

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

VERBATIM REPORT

TWENTY-FIFTH MEETING OF COMMISSION A
HELD ON THURSDAY, 3 JULY 1947 at 2.30 P.M. IN THE
PALAIS DES NATIONS, GENEVA

Dr. E. COLBAN

(Chairman)

(Norway)

Delegates wishing to make corrections in their speeches
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CHAIRMAN: The meeting is called to order.

We terminated our meeting yesterday by a statement by the New Zealand Delegate concerning paragraph 3 of Article 21. The New Zealand delegate suggested an addition to that paragraph in the following terms

"Nothing in this paragraph shall require the elimination or substitution of existing procedures which conform fully to the principles of this paragraph."

That question is now under discussion. I hope the delegates have had time to consider this question and I would like to call for comments.

MR. OSCAR RYDER (U.S.A.): Mr. Chairman, in the time available it has not been possible to go into this to the extent I should like to. The amendment as suggested by the delegate from New Zealand I think would be unacceptable. In fact it nullifies most of the paragraph as it exists. It might be that something could be worked out that would take care of the situation that the Delegate for Australia suggests. I am not certain of that.

I would suggest that we might defer this until we have the meeting on the Valuation Section and meantime see if we cannot get together, some of us, with the New Zealand Delegate and see if something can be worked out.

CHAIRMAN: The Delegate of Australia.

Mr. MORTON (Australia): I have been listening to the lengthy dissertation of the Delegate of New Zealand on the type of procedure which his country possesses, and having been assured that it has stood the test of time (and amongst other things has received the blessing of a Royal Commission) I am sure we all feel certain something should be done which would enable us to proceed.

However, I am far from hopeful that this would be accomplished by the inclusion of a note in the terms that the New Zealand Delegate has himself suggested, when he says that nothing in this paragraph shall require the elimination or substitution of existing procedures which conform fully to this paragraph.

The procedure does not conform fully, in so far as it is admittedly not an entirely independent tribunal. Now I think if the suggestion of the United States Delegate was adopted, in the meantime we ^{might} arrive at some formula which might cover the New Zealand proposal. It might be time saving and desirable.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. RHYDDERCH (United Kingdom): I have every sympathy with the Delegate for New Zealand in trying to maintain a system which has worked satisfactorily for a long time, and I think the suggestion of the United States is a good one. We should try to reach some compromise which would meet him.

I can quite understand his difficulties, but at the same time we do not want to fall into the danger of allowing any country to use its powers arbitrarily in any way.

CHAIRMAN: The Delegate of Canada.

Mr. URQUHART (Canada): Mr. Chairman, Canada is prepared to accept an Amendment along the lines proposed by the Delegate for New Zealand, but we feel the same as the Delegate of the United Kingdom - it might leave the door too wide open, and we think perhaps in the meantime some agreement can be reached on the wording which would meet the situation.

CHAIRMAN: The Delegate of New Zealand.

Mr. JOHNSEN (New Zealand): Mr. Chairman, I appreciate very much the sympathy expressed by several Delegates for the case put forward on the part of New Zealand. We will be only too happy to try and work out some solution which would be acceptable to everybody.

With regard to the statement made by my colleague from Australia, I think he made a slight omission there. The proposal which we put up was that the procedures would conform fully to the principles of this paragraph, not to the paragraph. It is "the principles" that is the determining factor.

CHAIRMAN: The Delegate of Australia.

Mr. MORTON (Australia): Oh, quite, I am fully in support... (Laughter).

CHAIRMAN: The Delegate for India.

Mr. RANGANATHAN (India): Mr. Chairman, I just wish to say that we have a problem almost similar to that of New Zealand in India, and we also welcome this promise of a fresh effort to find something to fit our conditions.

CHAIRMAN: I think we all are in agreement with the suggestion of the United States Delegate that we should take this question further when we have finished with the rest, in the hope that at that time we shall be in possession of a text acceptable to everybody, and because of certain expressions used by one or two Delegates I would underline that what the New Zealand Delegation proposes is not to keep the door open for anything but already existing procedures. That limits very considerably the scope of the proposal.

I take it that this proposal is accepted, and that we all now adopt paragraph 3 in the text of the Sub-Committee, leaving it open for further discussion and decision whether we should add anything to it.

CHAIRMAN: Is that agreed? (Agreed)

We pass on to Article 22, on pages 36 and 37 of Document T/103, "Information, Statistics and Trade Terminology". On Paragraph 1 you have the comment: "The Delegate of France drew attention to the practical difficulties of many States in supplying the information relative to subsidy payments and quantitative restrictions".

(Interpretation) I shall ask the Delegate of France whether he will consent to the omission of his comment from the text which will be sent to the Preparatory Committee, in the light of the fact that paragraph 1 of the draft already speaks of supplying "as much detail as is reasonably practicable".

M. ROUX (France) (Interpretation) Mr. Chairman, I do not attach undue importance to the insertion of this commentary, particularly as you justly said yourself that the paragraph itself says "as promptly and in as much detail as is reasonably practicable". Therefore, I think it is pointless to maintain this commentary. I simply wanted, in the course of the discussion, to draw the attention of the Commission to the fact that one should not have too many delusions about the accuracy of the information supplied, owing to the technical difficulties which the Administration will have in governing the information.

CHAIRMAN: May I take it that the Commission agrees to the text of paragraph 1 submitted by the sub-Committee with the omission of the comment? (Agreed).

I would like to mention that in paragraph 1 we have letters (a) and (b) and the third paragraph should be marked letter (c).

Mr. C.E. MORTON (Australia): Mr. Chairman, I wonder if that provision is correct? Paragraph 1 says "the Members shall communicate to the Organization certain statistics, that is, those mentioned under (a) and (b). Actually, the next paragraph could be paragraph 2.

CHAIRMAN: It seems to me that that is correct, and that the right thing would be to put (2) at the head of this paragraph beginning "So far as possible", and then to say "So far as possible, the statistics referred to in (a) and (b) of paragraph 1 shall be related to", and to re-number the following paragraphs in consequence of that.

Mr. J.P.D. JOHNSON (New Zealand): Mr. Chairman, would it not be sufficient merely to refer to the statistics in paragraph 1: need it be mentioned as (a) and (b)?

CHAIRMAN: That is a possibility, but I do not know whether it is worth our while to go into it any further. We have a Legal Drafting Committee and they will see to it that everything is put into final shape.

I think that, as far as we are concerned, we could abide by the solution to put (2) at the head of the paragraph beginning "So far as possible", and alter the following paragraphs. What is of importance, of course, is that we all agree to the text, and I would now ask whether there is any comment on these paragraphs, and whether we are all in agreement with paragraphs 2, 3, 4 and 5. May I take it that we all agree to this text? (Agreed).

We pass on to the next page of Document E/PC/T/103. Here we have the old paragraph 5, which now becomes paragraph 6. I do not think there is anything for me to say about the drafting, with the one exception that the Delegate of the United Kingdom would prefer the word "may" instead of "shall" in the first line. I would like to ask the Delegate of the United Kingdom whether, in the same spirit as shown yesterday by the Delegate of the United States, he can abide by the text as adopted by the sub-Committee.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, I would not regard this point as one of vital importance which is going to make or mar the future of the world, but we have thought that there is something to be said for bringing the first/paragraph into line with the second. You will see that, in the first sentence, it says that the Organization may study this question, and we do not see why it is necessary to use a different word in the first sentence.

CHAIRMAN: My own meaning of these two paragraphs has been that the first sentence is a general instruction to the Organization to make it one of its tasks to see to it that the statistical information is collected and published, and it seems to me that the rest are not definite instructions but indications of in what way the Charter feels that the Organization may work. I do not know whether that is acceptable to the delegate of the United Kingdom.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, we should feel that a mandatory obligation in the first sentence is not really necessary. I think that a genuine preoccupation on the part of us all is that there should be no overlapping. There should be economy and there might be, in this case, someone else doing the same thing.

Mr. OSCAR RYDER (United States): Mr. Chairman, I would like to call attention to the fact that the first sentence relates back to the first paragraph of this Article, and what the statistics required to be furnished by Members in that paragraph shall be; then it provides that the Organization shall act as a centre for the collection of these statistics. There may be a dispute on that subject. The second sentence provides that "The Organization may, in collaboration with the Economic and Social Council" I

have no strong views one way or the other. I think, in general, it is better to leave things of that sort to the discretion of the Organization, and therefore I would recommend the word "may".

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, I think this particular Article must be taken in conjunction with Article 61. It says there "In addition to the functions provided for elsewhere in this Charter, the Organization shall have the following functions". One of those functions is "to collect, analyse and publish information relating to international trade....." That is why there is an obligation here, and the word "shall", in our opinion, is preferable.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, I feel quite overwhelmed by the arguments against my modest suggestion. I think that we should be happy to withdraw our objections for the general good.

CHAIRMAN: We have next, comment (b): "The delegate of France wished the record to suggest that the Organization should resume as soon as possible the work begun by the League of Nations on the preparation of a standard customs nomenclature. The Delegate of the Union of South Africa dissented".

May I ask the Delegate of France whether he wants to maintain this comment? Personally, I feel that this point might be raised at the moment when the ITO is created, and I do not think that it is of any use to raise it now.

M. ROUX (France) (Interpretation): The only purpose of this remark was to show that when the question of statistics was raised in the Charter the nomenclature was in conformity with that of the standard customs nomenclature. In Article 22 much stress is laid on the necessity of having comparable customs statistics; it would be absolutely useless to try to achieve this if the present nomenclature is not unified, because in all countries customs statistics are established from statements sent in by countries, and these statements have to be made in conformity with customs terminology. We have rather a tendency here to put the cart before the horse. If there is any lack in the Charter in this respect, and if the work which should be done is not done, this would sooner or later be clear. Therefore, I am willing to withdraw my remark.

CHAIRMAN: The Delegate of Belgium.

M. de SMEDT (Belgium) (Interpretation): I simply wanted to remark that the new customs nomenclature in use in the customs union between Belgium and Luxembourg is copied from the terminology established here in 1937. We think this nomenclature is almost perfect except in some small points. Therefore, the Belgian Government hopes that countries will be able to adopt it also.

CHAIRMAN: If there are no further remarks, I take it that we adopt Paragraphs 6 and 7, leaving out the comments (a) and (b).

The Meeting agreed.

Mr. S. RANGANATHAN (India): There is one minor amendment in Paragraph 7, Line 2, where the reference should be to Paragraph 6 and not 5.

CHAIRMAN: Thank you.

Then we have Comment (c) on Page 39:-

"The Delegate of the United States expressed the wish that Chapter VIII on Organization should be framed so as to leave the Organization sufficient latitude to call into consultation the experts of various governments when investigating technical problems such as standard classifications,"

May I ask the Delegate of the United States whether his Delegation is a Member of the Committee dealing with Chapter VIII, and does he consider this is important?

I might perhaps add the practice adopted by the Committee so far has been to call on Members of the Commission who are highly qualified experts in a personal capacity and not as experts of their governments. We must not forget that on the Executive Council there will be representatives of a considerable number of governments, surrounded, I take it, by technical advisors. This combined practice should give full satisfaction to the United States Delegation and fulfil the purpose it has in mind.

Mr. Oscar RYDER (United States): I do not think the American Delegation expected this statement to be placed here. I cannot see that any useful purpose would be served by retaining it.

CHAIRMAN (Interpretation): We have then finished with Article 22; and it should be noted the Article is adopted unanimously without any commentary.

We pass now to Article 23 - Boycotts. Here we have a text which has not been altered by the Committee and which was unanimously agreed to by the Working Party. There was some discussion on a query put in by the Delegates of Lebanon and Syria and you will see in the comment on Page 41 it is stated that these Delegates reserved their decision.

I should like to ask whether one of these Delegates would like to speak on this matter.

CHAIRMAN: The Delegate of the Lebanon.

MR. J. MIKAOUI (Lebanon) (Interpretation): Mr. Chairman, the amendment we have presented in relation to Article 23 has a point of importance for us, both from the economic and from the political angle.

We are tied by the decision of the Arab League to boycott Zionist goods, and when we proposed our amendment we explained the motive which brought the Arab League to this decision, and therefore I do not think that it is necessary to repeat myself.

However, I must call the attention of this meeting to the following: During the course of the first discussion on our amendment, two Delegates took the floor. I believe that these were the Delegate for the Netherlands and the Delegate for Czechoslovakia. The first speaker observed that this Article did not imply the boycott of Zionist goods since this Article did not imply a boycott of goods on account of their origin. The second speaker declared that this Article could not apply to our case since Palestine was not a Member of the United Nations. If this Article really cannot apply to our case, we are ready to accept it in its present form, provided we receive a formal confirmation that this Article and its conditions cannot apply to our case. We have no intention whatsoever of boycotting a Member State.

At one of the last meetings of the Heads of Delegations, it was decided to invite two more States which are Members of the Arab League, that is, Transjordan and Yemen. This brings the total number of Members of the Arab League who have been invited to seven, and I am confident, Mr. Chairman, that none of them is in a position to accept Article 23 under its present form. Therefore, we would like to reserve our position in relation to this Article.

CHAIRMAN: I would like to say at once that I do not think that this Commission or the Preparatory Committee, as such, is in a position to give any authentic interpretation that would entirely satisfy the Delegate from Lebanon. So, unless he can accept the text as it stands, I do not see any other case than to note that they reserve their position in regard to this Article.

My own view would be, as I explained when we discussed it on an earlier occasion, that when this Charter is a living reality I firmly hope that the political difficulties to which the Delegate of the Lebanon has just referred will have been solved and that it will be easy for them to drop their reservation. Of course, I have only spoken in my personal capacity, and I would like to hear whether any delegates would like to comment on the statement of the Lebanese Delegate.

If no delegate wishes to speak, I then propose that we adopt Article 25 as it stands, with the following comment: The Delegates of Lebanon and Syria reserve their position in regard to this Article.

Mr. MIKAOUI (Lebanon) (Interpretation): Mr. Chairman, allow me to thank you for your wishes and to express the hope on my own behalf that there soon will be found a fair solution to this problem which gives rise to our reservation.

I would furthermore like to ask you, Mr. Chairman, to have our reservation put on record.

CHAIRMAN: Any remarks?

Agreed.

We pass on to article 37.

There you have on page 43 a number of general comments, but I shall take them as we arrive at the points of the Article to which they apply. The first applies to the Introduction of the Article. It is a suggestion by the Delegations of Belgium, France, Netherlands and Luxemburg to substitute the words, "Members shall be entitled to take measures" for the clause beginning "nothing in Chapter V shall be construed", and so forth. This change was dependent upon a re-arrangement of the order of the Sections in the latter part of Chapter V, and in the Working Party we did not consider ourselves to be within our terms of reference with regard to a re-arrangement of the whole Chapter; but I take it that Commission B may quite well take it upon itself to consider also that aspect of the question.

Speaking for myself, subject to correction, I would say that whether you maintain the words "subject to the requirement" etc., or you say, as suggested by these Delegations, "Members shall be entitled to take measures" etc. - whether you use the one or the other wording, it seems to me it does not prejudice at all the re-arrangement of the Articles of the Charter; so I take it we should simply decide whether we like the one or the other wording the better.

CHAIRMAN: The Delegate of France.

Mr. ROUX (France) (Interpretation): Mr. Chairman, it is not the question of what form we finally adopt for this Article, or what number it will take in the Charter. It is far more a question of substance.

In our opinion, which is shared by other Delegations, the provisions of Chapter V, such as they are expressed in Articles 34, 35 and 36, more particularly the questions of appeal, equally apply to this part of the Charter, since it was decided to put all exceptions to Chapter V within the framework of Article 37. The impression might easily be created that appeals are no longer valid for cases which are dealt with in Articles 38, 39 and so forth, therefore our proposal was to re-arrange Chapter V in such a way that it would clearly show that appeals are possible even when a country makes use of exceptions provided for in Article 37, provided they make use of their possibilities to avail themselves of the exceptions which are mentioned in Article 37.

CHAIRMAN (Interpretation): Your intention is therefore to place Article 37 before Articles 34 and 35.

Mr. ROUX (France) (Interpretation): Yes, exactly.

CHAIRMAN: The Delegate of the United States.

Mr. OSCAR RYDER (United States): I wanted just to say that this question of arrangement will have to be taken up later. As I understand it other Delegations are proposing various re-arrangements of the Charter, and there will have to be a Committee on the proposals sooner or later, or may be the Drafting Committee, to decide on the proper order.

I do not think a large Commission of this sort gets very far in drafting, and whether the language suggested by the French Delegate or the language at present in Article 37 should be used, I think might well be referred to a Legal Drafting Committee for opinion and solution.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. RHYDDERCH (United Kingdom): I agree, Mr. Chairman, I think it is placing quite an impossible task on this Commission to decide the re-arrangement of paragraphs such as this, because, as we all know, re-arrangements may have different effects at different times, and I would agree with the Delegate of the United States that it should be left to people more competent to deal with.

CHAIRMAN (Interpretation): Has the French Delegate any objections whatsoever to the re-arrangement of Chapter V being left to a sub-Committee, which will certainly be constituted at an opportune moment?

M. ROUX (France) (Interpretation): Mr. Chairman, this Committee is, in fact, in existence: it is the Legal Drafting Committee. Therefore, I think we should refer the question to that Committee but give it an indication of what we want, and I think we are all agreed on the provisions of the Charter to apply to Article 37 as well as to the other parts of Chapter V.

CHAIRMAN: That is really a question that is strictly within the competence of our Commission to decide, -whether we want the clauses of Article 37 to be amongst those clauses to which the provisions of Articles 34 and 35 can apply. That is what the French Delegate wants, and I think we must try to define our attitude to that question. That is not a matter for the Legal Drafting Committee.

Does any Delegate wish to express an opinion on the proposal of the French Delegation, namely, that in the establishment of the text of Article 37 we shall have in mind that any complaint brought against a Member for having abused the liberties given under Article 37 may be subject to the redresses contained in Articles 34 and 35.

I would add that it may be difficult, on the spur of the moment, to have a definite opinion on this matter; and I would consider it quite reasonable that that question could be put to some other organ of our Conference - for instance, the sub-Committee dealing with Articles 34 and 35.

(Interpretation) Will this be agreeable to the Delegate of France?

M. ROUX (France) (Interpretation): Yes, Mr. Chairman, this is quite agreeable to me. However, would it be possible, when we refer the question to the Committee, to draw their attention to the nature of the question which is put before them? Incidentally, this same question arises again in Article 38, which we do not have to consider within our terms of reference here, and I think Articles 37 and 38 are both subject to the course mentioned. Therefore, the question has a rather more general aspect.

CHAIRMAN: As we all agree that the main question brought up by the Delegate of France is a question of the extent to which the clauses of Articles 34 and 35 are applicable to Articles 37 and 38, it is reasonable to refer that question to the sub-Committee dealing with Articles 34 and 35. Is that agreed?

(Agreed)

We now pass on in our discussion of the text of Article 37. The introduction will, then, remain as in the text on Page 44 of Document T/103, and now we come to the different sub-headings.

(a) "Necessary to protect public morals". There we have a specific comment: "The Delegate for Norway referred to his country's restriction on importation, production and sale of alcoholic beverages that had as its chief object the promotion of temperance. He re-stated the view put forward by the Delegation of his country to the Drafting Committee that the taxation and the price policy of its State liquor and wine monopoly was covered by sub-paragraphs (a) and (b)."

Does the Delegate of Norway want to maintain that reservation?

Mr. MILLERUD (Norway): Mr. Chairman, I only wish to remind

the Commission of the point made by the Norwegian Delegate to the Drafting Committee in New York. The comment was repeated here in Geneva in the Working Party. As far as we now can see, our restrictions on importation, production and sale of alcoholic liquors are covered by sub-paragraphs (a) and (b), especially seen in connection with paragraph 4, Article 32, and we suggested the addition of the word "social" to that paragraph.

Mr. MALTERUD (Norway): Mr. Chairman, I think it is sufficient to mention that we have made the proposal here to paragraph 4 of Article 32.

CHAIRMAN: Does this mean that you will withdraw your reservation under reference to the Norwegian amendment to Article 32, paragraph 4?

Mr. OSCAR RYDER (United States): Mr. Chairman, I do not understand what was exactly meant there.

CHAIRMAN: Will the Norwegian Delegate tell us what is the content of the amendment to paragraph 4 of Article 32?

Mr. MALTERUD (Norway): Mr. Chairman, it is the addition to the last sentence of "... and operated mainly for cultural and social and for revenue purposes."

Mr. OSCAR RYDER (United States): As there has been no discussion on that amendment in the Commission, and the Sub-Committee has not considered this Article either, I do not know yet what has been accepted and what was rejected.

CHAIRMAN: In this condition, perhaps it would be desirable provisionally to say that the Delegate of Norway well, it is not for me to formulate that.

Mr. W.E.H. RHYDDERCH (United Kingdom): I think that everybody here would agree with the delegate of Norway if he wishes to take such an extreme view on morality as he has taken. I should suggest there is no real point in putting it in at all. It ought to be withdrawn. I do not think anybody would quarrel with the Delegate of Norway, although it might have a different effect in other countries.

Mr. C.E. MORTON (Australia): I think that the note doesn't matter really. I note that it only refers to the price policy, but it does not refer to the quality of liquor. It is good for protection of animal life.

CHAIRMAN: As there is some uncertainty as to the situation ^{is} as it/explained by the Delegate of the United States, and as the Norwegian amendment on Article 32 has not yet been considered, perhaps it might be better to simply state that "The Delegate of Norway re-stated the view put forward by the delegation of his country to the Drafting Committee that the taxation and the price policy of its State liquor and wine monopoly was covered by sub-paragraphs (a) and (b)", if you like. And then, when paragraph 4 of Article 32 has been discussed and settled, the Delegate of Norway will then decide whether he will ^{maintain his} reservation or not.

We pass on to point (b). There is no other comment, and I take it that we all agree to the text that we adopted at the Working Party. Is that agreed? Agreed.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I wonder whether it is the heat or my desire to be away from here, however, I must say that, from this Article, I do not gather easily the meaning as it is worded here. I know what is meant, but the text is not clear. It says: "Necessary to protect human, animal or plant life or health provided that corresponding safeguards are applied in the importing country if similar conditions exist in that country." I think the text is far from being satisfactory, and I very much doubt whether any outsider would construe it in the right way.

CHAIRMAN (Interpretation): This text was established after a difficult and prolonged discussion, and the intention behind the words is quite clear. If a country refuses to import a product in order to protect domestic animals, it must establish the proof that it has measures of protection comparable to those of the exporting country. It might appear at the first glance perhaps somewhat complicated, but the intention is quite clear and logical.

M. F. GARCIA OLDINI (Chile) (Interpretation): I am not entirely convinced of the logic of this text.

Of course, I do not wish to set aside the French text, but do you not think it would be expedient to recommend to the Legal and Drafting Committee that the possibility of providing a clearer drafting of this Article should be considered?

Mr. C.E.MORTON (Australia): I have much sympathy with the Delegate of Chile. I think this is one clause on which an explanatory note is justified. It is extremely difficult to understand this text without a note along the lines which you have indicated being included in ^{the} explanatory notes.

CHAIRMAN (Interpretation): Mr. Ryder, the Delegate for the United States.

Mr. Oscar RYDER (United States): As this was a compromise between two very opposing views, after a long and arduous discussion, I think it should stand as it is.

Mr. C.E.MORTON (Australia): This paragraph may be read by all and understood by none.

CHAIRMAN: Could we not leave it as it stands and see whether ^{some} the Delegates to the World Conference are able to find clearer phrasing.

Mr. C.E.MORTON (Australia): The only bright spot is that Article 35 affords means of action where a Member considers that Sanitary Laws are being inequitably employed to his disadvantage. If it were not for that fact I would be very unhappy regarding the terminology of sub-paragraph (b).

(No French interpretation)

CHAIRMAN: As the United States Delegate has said, there has been a very long and arduous discussion and it is necessary for us to come to a decision.

M. F. GARCIA OLDINI (Chile) (Interpretation): The traces of this long discussion are very visible in the text, - the discussion led to a compromise - but the two conflicting viewpoints should not be left in the text, and I think it would be very advisable to have a note here in order to clarify it.

CHAIRMAN: I have no objection and will ask for a draft of wording to be submitted to me. We can then insert this new draft and see if the Executive Committee will accept it.

May we now consider that (b) is approved with this proviso?

The Meeting agreed.

CHAIRMAN: We have a comment on (c):-

"The Delegate for the United States mentioned that he understood the term "fissionable materials" to include "source materials".

Mr. Oscar RYDER (United States): When this was being discussed, a number of Delegates raised various points. The matter was not raised by the United States as to the discovery of the source of fissionable materials. We stated that our understanding was that it did include source-materials. To clarify the point, we think the wording should be "fissionable materials and their source-materials".

CHAIRMAN: Have I understood that you want this paragraph to refer to fissionable materials and the materials from which they are derived?

MR. O. RYDER (United States): No, Mr. Chairman; what I suggested was that to make it clear we might make Article 37 (c) read:

"Relating to fissionable materials and their source materials."

MR. C.E. MORTON (Australia): Mr. Chairman, that surely is a matter of substance, which it is not right to take up here unless you wish to re-open discussion on this item - not that I wish to discuss it.

CHAIRMAN: It is certainly a question of substance. Do you feel very strongly about it, Mr. Ryder?

MR. O. RYDER (United States): Well it was thoroughly understood that fissionable materials included source materials. It was stated in a previous discussion, and no one questioned it, that fissionable materials should include the source materials. I think that the language used there would cover the source materials. But it was only to make it absolutely clear, in view of the preceding discussion, that I made the suggestion.

CHAIRMAN: Is it not perhaps best to maintain (c) in the text of the Drafting Committee and to maintain also this amplification by the Delegate for the United States?

Well, I do not suggest to replace the words "The Delegate for the United States" in note (c), by "The Commission". It is simply because I do not think the Members of the Commission have sufficient technical knowledge to be able to say whether they agree or not. I have not heard anybody opposing this interpretation,

but I do not think that the Commission as a whole is ready to accept this straight away.

MR. O. RYDER (United States): Mr. Chairman, it seems to me that it should be understood not only by the United States but by the Commission that this applies to the raw materials of which fissionable articles are made. Article 37(c) would be meaningless unless it included the source materials from which fissionable materials are made. I do not think there could be any question of that.

CHAIRMAN: I entirely agree with the Delegate of the United States. My only difficulty is that if we say "fissionable materials and their source materials", we give a very restrictive definition of fissionable materials.

MR. O. RYDER (United States): Mr. Chairman, it would be just as agreeable, I think, to the United States Delegation if you had this note reading:

"The term fissionable materials is to be understood to include source materials".

MR. W.E.H. RHYDDERCH (United Kingdom): I think it would be clearer to all the delegates generally if we did not use the words "source materials". It has a curious meaning. I rather liked your phrase, Mr. Chairman, "the materials from which they are derived." I think that would be clearer to everybody.

Is that all right with you, Mr. Ryder?

MR. O. RYDER (United States): Mr. Chairman, that would be acceptable to me.

CHAIRMAN: Thank you. That seems to me to make it much easier for the Commission to have an opinion. Could we say:

"The Commission is of the opinion that the term fissionable materials also includes the materials from which they are derived."

Is that the opinion of this Commission? No objection?

(M. ROUX (France) made a correction to the French text)

CHAIRMAN: Are we all agreed to this? Thank you. That is agreed.

We pass on to point (d). There are no comments and I take it that it will be unanimously approved in the text of the Drafting Commission.

Agreed.

Paragraph (e). There we have a comment. The Chinese Delegate again drew attention to his proposal in the Drafting Commission that permission should be given for measures "temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity or other national emergencies, provided that such measures are withdrawn as soon as the said conditions cease to exist".

Mr. MORTON (Australia): Could I ask the Chinese Delegate how he proposes to prevent or arrest a natural calamity?

Mr. MA (China): I didn't quite hear...

CHAIRMAN: I think I remember from the discussion in the Working Party that after considerable discussion the Chinese Delegate said that he did not know exactly whether in second reading he would maintain this statement, or whether he might accept the text of point (e) as it stands.

I would ask the Delegate of China what his decision is to-day.

Mr. MA (China): Mr. Chairman, this Article 25 2 (b) does not quite cover our point, and as this is rather an important question with us, my Delegation has not yet come to the decision to drop this proposal. May I request that this reservation be provisionally retained for the further reflection and decision of my Government at a later stage.

May I also add in this connection that as I had no knowledge that Commission A had begun discussion of this paper - nothing had been indicated in the Agenda before to-day - I was therefore not present when Article 19 was discussed.

In Article 19 3 (a) we have also a reservation. We will not insist on that reservation so much; but on this our Delegation has not decided to drop it.

CHAIRMAN: I thank the Delegate of China for having withdrawn his reservation on paragraph 3 of Article 19, and as to his reservation on Article 37 (e) I think we could perhaps write it in as follows:-

"The Chinese Delegate provisionally maintained his proposal that permission should be given for measures (and so on,...) cease to exist" - and strike out the last two lines. Agreed.

CHAIRMAN: Point (e) is then agreed, with this provisional reservation on the part of the Delegate of China.

We pass on to (f).

The Delegate of the United States.

Mr. RYDER (United States): I would like to call attention to the fact that much of what we are doing with this Article is bound to be tentative, because our proposal is tentative, and in various Sub-Committees which would require Amendments to this Article. For instance, there is a proposal to transfer this (f) to Article 29, dealing with Exchanges. That is under consideration and it would change somewhat, as I understand it, the purport of this exception. Then, in the next paragraph (g), there is a proposal which was submitted to this Commission and which was referred to the Sub-Committee on Article 25, and that proposal involves an Amendment to (g).

Then there is also under consideration in the Sub-Committee on paragraph 15 a proposal for the transfer of sub-paragraph 2 (a) of 25 to Article 37. Then the United States proposed, and the Working Party recommended - although they had no power to take action - that sub-paragraphs (c) (i) (e) and (k) be made a general exception to the whole Charter, and be put in Chapter VIII, or the final Chapter of the Charter.

I do not think I have enumerated all the suggestions which will involve this Article, so I think all we can do now is pass tentatively on what we agree.

CHAIRMAN: I entirely agree with the Delegate of the United States that when we went through the text provisionally it was his intention to come to the different proposals made in other Committees.

Mr. RYDER (U.S.): Some of them. CHAIRMAN: Yes, some of them.

Mr. Oscar RYDER (United States): Mr. Chairman, I think that the text of this Article will have to be decided in connection with the new Article on exceptions to the whole Charter, in view of the work of all the committees that are interested.

CHAIRMAN: I entirely agree, but that does not prevent us from passing the text as far as we are concerned today.

Mr. Oscar RYDER (United States): I just wanted, on this particular sub-paragraph (f), to say that I am willing to pass this tentatively, subject to consideration of the proposals of the sub-Committee on Articles 25, 28 and 29.

CHAIRMAN: We might, perhaps, insert a note on (f), stating exactly what the United States representative has just said - provisionally agreed to, subject to any decision taken on Article 25 and following Articles.

With this explanatory note, I take it that (f) is agreed?

(Agreed)

We pass on to (g). No comment?

Mr. Oscar RYDER (United States): I have the same comment to make.

CHAIRMAN: We can let the remark apply to both (f) and (g).

We arrive at (h) "Relating to the products of prison labour". Any comment? (Agreed)

(i). No comment? (Agreed).

(j) "The Delegate of India repeated the suggestion made by his Delegation at the First Session that the words following upon "natural resources" should be deleted." Does the Delegate of India still maintain that desire?

Mr. S. RANGANATHAN (India): I shall give an illustration which will clarify the reason for this suggestion. A mineral of much strategic and industrial importance is being extensively mined, and practically the whole production is being exported. We wish to conserve it for more effective or beneficial and planned use later. The easiest and most effective way to secure this is by limiting exports. We cannot do this with item (j) as it stands, unless we link it with a somewhat unrealistic restriction on domestic production or consumption. It is to avoid having recourse to such steps that we made this suggestion, and if the Commission see no objection, I would request that the suggestion be left on record.

CHAIRMAN: Does not this really involve general permission to restrict any kind of exports? Obviously, it is limited by the words "exhaustible natural resources", I agree; but nevertheless it leaves the door wide open, and without any opportunity for the Organization to control and criticize.

Of course, if the French suggestion should materialize and Article 37 be subject to Articles 34 and 35, then there would be some possibility of checking the steps taken; but we do not know how that will work out, so unless the Indian Delegate can forego this reservation, I do not see any other solution than to maintain the text of the Committee and also the reservation of the Indian Delegate, and the whole question might then be reconsidered when we know what will happen to the place of Article 37.

Mr. S. RANGANATHAN (India): Could we then have this reservation maintained on a provisional basis?

CHAIRMAN: Yes, on a provisional basis.

The note will, then, be "The Delegate for India provisionally

maintained his proposal that the words " and so on and so on,
"should be deleted"

We pass on to the next point (b): "The Delegate for Brazil provisionally suggested that the words "are taken pursuant to international agreements or" be deleted. He would, however, study the matter further."

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, the Atlantic Charter reads, in Chapter IV, "They will endeavour, with due respect for their existing obligations, to further the enjoyment by all the States, great or small, victor or vanquished, of access on equal terms to the trade and to the raw materials of the world, which are needed for their economic prosperity". Because of these words, we cannot accept the words "...pursuant to international agreements". We can accept very easily the paragraph reading "Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption".

CHAIRMAN: I will draw the attention of the Commission to the fact that the Sub-Committee dealing with Chapter VII has adopted a recommendation to delete, in sub-paragraph (b) of Article 37 "are taken pursuant to international agreements or" which is the deletion proposed by the Brazilian delegate, and unless there should be any objection in our Commission, I do not see why we should not abide by the resolution of Commission B.

Mr. OSCAR RYDER (United States): Mr. Chairman, concerning this matter, I do not know whether it would be agreeable to my Delegation to delete those words, but nevertheless, the decision of my Delegation depends somewhat upon the language used in Chapter VII and the language proposed for insertion in Article 37. I think our Delegation would have to ^{decision} defer /on the question of whether we should follow the suggestion of the Delegate for Brazil, and delete the words "Are taken pursuant to international agreement", until we have considered the ~~form~~ taken in Chapter VII.

Mr. W.E.H. RHYDDERCH (United Kingdom): Mr. Chairman, we would support the suggestion of the Delegate for Brazil, but I quite agree with the Delegate of the United States that we should not go further until we consider the actual form of the new exceptions which^{we}/are going to propose here in accordance with the suggestion made by this paper.

CHAIRMAN: In the Report of the Sub-Committee on Chapter VII, it says on page 8: "In the light of the new Article 53 on Types of Agreements" (that is commodity Agreements) "and the new text of the Exceptions Article 62, the Sub-Committee recommends:(i) acceptance of the proposal that agreements falling under Chapter VII should be classed as an exception to Chapter B, with the consequential deletion of sub-paragraph (d) of paragraph 2 of Article 25, and (ii) the deletion of sub-paragraph (b) of paragraph 1 of Article 45." They recommend that agreements falling under Chapter VII should be classed as an exception to Chapter V, Article 37. That proposal is before us. We have another statement in the same direction on page 47 of document T/103: "The United Kingdom Delegation has proposed that a reference to Chapter VII should be inserted in Article 37 in the following form: '(1) Undertaken in pursuance of obligations under inter-governmental commodity arrangements concluded in accordance with the provisions of Chapter VII'". That is an elaborate text, covering the point submitted in Chapter VII.

Mr. W.E.H. RHYDDERCH (United Kingdom): I should like to suggest one small amendment to that. This was drafted before we got this Report, and I should rather like the term "agreements" substituted for "arrangements". That would be more in accordance with the Report on Chapter VII.

CHAIRMAN: I take it that we agree to include a new paragraph in Article 37. It will be paragraph 10.

Mr. Oscar RYDER (United States): I think some time is required. I should like time to consider this amendment in view of this note. The question of whether we should delete this phrase in sub-paragraph j, which the Brazilian Delegate suggests, I think should be considered in connection with the phraseology we may adopt here for making an exception in regard to Chapter VII.

CHAIRMAN: In reply to the Delegate of the United States, I would like to draw attention to the fact that the answer is contained in the Report of the Committee of the 19 June; the recommendation of Commission B is based on the Report of the recommendation of the Sub-committee which was unanimously passed a couple of days ago.

Mr. Oscar RYDER (United States): I thank you for your explanation Mr. Chairman, but nevertheless, I did not know of this decision, and as a very important question is involved, I should like to have a postponement.

CHAIRMAN: We have not yet considered Paragraph k of 37, and I take it that we all agree it is superfluous in its reference to obligations under the United Nations Charter.

Mr. E. L. RODRIGUES (Brazil): After the suggestion of the United States Delegate for which I thank him, I should like to know exactly when we will have an opportunity to discuss this again.

CHAIRMAN: The Secretary informs me that if it is convenient to the United States Delegate, we could have a meeting tomorrow.

Mr. Oscar RYDER (United States): I would have no serious objection to that, but I doubt whether it would be advisable to have a meeting of this Commission just on one small point at this time.

CHAIRMAN: I hope the Delegate of Brazil will show the necessary patience and wait a few days. Personally, I can assure him everything will be satisfactorily settled.

Page 43 contains an important point:-

"The Delegate for Canada suggested that the following new sub-paragraph be added: "Relating to importation of goods the production of which was prohibited in the country of importation prior to 1 July 1939"."

I will call upon the Delegate of Canada.

Mr. G.B. URGUHART (Canada): As I think I explained once before, and my predecessors before me, the purpose of our proposal was to permit us to maintain a prohibition against the manufacture, sale and importation of margarine which has been in effect for some 20 odd years. We regard it as rather an important item and we would like to be able to continue the same prohibition.

Mr. Oscar RYDER (United States): May I ask the Canadian Delegate if he would mind changing the date to the 1 January 1939 so that the same measures could be applied to alcohol.

Mr. G.B. URGUHART (Canada): We have no objection.

CHAIRMAN: I got the impression from the discussion on this matter last time that there is only one commodity, just mentioned by the Canadian Delegate, to which his reservation applies, and I wonder whether it might help if, instead of suggesting a general sub-paragraph, he simply makes a reservation with regard to that commodity.

MR. C.E. MORTON (Australia): Would the Delegate of Canada indict margarine on the same basis as liquor, that is to say, as a danger to public morals?

MR. G.B. URQUHART (Canada): I might ask the Chairman if he thinks that that would get more general support?

CHAIRMAN: No, my idea is simply to try to restrict the dissent between us to the necessary minimum. You and the rest of the Commission are not in disagreement about such sweeping clauses as "importation of goods the production of which was prohibited in the country of importation prior to 1st July 1939", but simply about whether you can maintain the prohibition on margarine. That is one unique case, and / ^{perhaps} that could be covered in some way or another without opening up for other prohibitions - but I do not know whether very many countries still have such old prohibitions in force.

I asked some weeks ago whether the Delegate of Canada saw any possibility of waiving his proposals and I got a negative answer, and I understand that the same position prevails today.

MR. G.B. URQUHART (Canada): Mr. Chairman, I would have been glad to maintain it, but as I gather from your remarks that I am the voice crying in the wilderness here, in the circumstances, I see no alternative but to withdraw it.

CHAIRMAN: Well then, I take it that we maintain this proposal of the Canadian Delegate that a further sub-paragraph (b) be added "Relating to the importation of goods the production of which was prohibited in the country of importation prior to 1st July 1939".

MR. G.B. URQUHART (Canada): No, I said that I would withdraw it.

CHAIRMAN: Thank you very much. Well, that solves a problem which has been worrying me very considerably. Thank you very much.

We pass on to page 45, point (c). "The Delegate for India maintained his suggestion in the Drafting Committee that a Member should be allowed temporarily to discriminate against the trade of another Member when this is the only effective measure open to it to retaliate against discrimination practised by that Member outside the purview of the Organization, pending a settlement of the issue through the United Nations".

May I ask the Delegate of India whether he can follow the example of the Canadian Delegate?

MR. S. RANGANATHAN (India): Mr. Chairman, I regret I have to disappoint you. Two words have been omitted in the typing. After the word "Member" in line 5, there should be two words "in matters", reading "by that Member in matters outside the purview.."

You are aware, Mr. Chairman, of the reasons for this suggestion, but I am not anxious to start a debate on it. I made our position quite clear during the discussion in the Working Party on Article 23 and also on Article 37. The legal position in regard to the applicability of the provisions of this Charter to the circumstances of our particular problem is not yet authoritatively

clear. I would, therefore, request that this suggestion be formally maintained on record, until we reach the stage of signing the General Agreement or the Charter, as the case may be.

CHAIRMAN: Should we say "maintained until further notice" or simply "maintained"?

MR. S. RANGANATHAN (India): "maintained".

CHAIRMAN: Of course, we bow to any request of any delegate to have his proposal put on record.

Then we pass on to paragraph 3. "The Delegate of the United States suggested that sub-paragraphs (c), (d), (e) and (k) be removed from Article 37 and inserted in a new article elsewhere in the Charter. The Working Party considered such a change beyond its terms of reference but agreed to recommend to the Executive Committee that the proposed transfer of the sub-paragraphs in question be made".

We are here in Commission A, and that is a kind of Executive Committee, and I do not see that it is outside our terms of reference to consider this proposal on its merits. The proposal is to transfer these sub-paragraphs to somewhere at the end of the Charter, so as to make these sub-paragraphs apply to the Charter as a whole, not only to Chapter V.

Mr. RYDER (United States): Mr. Chairman, I would just like to remark that this Commission should probably transfer it to the care of a new Article, but the new Article might have to be framed and possibly include other paragraphs, for example, (e) and (f) of the present Article.

CHAIRMAN: May I take it that we all agree that these paragraphs of Article 37 be transferred to another part of the Charter, so as to make them applicable to all the Charter and not only Chapter V. There is, in a paper by the United States Delegation some time ago, a provisional Draft of the new Article in which this sub-paragraph would be included. It says, "Nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures:" - and then five paragraphs. And then, as the United States Delegate just said, there is always a possibility that other items may be included in the same new Article.

What we have to decide here is not the text of the new Article, but simply that we place this paragraph at the disposal of the Conference for inclusion in such a paragraph of such an Article when it is established.

The Delegate of Brazil.

Mr. RODRIGUES (Brazil): I have nothing against the proposal of the Delegate of the United States. but I am afraid that we here in the Commission who are discussing this Chapter V have not competence, perhaps, to extend these exceptions to the whole Charter.

I am not sure, but I think the other people who have dealt with a different Chapter did not know anything about that, and some information should be given to them before taking such measures.

CHAIRMAN: I entirely agree with Brazil, and that is why I used the expression -

"We cannot decide the terms of such a new Article, we can only tell the Preparatory Committee that we place these sub-paragraphs at its disposal." We, in dealing with Article 37, say that we can keep them, but we think it is better that they are transferred to a general Article; but how the general Article shall be framed does not depend upon us, and they all may be returned to us, which I think would be a pity, but it is always a possibility.

May I take it that we all agree to this solution?

Mr. ROUX (France) (Interpretation): Mr. Chairman, I wonder if there is not some inconsistency in saying that Commission A is competent for deciding to transfer Article 37 to the end of the Charter in a Chapter which is not even numbered V; and saying, as we did previously, that the same Commission A is not competent for deciding to transfer Article 37 to another Article in the same Chapter V, namely, 34. If we do not want to accept the possibility for a minor change, we should never accept the possibility for a much more substantial one.

CHAIRMAN (Interpretation): No, I do not believe there is any such inconsistency. We decided that we could not change the order of Article 37 before we had given the Commission which was dealing with Articles 34 and 35 an opportunity to state their views.

Concerning the sub-paragraphs, we have not decided, as I said before, to do anything about them, or to change their wording or transfer them. We have simply decided to put them at the disposal of another part of the Preparatory Committee, for possible inclusion in a more general Article at the end of the Charter. If at that time we are told that these sub-paragraphs do not belong in the new Article, we will keep them in Article 37, but, as I said before, that would be rather a pity. May I take it that we are now in agreement with regard to this procedure?

The Delegate of France.

M. ROUX (France): (Interpretation): Mr. Chairman, may I merely point out, in the light of the remarks you made just now, that we are, in fact, discussing the disposition of the whole Article 37, since the Article as a whole is discussed in the light of knowing whether it should not be placed before Article 34, and some parts of it are being discussed in conformity with the remarks made by the Delegate of the United States as to whether this could not be taken out of the said Article and put elsewhere in the Charter.

CHAIRMAN (Interpretation): I think we should congratulate ourselves on having established the text of Article 37, which, after all, was our main task. It is not for us to determine the place it will have.

(In English): I have one more point to submit to you

before we adjourn. You will find it in the report of the sub-Committee on Chapter VII in Document W/228 (page 19) which reads "The provisions of Chapter VII shall not apply" etc. Sub-paragraph (d) states "to agreements relating to fissionable materials, to the traffic in arms, ammunition and implements of war" and so on, and there is a footnote saying "A proposal has been made for the deletion of this sub-paragraph in the light of an amendment to be considered by Commission A regarding the exclusion of such agreements from the whole Charter."

This means that if, finally, the American proposal to transfer the sub-paragraphs in question to a final Article of the Charter is accepted, this point (d), of Article 62 in Chapter VII will disappear. We cannot decide anything about it here. I thought I would just mention it.

Unless any Delegate has any point to raise in connection with our work, we adjourn till next week.

The Delegate of New Zealand.

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, I would just like to ask whether it is proposed that any special procedure should be followed for Delegates to confer on this question of Article 21, in connection with which we made a suggestion.

CHAIRMAN: I do not think that there should be any necessity for a sub-Committee on this point.

Mr. J.P.D. JOHNSEN (New Zealand): It could just be left, perhaps, for me to confer with other Delegations who are interested, and if any Delegation has any special proposal, they could possibly get in touch with me.

CHAIRMAN: The United States Delegate opposed your proposal, and I would suggest that you start with an eye-to-eye talk with him so as to convince him.

Mr. J.P.D. JOHNSEN (New Zealand): I do not think he opposes it: he wants to consider it further.

CHAIRMAN: Yes, but I do not like to appoint a sub-Committee for such a point. I think it is much better that we should gain some time. That was really the intention - that each of us should think the matter over further, and then that a private arrangement should be reached between you and two or three of the other Delegates who took part in the discussion here today. I think that is more constructive than to appoint a small sub-Committee. Is that agreed? I really think that is the better procedure in this case.

Mr. J.P.D. JOHNSEN (New Zealand): I think that is satisfactory, Mr. Chairman,

CHAIRMAN: The Delegate of Australia.

Mr. C.E. MORTON (Australia): Mr. Chairman, in regard to your kindness to me in granting an adjournment of this Meeting for a week, may I suggest this Meeting should be arranged for this day week, when I hope I shall be able to be fully briefed in regard to Article 18 and to raise certain other matters in regard to Article 17 which are related to Article 18.

CHAIRMAN: I think that is agreeable to us all. No further remarks? The Meeting is adjourned.

The Meeting adjourned at 5.30 p.m.