration to build a really large merchant marine, we are endeavouring very hard to build a small fleet to carry our trade, particularly in the Caribbean, and we have found that the most important reason for our efforts being made more difficult and fruitless so far is to be found in some of these arrangements. We are thinking not so much of arrangements as between the shipowners and shipping companies as some other arrangements between shipowners and exporters to Cuba. These arrangements in many cases have prevented our ships from getting cargo on the return trip. This increases the cost of operation in any single trip to such an extent that really this has been one of the most difficult obstacles we have had so far in the development of our merchant marine, in which our Government is very interested.

Considering everything that has been said so far in this Committee we agree with the danger of putting forward from the beginning various definitions and generalisations as to which

practices should be prohibited or suppressed, but we feel that maybe the main features of the American proposals reside precisely in the fact that they avoid general decisions. In fact, as we interpret them they only establish certain rules and mechanism for dealing with each specific case and on the basis of a particular complaint put forward. This is a good procedure for avoiding the danger of making such generalisations as may apply to restrictions or limitations which we may agree here are not so harmful.

According to our point of view, having listened to every aspect of the question that has been put forward so far, we are inclined to consider that the American proposals may be too loose, and we would probably be inclined to put on a little more control and make them a little more stringent in some aspects.

In that sense

In that sense we consider that the statement of the Canadian delegation may be the basis for devising some concrete measures, as the work of our Committee proceeds, to make possible that aspiration of our Delegation.

Finally, we may say that a small country like Czechoslovakia which is interested most in the more completely possible democratic control of any activity that may have harmful effects on international trade and, generally, on the development of small and less well developed countries, we feel that the suggested Charter proposed by the United States delegation, as a basis for our discussion, gives a good starting point for beginning to operate in this field, the aspiration of putting, in the end, all these private practices under control and subject to public opinion, which we feel is really one of the real bases of any democratic society.

THE CHAIRMAN: I should like to thank Mr Guerra for his statement. I now call upon the Delegate of Czechoslovakia.

MR SOBOL (Czechoslovakia) (Interpretation): Mr Chairman, Czechoslovakia, in the light of its past experience in the matter of cartels, has had to deal very seriously especially with German participation in most of the international cartels, and Czechoslovakia has thus been able to be one of the first States which have had to take legal action to control these activities on the part of cartels. In 1923 when special legislation was passed this cartel legislation concerned itself not only with national cartels but also with international understandings and Czechoslovak business participating in these agreements. This law imposed the obligation on the activities of cartels registering the cartels, also furnishing information concerning all their activities become obligatory. Cartels were thus registered in a public register of cartels. This law therefore made it possible for the State to intervene directly in the activities of cartels, especially in the field of prices and of all activities which might threaten our republic. The Government has a right to abolish agreements and cartels which are not in accordance with public opinion and in accord with the public interest, not only in the case of the cartel law, but the change in the structure of most of our industries

after the second World War, guaranteeing to us that most of these industries will not function against the public interest. Czechoslovakia, which is also in agreement with the general trend of the Charter as to the possibility of controlling cartels in accordance with the international trade agreement, feels that it is evident for itself as well as for other states which are in the same position that the problem is raised as to whether all members can guarantee that the cartels which are situated in their territory would function within the framework of the International Trade Organization. It is clear that Czechoslovakia will participate in the future with cartels and agreements which are in accord with our interests and national economy. Czechoslovakia has regulated the activities of cartels by domestic legislation. It is now ready to participate in international institutions which should give the same guarantee.

THE CHAIRMAN (Interpretation): I thank Mr Sobol for his statement. I now call upon the Delegate of France.

MR LECUYER (France) (Interpretation): Mr Chairman, I would like to refer to the statement made by the United States delegate. As far as I am concerned, I was very much impressed by the argument which he put forward. I had thought at least that I could deduce from them that such agreements threaten seriously world economy and represented something like the yellow fever or cholera and certainly necessitated heroic medical efforts like those which the United States Government applied so energetically and with such great efficacy to epidemics. Unfortunately, for the tranquillity of my own conscience, I heard, a short while afterwards, the delegate of Luxemburg, and I then thought, after his statement, that perhaps I was on the wrong track and that these agreements might, on the other hand, constitute a universal panacea against economic diseases such as sudden variations of prices, reduction in consumption or excesses of production. A night has gone by since I heard these statements. I do not pretend that I have devoted the entire night to considering them; nevertheless, I now ask myself whether the truth might not be much more simple and whether industrial agreements might not be considered both the

best and worst of things. I think, in any case, that we must not be surprised by differences of opinion concerning their existence, if we consider the profound differences in the economic structure of various countries. It is natural that the principle/~~of~~ ^{that} agreements should not be viewed from the same point of view by a country which possesses powerful industries and by another country where small, medium-sized businesses dominate, should exist. The conditions of their functioning vary in countries which work mostly for export or for those which are limited to the domestic market. I would like to remind you, moreover, that the problem of agreements constitutes only a part of the matter and that in regard to this subject we must not forget that the draft Charter aims at other things besides agreements. The French Delegation therefore considers that it is imperatively necessary that an end should be brought to the abuses such as have been noted in all countries which are committed by private economic powers, whether these powers be isolated enterprises or result from the coalition of a certain number of enterprises. On this last point the French Delegation approves the declaration and the distinction made in the draft Charter which, in the first section, aims at commercial enterprises whatever they may be, whether they be individual companies, factual or legal groups which have recourse to methods which might restrict competition, restrict access to markets and facilitate a monopolistic control of trade and commerce. The French delegation feels no hesitation in reproving these practices. Perhaps it would, however, be necessary, in order to avoid misunderstanding, to make it more clear that these are disloyal practices. In the second part the cartels are aimed at. Here again one must remark that the word "cartel" is not mentioned; but the draft Charter goes far beyond cartels and those who drafted it have quite rightly had recourse to a more extensive terminology and a more vague one, since they have aimed at all combines, agreements or arrangements. This corresponds to the nature of things, considering the infinite variety of the aspects which the agreement envisages that industry can assume. But

undoubtedly it will be necessary, at some later date, to discuss and to weigh carefully the meaning of the terms used. On the second part the French delegation has been struck by the difference which exists between the text of the original proposals and that of the proposed Charter. Whereas the first text seems to aim only at practices which are factually to be condemned, the second presumes, until proof to the contrary has been given, that certain practices are to be condemned. The French delegation thinks that a discussion here will arise on these points, and we feel that a too-restrictive legislation cannot be applied exactly. I do not know what Mr Wilcox may think concerning that, but I, for my part, am obliged to recognize the French Penal Law which should permit us to put an end to the abuses and such agreements is not very strong. The French delegation has noticed with great interest the suggestions made by the Canadian delegation which open up opportunities for the creation in jurisprudence of an international doctrine. There may be in this - and here I agree with the delegation of Cuba - some possibility of bringing together the many different points of view which have been expressed. The French delegation concludes, therefore, that it is not on the existence of the agreements themselves that we must express an opinion, nor so much on their activities in the abstract, but on the aims of such activities, aims which one cannot presume to be considered that they should be condemned without being the subject of some sort of examination. For instance, it might be illogical to condemn in Chapter V industrial agreements on prices and production and to recognize in Chapter VI the necessity for an intergovernmental agreement on production and basic prices. That is the position which the French delegation intends to take up on this part of the draft Charter. The text which the American delegation has submitted to us is a well studied and well considered text which indicates great knowledge of the subject, and the French delegation therefore proposes to accept it as a basis of discussion.

THE CHAIRMAN (Interpretation): I thank Mr Lecuyer for his statement. I now call upon the delegate of India.

Mr. D.G. MULHEKAR (India): Mr Chairman, the Indian delegation are in general agreement with the object of curbing unfair and restrictive business practices which are resorted to by certain cartels and combines and which tend to frustrate the very objective of the Organisation to promote expansion of production, trade and services. Such arrangements or agreements, in so far as they conflict with the objective of the Organisation, should be prohibited.

We cannot, however, ignore the fact that until suitable and proper machinery is devised by the Organisation to secure to industrially under-developed countries the essential technological assistance and certain manufacturing processes which may be necessary for the effective utilisation of their resources, it may be necessary as a last resort for such countries to secure such assistance under individual arrangements with foreign manufacturers, and in so far as these arrangements do not conflict with the objective of the Organisation, and as they would result in greater expansion of production, trade and services, they should not be ruled out as unfair or restrictive practices under these proposals.

In fact, I am glad to find support to my view in the statement already made by the delegate from Australia.

It may also be necessary for such countries for their manufacturers to enter into standing arrangements either with their Government or with their primary producers for the restriction of exports of raw materials in the interest of domestic industries. Such arrangements, that is, the right to impose restrictions on the export of raw materials in the interest of domestic industry, I think will not be interpreted as unfair and restrictive business practices.

I am glad to note that the draft Charter is an improvement on the previous U.S.A. proposals as it has widened the scope of

the Charter by including "Services" under clause 2 (a) of article 34. There is also a reference to "any territorial market or field of business activity" under clause 2 (b). These improvements I presume will not only cover commodity trade and production, but also services ancillary to trade, such as shipping, banking and insurance.

While I take this as a legitimate interpretation of the proposals under article 34, I may point out that under article 40 clause 2, which deals with exceptions, cartel agreements or understandings amongst private firms "concerning railway transportation, aviation, shipping and telecommunication services" are to be outside the scope of the undertakings expressed under Chapter V. I am afraid these exceptions revolt against the spirit of the whole approach presented under Chapter V. It is unsatisfactory from the point of view of India, where national enterprise has all along suffered under the operation of these private agreements and understandings, particularly in the realm of shipping, banking and insurance. With the operation of shipping rings, Indian national shipping has been shut out entirely, and it does not carry even 1 per cent. of its overseas trade. Insurance of its overseas trade covered by Indian insurance companies is not accepted by shipping companies, and as such it has to move under the protection of non-Indian insurance concerns; and so is the case with banking. You will agree that these are essential services required in the movement of international trade. Expansion and development of such trade depends upon the scope allowed for that country's national services for their proper and healthy development.

I would, therefore, urge that this position requires to be fully clarified in an unambiguous manner so as to "prevent business enterprises from following practices which restrain competition, restrict access to markets or foster monopolistic control in the field of international commodity trade or services ancillary thereto, such as shipping, banking and insurance."

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With these general remarks and qualifications I fully support the objective underlying article 34 of the draft Charter.

THE CHAIRMAN: I would like to thank Mr. Mulherker for his statement, and I now call upon Mr Hakim, delegate of Lebanon.

Mr HAKIM (Lebanon): Mr Chairman, we are in full agreement with the proposals of the United States Government for the investigation and control of all restrictive business practices; but we would have liked these proposals to go further and envisage international action for the suppression of such restrictive private practices wherever they prove to be harmful to world production and trade. These private practices have one aim in the last analysis, and that is the maintenance of monopolist profits. For that reason, where they are not regulated and controlled they can only be detrimental to the interests of consumers. This is particularly prejudicial to the interests of the less developed countries which consume the products under monopoly control for monopoly profits, without profiting from whatever may be their advantages to the producing countries. In this way these monopolistic practices frequently serve the interests of some nations, or, rather, the interests of some classes within these nations, to the detriment of other nations.

Furthermore, from the point of view of small underdeveloped nations like ours, private organisations or arrangements to restrict production or sale of industrial products are particularly objectionable, as they tend to impede in various ways the development of industry in less developed countries. These private organisations or arrangements are in many cases so powerful that small nations have little protection against them by their own means. Their danger may, moreover, go beyond the economic field to the political field.

International co-operation for the control of such private arrangements and their suppression where necessary may, of course,

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prove to be of limited effectiveness; but it would have much greater chance of success than action by individual governments, especially those of the small nations. For these reasons, Mr Chairman, the Lebanese Delegation not only supports the American proposals but also welcomes any reinforcement of the provisions contained in the Proposed Charter for the regulation, control and, where necessary, the elimination of restrictive business practices.

THE CHAIRMAN (interpretation): I thank Mr. Hakim for his statement, and I call upon Mr. Lawrence, Delegate of New Zealand.

Mr. F.W. LAWRENCE (New Zealand): Mr Chairman, New Zealand cannot claim to have analysed in any exhaustive sense the experience of operations of commercial enterprises in the international sphere which have restrictive and undesirable effects on trade. Thus the statements made by many of the delegates present hold considerable interest to us. Lack of knowledge in the respects indicated, however, does not prevent our stating now that we are in agreement with proposals which will have the effect of removing undesirable business practices from international trade. We see some difficulty, however, in arriving at a specification in our Charter which will permit of satisfactory tests of what is, in its social aspect, advantageous and what is disadvantageous practice. If this view is generally acceptable, it may be agreed that some changes in the provisions of the Draft Charter may have to be made. The means which the proposals for an international organisation would provide for gaining wider knowledge of restrictive business practices are welcomed. It is from this knowledge that specifications for a satisfactory code of conduct can be built up. Our general view is that undesirable practices should be prevented, but as we see it, the difficulty involved in this aspect of our problem lies in arriving at criteria on which judgment can be made as to what is undesirable business practice. We consider it satisfactory that it is practices rather than organisations against which the powers of the Draft Charter are

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designed to be directed. We feel, however, that progress of the Committee will be facilitated if consideration is directed towards the provisions of the Draft Charter submitted by the United States, and we are very happy to accept the text as a basis for discussion.

THE CHAIRMAN (interpretation): I thank Mr. Lawrence for his statement and I now call upon Mr. Leendertz, Delegate of the Netherlands.

Mr. P. LEENDERTZ (Netherlands): Mr Chairman, I am speaking here as alternate for Dr. Speekenbrink, who is prevented from being present this morning. The Netherlands Delegation whole-heartedly concurs with the suggestion that abuses which may arise or be contained in some cartel practices should be suppressed and even prevented. As to that aim there exists no controversy whatsoever. But this does not lead to the conclusion that cartels ought to be considered objectionable in principle. That some have sinned does not mean that all have sinned; nor that the sinners of yore will sin in the future. It is already possible now, and by international co-operation it will be still more possible in the future, to keep the advantages they certainly have and to do away with their drawbacks. Cartels have very often been children of necessity, called into life to combat the effects of competition which in the given circumstances threatened to become fatal to all concerned. Their efforts often resulted in the stabilisation of prices and employment and in the flattening out to a certain extent of the trade cycle, in the prevention of over-production and of wasteful propaganda, and also in co-operation in several respects such as research, the sharing of patents, &c. As other speakers have already given some instances thereof, it is not necessary for me to add other ones thereto.

As they so often sprang into life as a remedy against the results of unbounded competition in difficult circumstances, it does not seem very appropriate to abolish them wholesale under the present conditions.

The freeing of trade from all hindrances against the flow of goods and services, in order that this flow may become as beneficial as possible, is in the interest of all, and certainly of the Netherlands and the overseas parts of the Kingdom, which have always adhered to the principle of free trade. But certainly in the present hard times, when many hard-hit countries, the Netherlands among them, are in a period of very difficult reconstruction, it could not be wise to throw away a useful and well-tested tool for preventing unfavourable developments, and for directing some branches of economy to desirable ends, the more so as abuses may be prevented. The general aim of this Conference is to formulate directions for, and to draft, future trade. Certainly it cannot be in contradiction therewith to keep certain means of directing and organising economic life.

In this trend of thought cartels should not be forbidden on principle, but allowed under certain rules. A presumption of harmfulness should not be created. It is a general principle of law and equity that guilt should not be presumed but should be proven.

The supervision of cartel practices, the examination of complaints and the measures which consequently should be taken, are a subject of primary importance. For the Netherlands it is not a new one, neither in theory nor in practice.

Starting in the 'thirties, legislation has been brought into being which *inter alia* provides for a registration and a supervision of cartels. In practice the Government did appoint observers with some of them, both in the Netherlands and in the Netherlands East Indies. In the last-named country it caused several cartels to be created. There

exists, therefore, already some experience, whilst our perfect willingness to take steps in this direction was proven beforehand.

We are fully prepared to co-operate with the Organisation and with the individual members in order that whatever abuses may be made by or through cartels will be prevented. We think it necessary that all members shall undertake to introduce legislation which will enable them to carry out an effective supervision of the cartels under their jurisdiction, and to fulfil their part in an international co-operation to this end. By this introduction of parallel legislation the respective countries will gain the experience and build up the jurisprudence which will enable them to fulfil their internal task, and which at the same time will be necessary to them for effecting a practical and successful co-operation in this field.

For that co-operation an Organisation will be required. It seems to be indicated that the structure and the working of this Organisation should be based on the experience gained by the countries concerned, and should be developed as this experience will grow and extend by continuous practice. From the beginning the Organisation will be in a position to advise and to assist, inter alia, in solving differences which might arise. Should she not succeed in this last respect, such differences might be referred for their final solution to the International Court of Justice, which possesses an experience and an authority that will render its decisions readily acceptable to all. Some alterations and additions to the Charter of the Court would, of course, be required. This, however, is perhaps not a matter for this third Committee alone; the subject of the mode of deciding possible differences

will probably come up during the discussions of other Committees as well, especially in those of the Fifth Committee.

For the present I think I may confine myself to these remarks. It will be clear, therefore, I trust, that, although on some points we should suggest some alterations and additions, there exists a perfect concord as to the aim - the prevention of abuses.

THE CHAIRMAN (Interpretation): I thank you for your statement, which unfortunately was interrupted by these extraordinary noises outside. I should like to ask the Secretariat if they could perhaps try either to stop or at least curtail for a few moments the work going on outside. I now call upon the delegate of Norway.

MR MELANDER (Norway): Mr Chairman, the head of the Norwegian delegation stated during the general debate that we agree in principle with the proposals contained in the suggested Charter, but that we needed further explanation on some points and that we entertained doubts about others. The chapter of the suggested Charter with which we are now dealing contains certain provisions on which we feel somewhat doubtful. We agree that an International Charter on Trade and Employment will have to have provisions dealing with restrictive business practices of an international character. The acceptance by Governments of rules regarding general commercial policy would be made ineffective if commercial enterprises were allowed, through international cartel agreements, patent licensing agreements, etc., to share markets, arrange for quota systems to be introduced de facto although such quota arrangements might have been prohibited through inter-governmental agreements. However, there appears to be a basic difference between the point of view expressed in the

U.S. proposals and the point of view which has been maintained in Norway for the past two decades with regard to international business arrangements, such as, for example, international cartels.

According to the provisions of the Draft Charter - at least, as far as we can see - it seems to be taken for granted that practically any kind of restrictive combination for agreement in international trade will have the effect of hampering the expansion of world trade and production. I refer to the first paragraph of Article 34 of the suggested Charter, where it is stated that members agree to take measures to prevent business practices which, among other things, restrain competition, restrict access to markets or foster monopolies in international trade, and which thus have the effect of frustrating the purpose of the Organisation.

We certainly agree that there may be restrictive practices which have such effects, but, on the other hand, we believe that arrangements of this kind may prove beneficial for the expansion of international trade. It might be mentioned in this connection that, as far as domestic competitive restrictions are concerned, Norway passed a law as far back as 1926. This law did not declare all kinds of cartels, etc., illegal, but only such cartels or combinations, etc., which were unduly restrictive were declared illegal. Government control of cartels, combinations, etc., was, however, established, and this system has worked very well in our country. The task of the international organisation, as the Norwegian delegation sees it, should not be to prevent any arrangement which might appear to be restrictive but to prevent those international arrangements which are unduly restrictive and thus have the effect of restricting the purpose of the Organisation.

Further, we agree that all international combinations, agreements or other arrangements in this field should be registered with the Organisation in order that it might be in a better position to consider possible complaints.

Apart from the reservations I have already made, the Norwegian Delegation is of the opinion that the proposals submitted by the United States Government are well suited as a basis for the discussions of this Committee. What I have now said is, of course, limited to general remarks. Our delegation will, however, at a later stage, make further comments upon points contained in the suggested Charter, and we will propose some amendments to the draft texts.

THE CHAIRMAN (Interpretation): I thank the delegate of Norway for his statement.

Our Committee yesterday worked not as fast as an express train, but rather like a slow train. Today, on the contrary, it is working very fast, due not only to the system of interpretation, but also to the fact that the statements are so well prepared. As a result of all this we are ahead of our schedule. Therefore, in order that I may be able to discuss with the Secretariat certain proposals I am going to make to them for the future, I should like to adjourn for 15 minutes. The meeting will begin again at noon.

(At 11.45 a.m. the meeting adjourned
for 15 minutes.)

(The Meeting resumed at 12 o'clock)

THE CHAIRMAN: Gentlemen, the meeting is again open.

I call upon the delegate of South Africa.

MR W.C. MAUDE (South Africa): Mr Chairman, before we adjourned you said that we should be proceeding at the speed of an express train. As far as I am concerned, we will proceed at the speed of a jet airplane.

Your proposal that we should proceed on the question and that each delegation should make a statement has rather placed us in a predicament, because we are inexperienced in cartels and we had not thought to intervene at this stage in the debate. Moreover, we are a bit hesitant to speak at all after we have heard a man like Mr Wilcox on the subject.

(At this point the simultaneous interpretation system broke down. The Committee adjourned for a few minutes while the fault was repaired and then resumed almost at once, without Delegates leaving their seats)

THE CHAIRMAN (Interpretation): I should like to apologize to Mr Maude for this incident which interrupted his statement, and I am sorry to have to ask him if he would be so kind as to begin again, because I am afraid some delegates might not have heard all that he said because the interpretation system did not function properly at that point.

I again call upon Mr Maude.

MR MAUDE (South Africa): I had said that I wanted to proceed at the speed of a jet airplane; but apparently modern inventions have their breakdowns.

I was a bit hesitant to take part at all in this debate at this stage for various reasons: one of them was that one feels reluctant to speak and to take part in a debate together with experts, and I have in mind chiefly Mr Wilcox. Then after that we had the Canadian Commissioner under the Investigations Act, and it was not so much a case of entering where angels fear to tread as a case of the timidity of a babe in the woods. We are not very familiar with the maze of the ramifications of cartel enterprises. You will see from this that in South Africa we have not given very deep thought to the problem of cartels, and from this point

of view we are chiefly here to be educated, and I am afraid that our contribution will not be very constructive - certainly not at this stage.

We feel, that Mr Wilcox made an extremely good case for the American proposals as set out in the draft Charter; we are all getting used to the broadminded world statesmanship from the Americans, especially in world economic policy, and we therefore accept the draft Charter as a basis for discussion. We entirely agree that it is a necessary counterpart of the provisions of the draft Charter, which proposes to regulate governmental control of the flow of international trade, to write into our draft Charter, where necessary, control of private cartels, private cartels of trade. I must confess that we are not entirely certain that it is a proper procedure to spell out the criteria under which we propose to control cartels and we feel that there are a great many risks in doing so. I cannot think of a better illustration of the difficulty of spelling out than the very illustration that the American representative used himself yesterday. He spoke of the cartels that might prevent the "know-how" being communicated to the under-developed countries who want to set up new industries. We also heard yesterday precisely the opposite, that cartels made it possible for the "know-how" to be communicated. I mention that merely as an illustration of how difficult we feel it is to spell the thing out. On the whole, I should say that our attitude would be to this effect, that it would be impossible to lay down that all cartels are necessarily black. We feel that there are various gradations: some cartels might be grey or even white for that matter. We do not, of course, suggest that none is black. We know that there are black cartels; and, in fact, Article 40 in the American draft Charter is proposing to exclude certain forms of cartels that we think should be controlled; some of them have already been specified this morning; so that I need not go into that at all. But I would say that we would favour the Canadian approach, that we must direct our attention to restrictive practices that unduly restrict and not condemn all practices of this description, emphasis

there being on the word "undue" or "unreasonable," if you like. I should perhaps like to make a more general remark. Mr Wilcox yesterday spoke of the dangers of rigidity being introduced into the flow of international trade by the operations of cartels. I was rather interested in that because in this very draft Charter that we have before us we are also introducing concepts where we propose to develop the concept of rigidity. I was thinking of commodity arrangements. The whole concept of rigidity of course nowadays links up with the problem which is actively in the minds of all of us here, I should think, namely, somehow to find a common ground between rigidity on the one side and entire freedom on the other side. It is, as I see it, one of the functions of this very conference to find that common meeting ground, and it is just possible that even in the case of cartels there is a middle ground somewhere which it seems to me we should find. It is a case of marrying freedom to security in the broader sense. As regards the position in South Africa, we have at the present time no legislation which would enable us to implement the suggestions incorporated in the American Charter, and our Government is considering making investigations. They might very usefully be guided by the Canadian experience of twelve months ago; but until such an investigation is concluded it is quite possible that our Government will not be able to introduce any legislation in order to control cartels. On the whole, I should say that this debate has been extremely useful for our authorities at home in developing their own thoughts on the subject and in guiding them in legislation which they may propose to draft.

THE CHAIRMAN (Interpretation): I thank Mr Maude for his statement; but I am afraid that I cannot agree and have to protest against his over-great modesty. He told us at the beginning of his statement that he had no experience whatsoever of cartels and their problems. But all his remarks here were so pertinent and so just that they showed us that he knows the subject as well as any one of us. If I could reproduce his thoughts again in a few words I would say that the problem of cartels is both

black and white - a whisky we all know!

I should now like to ask the United States delegate whether he has a few words to add to the preliminary explanations which Mr Wilcox was kind enough to give to us at the beginning of our meeting yesterday afternoon.

MR ROBERT P. TERRILL (United States): The United States delegation has no further statement to make at this time.

THE CHAIRMAN (Interpretation): In that case I shall call upon Mr Holmes the United Kingdom Delegate.

MR HOLMES (UK): Mr Chairman, I propose to be very brief and, indeed, as compared with the representative of South Africa, I shall be using atomic energy - in fact, I had thought that I might go after a record - and I am the more happy to do so in case the effects of the war which have been rather apparent this morning recur. But I am able, of course, to be brief because the view of the United Kingdom on this subject has, in a sense, been fairly fully expressed and a whole chapter was devoted to this subject in the proposals put forward by the United

States in December of last year.

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And it will be within the recollection of members of this Committee that when those proposals were put forward, there was also a joint statement by the Government of the United States and the Government of the United Kingdom in which it was made clear that the Government of the United Kingdom was in full agreement on all important points with the proposals, accepted them as a basis for international discussion, and would, in common with the United States Government, use its best endeavours to bring such discussions to a successful conclusion in the light of the views expressed as they are being expressed today by other countries.

The subject with which we are concerned clearly is one of the important points in the proposals, and therefore what I have said as to the agreement of my Government applies in this case. The subject is obviously important, and, as has been said by many previous speakers, especially the representative of the United States and I think the representative of Canada, there is little purpose in removing governmental barriers to the flow of trade if privately negotiated arrangements between industries in different countries are allowed to take their place. There must, therefore, be some procedure for dealing with restrictive business practices at least to the extent that they work in opposition to the aims of the International Trade Organisation.

Now, Sir, we have those aims, all of us, I have no doubt, very much in our minds, and it is from that point of view that we in the United Kingdom feel it appropriate to consider this particular problem. We feel that in so far as the business arrangements of the kind which form the agenda do frustrate or may frustrate the purposes of the Organisation, steps must be taken to curb those practices. We feel, therefore, that we should examine the practices which are said to have that type of bad effect, which have adverse results on our aims of full employment

or our aims of seeking a high and stable demand for goods and services in general, and that if these practices can on occasion be found to interfere with those aims, we must condemn them.

We consider, therefore, that consultative procedure within the International Trade Organisation that we are seeking to establish is very necessary -- one under which particular cases could be studied with a view to examining their economic and commercial effects. On such an examination all the facts should be available. The examination should be frank and exhaustive in order to inform those countries which, by reason of their state of development or the structure of their economy, may be most liable to the sort of damaging effect which it may be shown that cartels and other business practices may have. We feel that what we want is not so much a judicial procedure as a consultative procedure -- not so much a judicial procedure which attempts to apply a legal code. If, of course, the International Trade Organisation does find that a particular practice invariably has ill effects, the Organisation would be on good grounds in proposing the general prohibition of the practice. It may be that in time a detailed code can be built up, but that may be perhaps rather more for the future than for the present.

I might also say that there are naturally some difficulties connected with this problem, as there are in many problems in front of the Preparatory Committee as a whole. One of the difficulties, no doubt, in this particular part of our labours will be found to lie in the fact that, unlike some of the other matters, or in a greater degree perhaps, the problem of restrictive business practices is an internal one for each country as well as an international one for the Organisation, and that in the past various countries have adopted quite different attitudes to these restrictive practices. In some all arrangements which could be said to be in any sense in restraint of trade have been prohibited,

or, at least, have been looked upon with disfavour. In other countries cartels have been allowed, and I believe that in some cases even a law has been provided for compulsory cartilisation where a majority of the particular industry supports it.

Perhaps it could be said of the United Kingdom that we have occupied something like an intermediate position in this. In effect, our laws neither encourage nor condemn cartels; and I think it is perhaps important that the Committee in considering this subject should have due regard to the variation in the legal background against which the problem appears.

I think that is all that I need say at the moment, except this, that we here of the United Kingdom will co-operate most fully in the work of the Committee and may be able at an appropriate stage to produce perhaps draft variations to some of the words which have already appeared on the subject.

THE CHAIRMAN (interpretation): I thank the United Kingdom delegate for his statement. Gentlemen, in view of the progress that we have made in our work, we will now adjourn. We have made much greater progress than I had hoped. The matter we have been discussing is one of the greatest interest to all of us, and I should like to thank the delegates who have spoken and offered statements for the contribution they have made to our work and the help they have given in clarifying the problem which we have to resolve. As Chairman of this Committee I suppose I ought now to make a statement giving a summary report of all the ideas which have been expressed at this meeting. I admit that I am not capable of doing so. That is not because the views which have been expressed here were so greatly divergent that it would seem impossible to construct a bridge between the different points of view; but I believe that before coming to any conclusion at the end of this first day of our discussions, a few moments of reflection and thought are more than necessary. If you will permit me, I shall reserve the right to get into touch with some of you. I am

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certainly at the entire disposal of all the delegates who may wish to speak to me on some special point which may be important to them. In the light of the conversations we may then have, I shall then get into touch with our Secretary in order to bring out certain matters in the light of which our work ought to proceed to the next stage of our work. Under these conditions it would be quite useless to hold the meeting which we had planned to hold this afternoon. At the right time the secretariat will notify you of the time of the next meeting which will probably take place some time in the course of next week. In the mean time I shall be very grateful to you if you will please send to the secretariat any remarks and suggestions in writing relating to the text which we may have to prepare later. The secretariat will compile all these texts and submit them to me. I shall naturally be in touch with delegates who have prepared such texts, in order to make the best possible use of them. Does any delegate wish to speak? If no one wishes to speak, I shall declare the meeting closed, and I shall ask you to await the convocation to the next meeting which will be sent to you by the secretariat.

MR LEENDERTZ (Netherlands): Is it likely that the meeting will be next Monday?

THE CHAIRMAN (Interpretation): Certainly not Monday, as unfortunately next Monday I shall be in Paris, but I hope to be back here Monday evening. However, I do not think that we shall be able to meet before either Wednesday or Thursday.

MR LEENDERTZ (Netherlands): Not before Wednesday or Thursday?

THE CHAIRMAN (Interpretation): No. Whilst we have to think of our own work, we have also think of the work of other Committees and the desire expressed by some of the delegates not to have too many meetings at the same time. The Secretariat have told me that the agenda for next week is not yet ready, but it does not seem very likely that our Committee will meet any time before the middle of the week. Are there any other remarks? . . . If there are no further remarks, I declare the meeting closed.

The meeting adjourned at 12.33 p.m.