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

VERBATIM REPORT

THIRTY-NINTH MEETING OF COMMISSION "A"

HELD ON THURSDAY, 14 AUGUST 1947 AT 2.30 P.M.

IN THE

PALAIS DES NATIONS, GENEVA.

M. Max SUETENS (Chairman) (Belgium)

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CHAIRMAN (Interpretation): The Meeting is called to order.

Gentelemen, we will resume the discussion where we left it this morning. If you remember, we were faced with two amendments, one presented by the Czechoslovakian Delegation, and another amendment presented by the Netherlands Delegation. The first amendment tended to delete in paragraph 3 of Article 12 some words. The second amendment, of the Netherlands Delegation, tended to delete this paragraph 3 entirely. I shall now ask Dr. Coombs who presided over the sub-Committee which dealt with the examination of this Article to give us his opinion on the matter.

Dr. H.C. COOMBS (Australia): Mr. Chairman, these particular amendments, of course, were not discussed by the sub-Committee, and I do not think I can pretend to speak for the sub-Committee on them, but perhaps I should comment on the proposals that have been made.

It seems to me, in relation to the proposal put forward by the Czechoslovakian Delegation, that it is reasonable to expect that a Member would make the complaint so to speak in its own right, not merely acting as a sort of Post Office for private individuals. But I think it is equally reasonable to allow that a complaint by a Member made in its own right could originate from an action which affected one of its nationals individually in the first instance; but I think the Member, before making a complaint in respect of that action, has an obligation to examine the circumstances of the case to satisfy itself that the action has, in fact, adversely affected its interests and to make the complaint on that ground, that is, although it would obviously be perfectly reasonable, it seems to me, to quote the

individual case, in illustration of the complaint. So that as regards the operation of this, it would appear to me that the substance of the clause would not be affected if we deleted the references to nationals and in particular, I think, delete the phrase "present to the Organization", which does carry an implication that the Member does not necessarily accept any responsibility for the complaint itself. I think the clause would be adequate for its intention if it read:-

"Any affected Member may complain to the Organization that action by another Member is inconsistent with its obligations under this Article".

The only disadvantage about doing that is that this Article has been substantially in this form for some time and the reason for the deletion of this might not be understood. I suggest, therefore, that if that is done a note might be included in the Report to read something to the effect that:

"It was agreed that complaints under this paragraph should be alleged by Members only in their own right although a complaint by a Member could properly concern action affecting one of its nationals. The Member should, however, be expected to examine the circumstances of the case and satisfy itself before complaining that its interests were adversely affected".

Some such wording as that would explain the reason for the deletion of the parts referred to.

Referring now for a moment to the suggestion by the Delegate for the Netherlands, I agree fully that nothing is given in this paragraph which is not adequately provided by Article 35. There is a right of complaint for which machinery exists there; and therefore there would be no harm in deleting the whole clause, although, for the same reasons, it might be worth while adding a note to the effect that this paragraph in the preceding draft text was dropped because it was considered unnecessary in the light of the provisions of Article 35.

CHAIRMAN (Interpretation): Mr. Webb.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, we are in favour of the change which I think Dr. Coombs has suggested, that is I think we should replace the words in paragraph 3 "may present to the Organisation a complaint" by "may complain to the Organisation." The effect of that change would be to throw upon the Member presenting the complaint the responsibility of assuring itself that it is not trivial and that there is at least a reasonable assumption that the facts are correct.

As to Dr. Speekenbrink's proposal that (3) should be deleted altogether, I think he has made in some sense a good case but I would be against the deletion of the paragraph because I think that if you do that, logically you must go to Article 26 and also to Article 40 dealing with Restrictive Business Practices, and make there a similar change because there are similar provisions in those Articles. I do not think that should be done because it seems to me that there is some justification for assuming that slightly different complaint procedures may be justified under different parts of the Charter.

M. A. FAIVOVICH (Chile) (Interpretation): Mr. Chairman, I would just like to say a few words on Articles 12 and 12A because I think that there is a close link between these two Articles. We agreed to sending these Articles to the Committee because we thought that these Articles established an equitable balance between the rights of investors and of the countries where the investment were made, and we understood quite rightly, that the investor should have certain guarantees for the investment. We agreed, on the other hand, that an equal treatment should be granted to domestic capital and to foreign capital being invested in the country.

Furthermore, we admitted and we agreed to the fact that if capital were expropriated from a country the investor should receive an equitable and just indemnity, and we thought that a regime could not be perpetuated which, in fact, exposed the investor to any form of arbitrary expulsion, but we could not accept that, under the guise of all the facts that we have just mentioned, this Article should come to mean that a State could intervene politically in the countries where such investments are made, and it seems to us that this paragraph 3 gives too much relief to the particular situation of the investor as apposed to the situation of the country where the investment is made. In fact, this Article gives a special statute to the investor, and therefore there is no more of that equality between the investor and the country where the investment is made, of which I have just spoken.

For this reason, I agree that the words "on behalf of any of its nationals" should be deleted. We do not think that a country should be asked to intervene and represent any particular interest here and in that way act on behalf of its national, but we think that the Czechoslovak amendment does not go far enought and we would ask to see the words "acting on its own behalf or on behalf of any its nationals" deleted.

Furthermore, as we suggested on a previous occasion, we would like to see the word "complaint" replaced by the word "claim", and at the end of the same paragraph the word "mutually" should be deleted.

I would like to mention another aspect of this Article. This Article provides for claims in cases where a party, acting on its own behalf or on behalf of its nationals, thinks that it can make a complaint. But the substance of the paragraph ought to mean that a State could only complain when the provisions of the Charter have been violated.

In fact, the Charter is a document which will be signed by Member States and which will be an official document between the Member States. In cases where investors think that they have the right to complain, they should go through normal diplomatic channels and ask for the diplomatic help and assistance of their own Government. They should not act through the provisions of the Charter, because, as I have just stated, this paragraph ought only to provide for violation of the provisions of the Charter.

To summarise what I have said, I would say that in regard to paragraph 3 of Article 12, and the similar changes to be made in Article 12A, we would adopt the Czechoslovak amendment; but would ask to see the scope of the amendment extended to the deletion of the words "acting on its own behalf or on behalf of any of its nationals". We would also ask that the word "complaint" should be replaced by the word "claim", and at the end of the paragraph, that the word "mutually" should be deleted.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, when we started the discussion on Chapter IV, the Cuban Delegation presented an amendment asking for the complete deletion of this paragraph, so naturally I have to support the Delegate of the Netherlands; but it was discovered during the discussion that practically every one of the Chapters of the Charter has a provision of that sort, called, more or less, "administrative consultation with respect to complaints". When we asked for the deletion, it was entirely on technical grounds, because we saw systems of complaint and consultation in every Chapter, and we were repeating some of the elements of the procedure, but they were not the same all through the Charter.

We suggested then that there should be a general procedure of complaint and consultation - that that procedure should be moved to Chapter VIII, and be applied to all the Chapters of the Charter. That was agreed in general, but it was found difficult to convene the various meetings of the sub-committees.

We have discussed this matter in the Legal Drafting Committee, and we have come to the conclusion that it is absolutely necessary to delete in every Chapter the special procedure established, and instead to make a general procedure in Chapter VIII. However, at this stage in the work of the Preparatory Committee it would be almost impossible to do it, because we would have to check very carefully the special procedure for consultation given in every Chapter. Therefore I think the best solution would be to insert a note concerning this paragraph, stating that the World Conference should study the convenience of taking away the special procedures for consultation, to yield the ground to the general procedure for consultation envisaged in Chapter VIII - I suppose in

Articles 87, 88 and 89. But as it is here that we have to deal with it, I only want to call the attention of this Commission that we are facing this situation: According to the rights of international law, there is a right of interposition, by means of which a Government interposes its good offices or acts on behalf of one of its nationals in relations with other Governments. That does not happen every day, and there is a large amount of jurisprudence and preference in regard to this matter. But that action stops when the other Government does not give the problem consideration. Then, if the Governments are not both bound by a treaty, or some sort of agreement, the matter finishes.

Now, if we wish this text, as it is actually drafted, to mean that any of the Members of this Organization may act not only on their own behalf but on behalf of any of their nationals --that is to say, that any of the Governments here represented could come to the Organization with a complaint acting on behalf of Messrs. Such-and-Such--I think that we would be going farther than international law permits.

For that reason, we second the amendment proposed by the Czechoslovak Delegate and supported by the Chilean Delegate. To conclude, I want only to state that the Cuban Delegation has reserved its position in relation to this Article, and in relation to Article 124, pending the approval of an amendment presented that was transferred to Article 89.

CHAIRMAN: Mr. Rubin.

Mr. SEYMOUR RUBIN (United States): Mr. Chairman, it seems to us there will be some confusion arising out of the words "acting on its own behalf or on behalf of any of its nationals".

As I see it, at any rate, it does not appear to the Delegation of the United States that there is anything unusual or anything extraordinary under the terms of the Charter in the words "on behalf of any of its nationals", and I am somewhat puzzled by the comments which have been made arising out of that particular phrase.

Now it does seem to us that if we passed "trade among States" to mean trade which is largely carried on by private organisations in those various States, if complaints do arise under any provisions of the Charter they are going to start off originally with the complaint of a national of one country, engaged in the trade of a particular commodity, that the Charter is violated. He will then present his case to his Government and argue that the Government of the United States, or one of the other Members of the Organisation, has done violence to its obligations under the Charter; and if his Government is satisfied that it is a reasonable grounds for complaint, and is satisfied that it wishes to take that complaint to the Organisation, it will do so.

It will then present the complaint as its own, but will certainly present the complaint which arose, in the first instance, because an individual a national of that particular Member State was injured in a way which is thought to be contrary to the terms of the Charter.

Now it seems to me that we have nothing other than the situation in paragraph 3 of Article 12. It may be that a measure which a Government takes is injurious to an investment of a particular national, or it may be that a measure which a

Member Government takes is injurious to the trade which such national is carrying on, and in either case the affected Member acting in its own capacity, but certainly having the interests of its nationals in mind, and having their rights in mind arising from the terms of the Charter, will present the point.

So it does seem to me that there is an element of ambiguity in the discussion so far which is somewhat difficult for me to understand. Under these circumstances, however, it would appear that there may be no clarity in maintaining this paragraph as it now stands. On the one hand, I would personally not like to see the phrase "acting on its own behalf or on behalf of any of its nationals" deleted from this particular provision of the Charter on the basis of the discussion which has taken place up to now. It does seem to me, certainly, that no Government will be violating the sovereignty of any other Government if it listens to the complaint of one of its own nationals, and thereafter takes the complaint to the Organisation, and in this sense there seems to me no reason for the deletion of the phrase "of any of its nationals".

However, I think that despite the occurrence of paragraphs similar to this in other portions of the Charter, it might be as well, with a view to facilitating our work and perhaps eliminating further discussion of this somewhat metaphysical point, if paragraph 3 were entirely deleted, and if we then went entirely on the basis of what is found in Article 86 and the Articles which follow that.

If that were done, I would like to see inserted in the Record a Note similar to the Note which was presented tentatively by Dr. Coombs a few moments ago. I would like to see some clarification in the Record that a Member is certainly not

precluded from listening to the complaints of one of its nationals that an obligation by another Member under the Charter has been violated, and then presenting a complaint on that ground to the Organisation. If that were done, Mr. Chairman, it does seem to me we would probably not lose a great deal by eliminating paragraph 3.

I agree with Mr. Webb entirely that I personally do not see any strong reasons for deleting it. Provisions of this sort do occur in other portions of the Charter, and deletion of the paragraph here may lead to re-examination of other solutions, to see whether or not the provisions of those other Chapters should or should not be retained; but in view of all the discussion, I put forward the suggestion that perhaps the simplest action for this Commission to take would be the deletion of paragraph 3 and the addition to the Record of an explanatory note along the lines I have suggested.

CHAIRMAN: The Delegate of Brazil.

Mr. J. TORRES (Brazil): Mr. Chairman, having been the one who pressed in the Sub-committee that this paragraph be retained, I think it is my duty to say a few words on the subject.

In the minds of many people, Chapter IV is pretty much what Dr. Gutierrez said, in a happy expression, "a catalogue of good intentions", and I was concerned with the fact that by deleting this paragraph we might be weakening further the text of a Chapter which does not have much force. I did not demand that it be retained, because of the fact that it may giveninvestors a special privilege or even put them in a special position.

My understanding is that this paragraph would provide for action that would work both ways. It would also give the countries who need certain facilities some measure of complaint vis-à-vis the other countries who may unreasonably withhold these facilities from them.

In Article 12 A we have already provided against the interference of capital in political affairs or in the internal situation of Member countries. But, seeing that this matter is now causing so much difficulty, and understanding, too, that sufficient provision has been adequately supplied in the Articles of Chapter VIII, I am prepared to forgo the psychological advantage that there may be in retaining this paragraph of Article 12, and therefore I would have no objection to its simple elimination.

CHAIRMAN (Interpretation): Gentlemen, the last delegate who has just spoken stated unequivocably that he accepts the deletion of the whole of paragraph 3 with, of course, the inclusion of a paragraph stating the reason for the deletion on the lines given by Dr. Coombs, and the formula given by Mr. Rubin, the delegate for the United States. Am I to consider, gentlemen, that you all agree to delete paragraph 3?

H.E. Z. AUGENTHALER (Czechoslovakia): I agree with the deletion of paragraph 3. I agree also with the addition of the note of the United States delegate, on condition that the note is completed by the following words, or approximately "that there is no cause for complaint if the legislation of the Member concerned offers to the nationals of the complaining countries, legal ways to receive justice."

CHAIRMAN (Interpretation): Mr. Augenthaler, I would like to give you my personal opinion. I rather fear to include the sentence you propose here because this would, it seems to me, extinguish all possibility of diplomatic action because there is no case which we could not find in which the laws of a country would enable the parties to find a solution.

M. P.BARADUC (France) (Interpretation): I quite agree with what seems to be the majority view, to delete paragraph 3, but I wonder what the amendment which was suggested by Mr. Rubin, and the addition suggested by Mr. Augenthaler would add to the case here. In fact, we are not at the origin of international law. There are current practices and customary practices followed in such cases, and in our Foreign Affairs Ministry in Paris we have very often the case of one of our nationals who comes to us and complains because another Government, in his opinion, has taken steps which cause him undue prejudice.

The first thing we say to one of our nationals in such cases is to refer the national to the Tribunes of the country involved and ask him to settle, if he can, his case in the country where such action has taken place. It is only if the case is complicated in some way that we resort to diplomatic action, but if a national thinks that any other country has violated the obligation of the Charter, then it will be, of course, for him to inform his Government of his opinion, but he will have to try first to obtain reparation from the Government taking such action, and if he does not obtain such reparation, it will be the duty of the protecting Government to consider the interests of its national and to envisage then only the possibility of referring the case to the Organisation. I think that Dr. Coombs summed up the case quite clearly, and it would be even dangerous for us to set up here rules of international law which would in fact only complicate the matter of settling disputes between nationals and other Governments.

Therefore, if we agree to suppress paragraph 3 here, I think that we ought in that case to refer only to the possibility of the procedures provided for in other Articles of the Charter, but it would certainly be dangerous to lay down rules for settling disputes in international law.

Mr. SEYMOUR RUBIN (United States): Mr. Chairman, I made a suggestion that a note be added here only because it seemed to me that the discussions have indicated that perhaps there is some special infirmity in the minds of some members of the Commission which touches on the Articles of the Charter. In my view there is no such special infirmity. If there is a violation to the right and obligations set down in the Articles of the Charter, a complaint can be presented to the Organisation. Now, under those Articles, like under most other Articles of the Charter, the way in which a complaint

would ordinarily come to the attention of the Government which presents the complaint is because some national of that Government has been injured - it may not be his investment which has been injured at all, it may be that he has been subjected to some sort of internal tax which affects his export to another country, and he makes the complaint on that ground; or he may be attempting to secure technology in the United States and he may find that in the United States there is some unreasonable impediment so that he can complain under the provisions of this Chapter,

It is with a view only to removing the possible inference arising out of the discussion — as I said, a special infirmity does attach to these particular investigations- that I make a suggestion of an explanatory note.

Secondly, concerning the comment of Dr. Augenthaler ; I venture to suggest that under the law of the United States it would effectively remove any possible complaint against the United States that it had violated the Charter on any ground whatsoever, because when this Charter does come into effect it will come into effect in the United States as a Treaty or other international agreement ratified by our Congress. It will, under the Constitution of the United States, become part of the Supreme Law of the land, and automatically there will be recourse to the United States in cases arising out of the violation of what would be then a Supreme Law of the land. The Law of the land, I would suggest to Dr. Augenthaler, would therefore remove any possibility of any complaint whatsoever on any question of the Charter presented to the Organisation, and I doubt very much whether that far-reaching conclusion is actually intended

Thirdly, I would like to present two sentences which perhaps can make more clear in general language exactly what I would like to see attached as a Note, and perhaps if we considered a particular draft or some wording in these rather large issues of international law, the difficulty as to exactly what we mean by the phrase "on behalf of its nationals" would disappear. The wording I would suggest is as follows:- "Paragraph 3 of Article 12 was deleted on the grounds that this subject was already covered by the provisions of Article 86. In this connection it was agreed that the deletion of paragraph 3 would carry no implication that a Member could not, as under other parts of the Charter, present a complaint to the Organization arising out of a violation of Articles 12 or 12A and affecting the interests of a national of such Member".

CHAIRMAN: Mr. Augenthaler.

H.E. DR. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I am very puzzled that we are discussing matters which, to my mind, are entirely clear. The Charter is a public and official document and private interests are of an entirely different character. I would make it clear, for instance, in the following way:- If my Government were to publish a rule contradicting some provisions of the Charter, I suppose that any Member may come and say "you have done something contrary to the Charter and I would like to discuss the matter with you", but there is something entirely different if some authority wrongly applies some provision of the Czechoslovak laws in contradiction, for instance, to the Charter which becomes a law of the country.

I will give you an example which will possibly make it very clear. Let us suppose that there is a case of confiscation of

property in Czechoslovakia. Now, the confiscation is decided by a court, and when we admit this procedure, a foreign country may come and, on behalf of its national, lodge a claim by diplomatic means, but I would reply "I can do nothing in this case because the courts are independent and your national has to lodge appeal against a decision, and so long as he does not go the normal way I am unable to discuss the matter with you". I think that that is the normal way of international relations, that is, that so long as normal legal ways are not exhausted there is no cause for complaint.

I hope that in the light of this explanation it is now clear what we have in our minds.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, the situation is so clear, from the international point of view, that I cannot understand why we are discussing the matter for hours.

If we do not wish to create a new right, then the deletion of paragraph 3 has no importance at all, because the matter is covered absolutely from the beginning to the end of Article 86. But what really makes everyone go deeper into the matter is that if it is understood that in every case where a national of a foreign country considers that the Government of the country where he is established or where he is having his activity has done something inconsistent with the Charter, that particular person will have the right to go to his Government and present a claim, that would make this Organization the biggest court of the world. We would receive millions of complaints.

I do not expect - and nobody can expect - to create that right. On the contrary, if that situation arises, that national must take steps according to international law, and we are not modifying here the general principle of international law. He must go to the courts of that nation, and exhaust all the legal procedure. When the court has given the last decision, then if he can present his case on the ground of denial of justice, it is the time (and only then) that the foreign government can interpose on his behalf.

If it is in relation to matters that have nothing to do with the Charter, the Governments must take action according to the principles of international law. But if the matter is one of the provisions of this Charter, or covered by one of the provisions of this Charter, then there is a special procedure, and the Government, instead of trying to go to arbitration,

or following any of the different procedures, will come to the Organization, to use the method which has been established. Therefore, I do not see why we should continue the discussion.

CHAIRMAN (Interpretation): Gentlemen, I would just like to make an observation. It is four o'clock, and I would like to remind you that we are still dealing with paragraph 3 of Article 12 and that we are supposed to finish today the discussion on Chapter IV.

I certainly do enjoy your company to the utmost, and I like to listen to the discussion here, and I would not mind seeing the sunrise in the gardens of the Ariana; but, nevertheless, I would like to avoid that emergency measure. When Dr. Coombs handed me this document it was with a certain pride and a certain relief. Now I understand very well his sense of relief, because with the text he handed me over his worries!

I think that the discussion now taking place and the arguments which have been presented, are only a repetition of previous discussions. Therefore, I think that we could now put an end to this debate. There is a simple proposition before us - to delete paragraph 3 altogether. Does everyone agree to the deletion of paragraph 3?

(Agreed)

Mr. Seymour RUBIN (United States): Mr. Chairman, I am agreed to the simple proposition of deleting paragraph 3; but there is another simple problem before the Commission, which is, the insertion of a note, which, to my mind, is not at all inconsistent with anything that Dr. Augenthaler or Dr. Gutierrez have recently said: a note which merely makes it perfectly clear that, as I previously put it, Articles 12 and 13 carry no special or hidden inferences within their mysterious depths.

CHAIRMAN: I propose that we go on with the discussion, and shall ask Mr. Rubin to prepare a Draft which we will examine later in the day.

Are there any comments on paragraph 4?

Does nobody ask for the floor on paragraph 4? Adopted.

Paragraph 5. I think the Belgian Delegate had one comment to make on paragraph 5.

BARON DE GAIFFIER (Belgium) (Interpretation): Mr. Chairman, this morning in course of the discussion the Australian and Chinese Delegates paid compliments to the Legal Drafting Committee for the work they had done in improving the text of Chapter IV. I think we could also add our congratulations to this Legal Drafting Committee on the work it has done on this paragraph 5. The question I raised was an important one and a substantive one, but as it is already late I am ready to accept that this question should be dealt with by the Organization when the Organization takes up the question of establishing and setting up an Investment Code.

CHAIRMAN: (Interpretation): Gentlemen, I do not think that I will be accused of being partial if I say that this is a good intervention.

Any further comments on paragraph 5?

BARON DE GAIFFIER (Belgium) (Interpretation): (This remark only concerned the French text.)

CHAIRMAN (Interpretation): Gentlemen, we now pass on to Article 12 A. This Article must be read in liaison with the Report which was presented by the Sub-Committee. You will see that at the bottom of page 5 of that Report, Document T/162, there is a footnote which reads as follows: "One or more of the Delegates

in the Sub-Committee believed it essential that the substance of this note, with which the Sub-Committee agrees, be included in the official explanation of the text".

The discussion is now open on Article 12 A, and as we have done previously, we shall start with the examination of paragraph 1 of this Article. Does anyone wish to speak on this paragraph?

The Delegate of Norway.

Mr. MELANDER (Norway): Mr. Chairman, I would just make some general comments on Article 12 A.

We have not had time to study this important Article very carefully so far. There are certain points on which we are in doubt, and we have not really been able to make up our minds on the Article, and consequently we have come to the conclusion that we would defer our decision as to whether or not we can accept this Article for the time being.

CHAIRMAN (Interpretation): We will take into account the Reservation which was just made by the Norwegian Delegate, and hope he will be able to withdraw it in the future.

The Delegate of Czechoslovakia.

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, I have two remarks to make. The first remark is on the ninth line from the bottom: "of other Members and security for existing and future investments." I think there should be added - but it is rather a question for lawyers to decide - "legal security". If there are Revolutions in the country - well, I do not know what use the Charter could be, or if the complainant may then ask the ITO to intervene.

And then the other Amendment would be that I would propose the deletion of the last phrase, from "Accordingly" to "future investments", because I cannot think that we agree to offer

the widest opportunities for investments.

CHAIRMAN: The Delegate of Brazil.

Mr. TORRES (Brazil): Regarding the first suggestion that we had, the word "legal" before "security", the Brazilian Delegation would be in agreement; but we cannot agree to the deletion of the last sentence of paragraph 1 of Article 12 A because we think it would do a great deal of damage to the effort we are here undertaking to provide for an atmosphere of confidence in order that capital movements may again come about in the world.

CHAIRMAN (Interpretation). It is a fact, Mr. Augenthaler, that this sentence shows fairly accurately the atmosphere in which this Article was drafted and I think you will have no objection, in principle, to maintaining that sentence, and that you only proposed this deletion because you thought the sentence was not particularly useful. Therefore I hope you will not object to maintaining this sentence.

The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to state that Czechoslovakia does not admit foreign investments in its country. That is why I cannot state here that I agree to give the widest opportunities for investment.

CHAIRMAN (Interpretation): This is, I think, the precise case in which a Government, when signing the Charter, can make a formal reservation.

The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I wonder if this case is not covered by the present sentence, saying: "They recognize that such development would be facilitated if Members were to afford, for international investments acceptable to them . . .". I think the word "acceptable" covers the case.

CHAIRMAN (Interpretation): I suppose that, nevertheless, you have no objection to the maintaining of that sentence?

Mr. OLDINI (Chile): (Not interpreted).

CHAIRMAN: The Delegate of the United States.

Mr. Seymour RUBIN (United States): Mr. Chairman, I would

like to associate myself with the statements made by the Chilean Delegate and the Brazilian Delegate just a moment ago. We did work this paragraph over rather carefully, and, indeed, the whole of Paragraph 12 A was worked over rather carefully at some length, in the Sub-committee, and I think that the insertion of the phrase "for international investments acceptable to them" is designed to take care of such a situation as Mr. Augenthaler has just mentioned. I would therefore very strongly prefer to leave the paragraph essentially as it is.

With respect to the insertion of the word "legal" before "security", I would have no strong objection to it, but it does seem to me that you create a certain amount of ambiguity by the insertion of the word "legal" and that, even without its insertion, no Member would be so unreasonable as to demand security whilst a country was in a state of revolution. This was drafted, I think, in reasonable terms with a view to reasonable application.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I agree with the speakers who considered we should maintain the last sentence. It contains the qualifying phrase: "consistent with the limitations recognized as necessary in this Article." That brings in all the preceding safeguards - the words "withappropriate safeguards" at the beginning of the paragraph; "interference in the internal affairs or national policies of Members," and, finally, the qualification "acceptable to them." So the provision is covered about as fully as it possibly could be and I suggest it should be maintained.

With regard to the insertion of the word "legal" before "security," I think it would be a pity to make that addition. It suggests a very narrowly legalistic interpretation of security and I am sure the intention was that it should be wider.

M. ROYER (France) (Interpretation): Mr. Chairman, I have no objection to the substance of this text, but I think that the drafting of this sentence is a little too strong. I think that we abuse the superlatives, and I think that in fact we weaken the effects in the text, and as Mr. Wilcox said one day, "the lady doth protest too much," and I think these objections ought to be reserved to the weaker sex. Therefore, I propose that the sentence should be modified in this way: "Accordingly they agree to provide, consistent with limitations recognised as necessary in these Articles, all facilities and the necessary guarantees of security for existing and future investments."

CHAIRMAN (Interpretation): Has everyone heard correctly Mr. Royer's amendment? Does the Commission agree to accept that amendment?

Mr. SEYMOUR RUBIN (United States): Mr. Chairman, I am disposed to accept the change in the text which is in accord with the general intention. However, it does not seem to me that there is a very great improvement in the words just proposed by the French delegate. It seems to me also that there is involved in these words the suppression of the words: "the widest opportunities for investment" and perhaps there is undue emphasis on the words: "all facilities and the necessary guarantees of security." Now what we laboured over and studied lenthily in the sub-Committee was the phrase which would indicate the sort of thing at which we were aiming, and I think that this sentence is pretty much the same, as it stands at the present time. It does express a point of view which found agreement in the Sub-Committee.

As Mr. Shackle pointed out it is hedged around with a number of unnecessary limitations. I would hesitate - unless a very strong reason appears - to substitute other words and make a change in the

wording of the Article which has in other parts been laboured over and very thoroughly discussed by the sub-Committee.

CHAIRMAN (Interpretation): Mr. Royer, I think that you know the French saying that the better is always the enemy of the good, and therefore I am afraid that if we try to improve this text we shall be drawn into very long discussions and get nowhere.

M. ROYER (France) (Interpretation): Mr. Chairman, I will therefore not press my point, but I thought that the text which I have just proposed might be able to gather the adhesion of certain of my colleagues who had objections to the text which is now before me.

CHAIRMAN (Interpretation): Therefore, gentlemen, we now would like to make a decision on paragraph 1 of Article 12 (A). I hope that Mr. Augenthaler has been convinced by the observations and the remarks which have been made, and therefore, that he has no objection to maintaining the last sentence of this paragraph, and as I stated just now, the Czechoslovakian delegation will be able to make a formal reservation on that paragraph at the time of the signature of the Charter. Therefore, there remains only the amendment tending to insert the word "legal" before the word "security" in this paragraph. There are certain difficulties here because certain delegations agreed to this insertion and other delegations said that this would narrow too much the scope of the meaning of security as it is here.

In the face of these explanations, I would ask Mr. Augenthaler if he presses his point of view for the inclusion of this word "legal".

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I do not insist on the word "legal", but to simplify the matter, I think I should say that I make reservation on the whole of Article 12a.

CHAIRMAN (Interpretation): This is already mentioned in the Report of the Sub-Committee. Does anyone else wish to speak on paragraph 1?

We now pass on to paragraph 2. We have two sub-paragraphs (a) and (b), and sub-paragraph (a) is itself divided into four sub-sub-paragraphs, (i), (ii), (iii) and (iv). Does anyone wish to speak on paragraph 2, sub-paragraph (a).

BARON. P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, the comment I wish to make refers to sub-sub-paragraph (iv) of sub-paragraph (a). The Report of the sub-committee reads as follows:- "The Sub-Committee believes that the word 'just' in paragraphs 2 (a) (iv) and 2 (b) covers all aspects of the payment of consideration or compensation, including adequacy and time of payment,.....etc.".

We asked and pressed our point that the word "prior" should be introduced before the word "just" - "for the payment of just consideration" - because, referring to consideration, in Belgian law the word "prior" is always introduced before the word "just" as the idea of "just compensation" does not include the idea of "prior compensation".

We would not press our point and ask for the insertion of that word if the Report stated that this is the meaning of the text, that the meaning is that prior compensation should not itself be paid but that the amount of the compensation to be paid should be fixed in a prior manner.

Our observation referred to both the Note and the text, because we have asked that the word "prior" be inserted in the text of the paragraph itself, but if the case is covered by the Note then we should not press for the insertion of the word "prior" in the text of sub-paragraph (iv) itself.

CHAIRMAN (Interpretation): Are there any observations on Baron Gaiffier's suggestion?

The Delegate for Chile.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): I think that this Note should be drafted accurately, because otherwise one might interpret the word "prior" as meaning prior to the payment and not prior to the fixing of the amount.

CHAIRMAN: Monsieur Royer.

M. ROYER (France) (Interpretation): This question, Mr. Chairman, was debated within the sub-committee, but I think that the insertion of the word "prior" would lead to many difficulties in the practical application. In fact, the practices vary in the different countries and the question of prior payment or prior fixing of the amount for the transfer of ownership might lead, in certain cases and in certain countries, to insuperable difficulties which we cannot foresee yet. In certain countries, at least, there would be no difficulties if the law of the countries provided for prior payment or prior fixing of the amount of the consideration before the transfer of ownership, but in other countries, where the transfer of ownership would take place before the fixing of prior payment, these countries would have to modify their own laws so as to bring them into harmony with the provisions of the Charter, and this would create insuperable difficulties because they would have to modify their laws for just one small point in the Charter.

Therefore, I think we could leave the word "just" here and leave it to the courts of each country to give a correct and legal interpretation of this word.

CHAIRMAN (Interpretation): Gentlemen, I think that we could leave the text as it now stands and make a note in the record of the declaration just made by Baron Gaiffier.

BARON P. de GAIFFIER (Belgium) (Interpretation): Thank you, Mr. Chairman, but I hope that a substantial part of the Report will go into the records of this meeting and will be taken up again in the Report of this Commission.

CHAIRMAN: The Delegate for Australia.

MR. B.W. HARTNELL (Australia): Mr. Chairman, I just want to ask whether it is your intention that the Note will incorporate the views of the Delegate of Belgium in respect of the word "prior" or not?

In fact, if it is the intention of the Committee to insert the words "just consideration" to cover the ideas put forward by the Delegate of Belgium, it would be impracticable for the Australian Delegation, I think, to accept that interpretation because, as far as I know, it would be constitutionally impossible. If, on the other hand, it is merely a question of expressing what is the point of view of the Belgian Delegate, that would suit us.

CHAIRMAN (Interpretation): It will only take due account of the remarks just made by the Belgian Delegate.

Are there any other observations on sub-paragraph (a)?

M. ROYER (France) (Interpretation): Mr. Chairman, this is just a remark on the first part of paragraph 2. I would like to ask the Secretariat, when the final text of Article 29 is drawn up, to put the terminology of this paragraph 2 into line with the terminology of Article 29; and to modify the words "special exchange agreement" so as to read, as in Article 29, "special agreement on exchange". (The second remark applies only to the French text).

The Chairman made a remark in regard to sub-paragraph (a) which concerned the French text only.

CHAIRMAN: (Interpretation): Are there any other comments on sub-paragraph (a)?

We can now turn to sub-paragraph (b).

H.E. Mr. Wunsz KING (China): I am wondering whether the word "reasonable" in sub-paragraph (iii) on page 9 is really necessary, seeing that the measures to be taken in this connection will always be reasonable.

CHAIRMAN: (Interpretation): Is anyone opposed to the deletion of the word "reasonable" in sub-paragraph (iii) of sub-paragraph (a), page 9?

Mr. Seymour RUBIN (United States): Mr. Chairman, the word was inserted there, I think, with a view to indicating that there should be some flexibility in the measures provided to ensure participation in the expansion of industry; and also because you might have, on the one hand, measures which were completely reasonable and, as a possible alternative, measures which were perhaps aimed at the same objective, but whose technique might, in operation, result in unwarranted and

unnecessary injury. As a result, I would prefer to maintain the word "reasonable" in paragraph (iii).

H.E. Mr. Wunsz KING (China): In view of the explanation given by the United States Delegate, I do not press my point; but, at the same time, I would like to suggest the addition of the word "reasonable" to sub-paragraph (iv) on page 10, so that it will also read "reasonable measures taken to ensure the transfer of ownership", etc.

CHAIRMAN (Interpretation): Does anyone wish to introduce the words "reasonable and justified"?

M. ROYER (France) (Interpretation): Mr. Chairman, I will not press for the inclusion of the word "justified"! We had in this respect a long discussion within the Legal Drafting Committee. The French law establishes as a principle that all individuals and States are sound in mind and body; but it seems to me that the text of many of the provisions of the Charter lays down as a basic principle that all the States are unreasonable! I think that it would be in the interests of a proper drafting to delete as often as possible any reference to the word "reasonable", because otherwise we would be implying that, in many cases, the States act in an unreasonable way.

Dr. A.B. SPEEKENBRINK (Netherlands): I support the suggestion, Mr. Chairman.

H.E. Mr. Wunsz KING (China): Do I take it that the word "reasonable" will be inserted in this sub-paragraph (iv)?

CHAIRMAN (Interpretation): Mr. Royer is not very keen on the insertion of this word.

H.E. Mr. Wunsz KING (China): Well, to cut a long story short, in view of the lateness of the hour: if it is reasonble to keep the word "reasonable" in this sub-paragraph (iii), it does seem to me rather unreasonable not to use the word "reasonable" in sub-paragraph (iv).

M. ROYER (France) (Interpretation): I have no further objection.

CHAIRMAN (Interpretation): Therefore we will include the word "reasonable" in sub-paragraph (iv). Are there any further comments?

We now turn to sub-paragraph (b).

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to make a statement that in the opinion of the Czechoslovak Delegation the provisions of this Article cannot be interpreted in such a sense as to nullify or impair any measures taken by Members in accordance with international arrangements such as decisions of the International Conference on German Reparations in Paris, the Articles of the present and future Peace Treaties of ex-enemy countries, or measures taken unilaterally and aiming at the confiscation of property of ex-enemy nationals or collaborators, or as punishment or part punishment for criminal offences.

Equally the provisions of this Article should not apply in such cases as requisitions in cases of emergency, for instance, war - it being understood that foreign nationals should receive treatment no less favourable than the Member's own nationals.

Then the second point is that according to our legislation we consider the nationality of a person according to the place where he is "incorporated". That means that if there is a Corporation constituted according to German law in Germany, then it is in our view "German", even if there are some other interests in it.

CHAIRMAN: The Delegate of the United States.

Mr. RUBIN (United States): Mr. Chairman, if I understood correctly the statement which was made in his first point by the Delegate of Czechoslovakia, my Delegation would certainly have no objection to that interpretation being incorporated in the Record, and perhaps added somewhere in the Committee's Report in an appropriate place. The point was discussed in the Sub-Committee and during those discussions I did express the view that the phrase "just compensation" excluded compensation to

enemy nationals whose property was taken over under the power of laws such as those which, I take it, the United Nations have already had put into application - the Trading with the Enemy Act, in the case of the United States.

Nor would "just compensation" be payable in the other circumstances indicated in Mr. Augenthaler's statement.

I would, however, like to have the opportunity of examining his statement when it is available, and would like to make the Reserve necessary for such examination.

With respect to the second point, it seems to me that we are in no way prejudicing in this Article the determination of what is a national of another Member.

In other words, we are not here saying that a Corporation incorporated in one country or another country is a national of the country in which it is incorporated, or a national of the country whose real nationals only control, perhaps, the entire ownership of such Corporation.

That question was referred to, as I understand it, earlier to-day by Baron de Gaiffier, and we at that time agreed to pass over the question.

M. ROYER (France) (Interpretation): Mr. Chairman, I would think, nevertheless, it would be useful that such a Note as suggested by the Czechoslovak Delegate, and to which the United States Delegate agreed, should be mentioned in the Note to the Report of the Commission on Article 12 A. In fact, part of the question was settled in the Note which was established by the Sub-committee at the request - if I remember rightly - of the Cuban Delegate.

As regards the seizure, sequestration and confiscation made by a State, it seems to me that there is a certain ambiguity in the English text. In fact, the French text says quite clearly that the law in force at the time of the sanctions to be taken by the State should be applied, but the English texts seems to say that the law must be pre-existing, that is to say, pre-existing, for example, at the time of signature of the Charter. If one could put these two texts in harmony, that is to say, the English and the French, and have the English text to follow the French text, I think that the cases of criminal offences could easily be covered and met.

As to the second question of reparations, then I think these questions are covered by the Peace Treaties and other treaties, and there the case could easily be dealt with by inserting in the text that the measures ought to be in conformity with the treaties which have been duly registered with the Secretariat of the United Nations. I think this is in accordance with Article 102 of the Charter.

CHAIRMAN: The Delegate of Cuba.

Mr. R. L. FRESQUET (Cuba): Mr. Chairman, I was going to refer to the Note which is mentioned in the Report of the Sub-committee, on Page 5 of Document T/162, because the Cuban

Delegation's acceptance of this paragraph 2(b) is dependent upon the inclusion of such a Note in the Report of the Committee, and from the Report of the Legal Drafting Committee it does not appear that the Note was included.

I may add, in answer to certain points raised by the Delegate of France, that it is our understanding that the term "pre-existing law" refers to the moment the act is performed. Of course, I have no objection to straining a point and adding in the Note the words "in force" after the phrase "because of a violation of pre-existing law," just to make it more clear.

(After the interpretation into French):

Mr. Chairman, I meant to say, "because of a violation of the law in force," because otherwise it has no sense.

CHAIRMAN (Interpretation): Mr. Fresquet, if I understand you rightly, you are asking for an amendment of the draft of the Explanatory Note on Paragraph 2 which appears on Page 5 of the Report of the Sub-Committee, Document E/PC/T/182.

Mr. FRESQUET (Cuba): Mr. Chairman, I am asking for two things: the inclusion of the Note in the Report of the Sub-committee, because in the Report of the Legal Drafting Committee the Note does not appear. That is our main question, but, in response to the point raised by the Delegate of France, we are in agreement on changing the wording of the Note in order to read: "because of a violation of a law in force", instead of as it is now: "because of a violation of pre-existing law."

CHAIRMAN (Interpretation): Are there any objections to the proposal just made by the Cuban Delegate?

(Agreed).

Mr. ROYER (France) (Interpretation): Is there any objection to adding to the Cuban Note in the sense I have just asked: that is to say, the addition would refer to the Peace Treaties or to a decision of the International Commission on Reparations; in other words, a decision derived from or taken in accordance with an international covenant?

CHAIRMAN (Interpretation): Gentlemen, I think the best thing to do now is to adjourn for a quarter of an hour, so that we can gain strength for our further efforts, in consideration of Articles 13 and 13A. In the meantime, during our break, I will ask M. Royer and Mr. Fresquet to draft their proposals. I will also ask Mr. Mendenthaler to submit his draft to Mr. Rubin.

The Meeting is adjourned for a quarter of an hour.

(The Meeting adjourned at 5.20 p.m.)

The Meeting resumed at 5.45 p.m.

CHAIRMAN (Interpretation): The Meeting is called to order. May I ask M. Royer what is the result of his talks with the Cuban Delegate and the Czechoslovakian Delegate.

M. ROYER (France) - not interpreted.

CHAIRMAN (Interpretation) The two texts will be circulated in French and English.

Has Mr. Rubin taken cognisance of the text of M. Augenthaler?

Mr. Seymour RUBIN (United States): I am sorry I was just a little late in coming to the Meeting. Mr. Augenthaler said that if the modification - which I presume we are just discussing - was made, that would take care of the suggestion he had made. As I understand it, the text which has been prepared will take care of the text suggested by Mr. Augenthaler.

CHAIRMAN (Interpretation): I think it would be better to defer the discussion until the texts are circulated.

We now have to turn to paragraph 3, this last paragraph of Article 12A. Has anyone any comment to make on this paragraph? No comment?

Adopted.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, my remark was not concerned with this particular sub-paragraph. I merely wish to say that, as I am not aware of the views of my Government on the text of Article 12A I enter a formal reservation.

Dr. COOMBS (Australia): It will be necessary for the Australian Delegation to make a reservation on this text.

CHAIRMAN: (Interpretation): Due account will be taken of the reservations made by the Australian and New Zealand Delegates.

The Note drafted by the United States Delegate has just been circulated. It refers to the deletion of paragraph 3 of Article 12. Any comment on this Note?

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, I am sorry, but I cannot agree with this Note. It raises the same problem we were discussing here, and as we stated already that it is in accordance with international jurisdiction, any interpretation of questions of international law and so forth concerning the private and individual interest of a Member should be brought before the ITO.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): I feel that in order to avoid confusion, which I am sure we all would wish to avoid in this discussion, it is very necessary to bear in mind this question is in two entirely separate parts.

The first concerns the case where a new law is authorised which might be held to be in conflict with some of these provisions quite irrespective of any case that might arise under it, and any law which might be introduced which would conflict with these provisions. Then clearly there is a right for a Member Government to go to the other Member Government which introduced the law and make representations that it is in conflict with the Charter, and it may be that the case of the Organisation is a case under the Charter. There surely can be no doubt at all of the right of one Government to do that in

respect of another Member Government. But there is then the second quite different type of case, which is the case where there is a law already in existence. Nobody can claim to [illegible] it, but it may be administered in such a way as to lead to a complaint by some national that it has not received justice or fair treatment. In that second case, clearly, it has to go through all its legal recourses, exhaust all its legal rights, before a case can arise at all. It is conceivable, I suppose, that a national might go through all his legal remedies and still not have got satisfaction, and in that case a case might arise that this is an unreasonable and unjustifiable action under paragraph 2 of the Article. That is a possibility. But that is quite a separate matter from the first case. It is a case where there might be a new law which is not in itself inconsistent with the Charter, but where it is administered in such a manner as not to constitute just treatment; and it is only in that case, after the legal rights have been exhausted, that the question will arise of that national's Government taking the case up under the Charter.

It seems to us, if one takes those two entirely separate aspects of the case distinctly, it clarifies the discussion considerably, and I should think it would make it perfectly possible to accept this Note suggested by Mr. Rubin.

CHAIRMAN: Gentlemen, I think that the difficulty here arises out of the fact that the objections presented by Mr. Augenthaler were related to a case which is, in fact, introduced again by the last words of the U.S. Draft, and those are the words "affecting the interests of a national of such Member".

I wonder if we could not find a text of compromise by altering the last words of this Note, and just say, "present a complaint to the Organization if the Articles 12 and 12A were to be violated." Final Stop.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I was about to make another suggestion on the lines of the remarks just made by Mr. Shackle. That would be to suppress the second sentence and replace it by the following sentence: "On the other hand, the omission of this paragraph should not be construed as to prejudice the rights of Member States to afford protection to their own nationals in accordance with the principle of International Law."

As Mr. Shackle pointed out just now - and I agree with him on this point - we are just acting as if there were no International Law, but, in fact, International Law is in existence and therefore we should not just take out of International Law certain of its provisions and apply them to a particular case, that is to say, the protection of foreign nationals, because the treatment ought to be the same whether a foreign national has five dollars in his pocket or only two dollars. There is no reason why we should mention here special provisions for them.

CHAIRMAN: The Delegate of China.

H. E. Mr. WUNSZ KING (China): When I asked for your permission to speak just a moment ago, I was thinking of suggesting almost the same thing as was suggested by M. Royer. I would suggest as a sort of compromise, that we accept the Note proposed by the United States Delegate, with the addition, after the words "in this connection", of the following words: "Without prejudice to the usual practice and procedure under the General Principles of International Law."

CHAIRMAN (Interpretation): Mr. Augenthaler, you are now faced with three suggestions; I hope that one of them will be satisfactory to you.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I am satisfied with two of them, that of Mr. Royer and that of Mr. Wunsz King.

CHAIRMAN (Interpretation): Which suggestion do you prefer, Mr. Rubin?

Mr. RUBIN (United States): I prefer the suggestion last made by the Delegate of China, Mr. Chairman.

CHAIRMAN (Interpretation): We will therefore accept the suggestion of the Chinese Delegate. After eliminating all these suggestions, we have finally reached a solution.

We will turn now to Article 13. Does anyone wish to speak on Paragraph 1?

The Delegate of Brazil.

Mr. J. ROBRES (Brazil): Mr. Chairman, I would just like to support the statement made by Dr. Coombs when he presented the Report, and to move that the words "including agriculture" be not included in the text of the Article but instead be subject to a Note similar to that of the Sub-committee.

CHAIRMAN: The Delegate of China.

H. E. Mr. WUNSZ KING (China): When I offered congratulations to the Legal Drafting Committee this morning for having introduced so many impprovements to the texts, I certainly had in mind this particular improvement. I am particularly fond of and attached to these two words and, if the objections from certain

Delegations are not very serious, I do hope that these two words will be kept in the text.

CHAIRMAN (Interpretation): One speaker proposed the deletion of these words: another speaker suggested that the words should be maintained.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, the English word "industry" can cover both the case of agriculture and industrial manufacturing activities, but in French the word "industrie" cannot have that meaning and therefore I would prefer that at least the word "agricole" be maintained in the French text, especially as we are going to have complaints from the representatives of the agricultural branches.

CHAIRMAN: The Delegate of the Netherlands.

Mr. A. B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to support the arguments of Mr. Wunsz King and Mr. Royer. I think the Legal Drafting Committee have done a good job here.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUITERREZ (Cuba): Mr. Chairman, the Cuban Delegation would very gladly support the maintenance of the text that has been offered by the Legal Drafting Committee, both in English and in French, because in Spanish, as in French, when you talk about "industry", agriculture is not included.

CHAIRMAN (Interpretation): I will therefore ask the Brazilian Delegate not to press his point.

Mr. TORRES (Brazil): Mr. Chairman, since the London Conference the emphasis has definitely been on industry and we in Brazil do not quite understand agriculture as industry. I doubt, of course, that the inclusion of the word "agriculture" is very pertinent, but, since you ask me not to insist, I merely say that we may have to come back to this point at the Plenary Session: I have to consult my Delegation.

CHAIRMAN: (Interpretation): Any other comments on paragraph 1?

Dr. H.C. COOMBS (Australia): Mr. Chairman, I feel that if changes have to be made it would be gramatically preferable to say: "including agricultural industries."

CHAIRMAN: We could also say "particular industries including agriculture."

Dr. H.C. COOMBS (Australia): The reason I have suggested there is that this Article deals with governmental assistance to economic development and mentions a form of assistance to agricultural industries. I do not know how that will be translated into French, but as I understand it, agriculture is not, in the English sense, an industry but a group of industries, and some form of governmental assistance might be given to, say, the wheat growing industry or the fruit growing industry, or some such sort of agricultural industry; but I think it was not ordinarily very popularly given to agriculture as a whole. The corresponding thing would be to imagine a governmental assistance being given to manufacturing, which is clearly not the sort of thing that was contemplated, and I think that the problem does not arise in the French text. I think a misunderstanding would arise unless you indicate in some way, and you edit those words to make it quite clear that you do contemplate that it covers forms of activity, agricultural as well as industrial. But if you say "including agriculture" it would appear to me to say that Members recognise a special governmental assistance may be required to promote the establishment for reconstruction of agricultural as a whole which is clearly not the thing intended.

DR. H.C. COOMBS (Australia): Mr. Chairman, I was wondering whether we might learn from the French once again and say "particular branches of production, industrial or agricultural".

H.E. DR. WUNSZ KING (China): I should prefer to keep the words "including agriculture" because if some such words as have been suggested by Dr. Coombs are to be used, then perhaps we will have to change the texts in all other paragraphs where the words "industry" or "industries" appear, while, if we use the words "including agriculture" in this connection, it is quite understood that whenever the words "industry" or "industries" appear in other texts they do not exclude agriculture.

CHAIRMAN: Of course, there is no question here of amending the French text. This only applies to the English text.

The latest suggestion which has just been made to me is to add the words "including agricultural industries". Does Mr. Wunsz King agree to that text?

H.E. DR. WUNSZ KING (China): I would prefer to keep these two words "including agriculture".

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I do not think that we should require to make the change very many times. As far as I can see, the only exceptions we need to make are in Article 13, paragraph 4(c) on page 19, the last line but one - that is the first point, and the second point is on page 22, Article 15a, paragraph 1, the sixth line. If we make the corresponding change as Dr. Coombs suggested, then I think that covers the case.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, all these suggestions mean exactly the same thing and I suggest that at this late hour we should not waste time on literary style.

CHAIRMAN (Interpretation): I propose the suggestion made by Dr. Coombs - "including agricultural industries". I suppose that the Commission will agree?

H.E. DR. WUNSZ KING (China): What is the actual position now, Mr. Chairman?

CHAIRMAN (Interpretation): We do not use the words "including agriculture". It is almost the same, but we will use the words "including agricultural industries".

H.E. DR. WUNSZ KING (China): Well, I do not mean to introduce a reservation on this relatively small point, but I would like to have the opportunity of examining the words further with my technical experts.

Dr. H.C. COOMBS (Australia): Could I refer back to the note on Article 12A? The representative of the International Monetary Fund has raised an objection to the last sentence on Page 5 of that note. The precise words that are objected to are those that follow the word "Charter" in the third from last line: "but subject to any other international obligations of that Member which are not inconsistent with its obligations under the Charter".

The representative of the International Monetary Fund has drawn my attention to the fact that the inclusion of those words would appear to give any obligations entered into internationally in relation to transfers greater authority than the obligations of the Member concerned under the Articles of Agreement of the International Monetary Fund, and I feel that there is something in his objection.

My recollection of the discussion in the Committee is to the effect that this clause was included at the request of the United States Delegate in order to ensure that a country which had, in a treaty between itself and another Member, undertaken to accept certain obligations in respect of transfer where an industry had been nationalised, would not be able to use the text of the Charter (if the obligations in the Charter were less than those entered into in the agreement) to evade the obligations entered into in the agreement.

I feel that the point that it was intended to cover would be met, while meeting the point raised by the representative of the Monetary Fund, if we deleted the words from "but subject" down to the end of the sentence and inserted a new sentence to the effect that this should not prevent a country taking action to give effect to any prior obligations in respect of such transfers as it may have accepted in an international agreement, provided that such action is consistent with its obligations under the Articles of Agreement of the Monetary Fund.

CHAIRMAN: (Interpretation): I think that it would be necessary that this text should be typed out.

CHAIRMAN: The Delegate of China.

Mr. WUNSZ KING (China): May I be permitted to come back to this small point about the words "including agriculture", because I am very anxious to dispose of my very small reservation since I dislike too many reservations to the text.

I would suggest the words "particular industries or particular branches of agriculture". I wonder if this wording would be acceptable to my colleagues? I should think that this wording corresponds with the French text very well.

CHAIRMAN (Interpretation): Is everyone ready to accept this suggestion?

Adopted.

CHAIRMAN: Is everyone ready to accept this suggestion?

(Agreed)

H.E. Mr. Wunsz KING (China): If this is accepted I am sure that some other text will have to be modified accordingly.

Mr. SHACKLE (United Kingdom): I have already indicated the references.

CHAIRMAN: We pass on to Paragraph 2 (a).

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, before starting the discussion on Paragraph 2, I would like to state that the French Delegation interprets Article 13 as it interprets Article 10, that is to say, that this Article has a general scope and that it must be construed as permitting help both to newly-founded and established industries and to industries which have to be reconstructed for different reasons, one of these reasons being for war damage, and that the needs of both cases are taken care of by this Article. I would like this declaration to be registered in our records and I hope that the registration of such a declaration in our records could mean the agreement of the Commission to this interpretation.

CHAIRMAN (Interpretation): Are there any objections to the French proposal?

(Agreed).

I hope that now we can turn to Paragraph 2 (a). Does anyone wish to speak on this sub-paragraph? Are there any objections?

(Agreed).

Sub-paragraph (b): are there any objections?

(Agreed).

Sub-paragraph (c): are there any objections?

Does everyone agree to sub-paragraph (c)?

(Agreed)

Therefore the whole of Paragraph 2 is approved.

CHAIRMAN (Interpretation): Paragraph 3. Are there any objections?

Sub-paragraph (a.) Agreed.

I would only like to point out in sub-paragraph (a) that there is a note made by the Legal Drafting Committee that this Committee was unable to agree upon the meaning of the English phrase "substantial agreement."

Dr.H.C. COOMBS (Australia): What does "substantial agreement" really mean?

BARON P. de GAIFFIER (Belgium) (Interpretation): In New York there was a long meeting of the Drafting Committee to try and find a translation of the words "substantial agreement", and in the end the French interpretation was "accord général" which could be translated back into English "general agreement."

M. ROYER (France) (Interpretation): I remember very well that we were faced with the same problem in New York that the words "substantial agreement" may be interpreted in two different ways in French; one translation for it is that out of seven or eight people who are gathered, five or six agree to a text. That is one way to interpret "substantial agreement." The other way is when two persons agree on 15 out of 18 points which are discussed. This is another way of interpreting "substantial agreement." The French way of saying "substantial agreement" would be that parties have reached an agreement.

Dr. GUSTAVO GUTIERREZ (Cuba): I would like to know from the delegates of Great Britain or the United States what is their interpretation for "substantial agreement."

CHAIRMAN (Interpretation): I wanted to raise the same question precisely.

Mr. R.J. SHACKLE (United Kingdom): It is with the utmost trepidation that I shall try to explain those words. It seems to me that those words would mean that all of the Members must agree on something; therefore it is not a question of the number of people who agree, but I think that what it means is that they agree to the essentials of the text; possibly without agreeing on minor points of detail.

CHAIRMAN (Interpretation): I think that therefore we could have a French translation of the words.

Gentlemen, I invite you to ponder over this question so that before the end of the discussion we may find a solution to this problem. I would like to know if anyone else wishes to speak on paragraph 3, sub-paragraph (a).

No-one wishes to speak on this sub-paragraph? No comments? No observations?

Therefore we pass on to sub-paragraph (b). Is everyone agreed?

Agreed.

Sub-paragraph (c).

DR. H.C. COOMBS (Australia): I am sorry, Mr. Chairman, but I am not quite sure which point you are on now. Are you still on the translation point?

CHAIRMAN (Interpretation). We have just approved sub-paragraph (a) and sub-paragraph (b) of paragraph 3. I was just asking if there were any questions on sub-paragraph (c) and if the Committee were ready to agree on sub-paragraph (c).

DR. G. GUTIERREZ (Cuba): Mr. Chairman, the point is to find the appropriate text in English and French for the words "Upon substantial agreement being reached".

BARON P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I think that the solution suggested by the Legal Drafting Committee, that is, to suppress in the French text the word "substantial" is the best one, because we find that word in various sub-paragraphs and it would be better to stick to the solution presented by the Legal Drafting Committee.

DR. H.C. COOMBS (Australia): Mr. Chairman, this question of "substantial agreement" does seem to me to be answered in part by the words that are proposed to be cut out of the French text. As I understand "substantial agreement", it means sufficient agreement to justify a decision by the Organization. It can only be a question of judgement, and I think that has been recognised all the time. I am not sure how that translation would read in French, but

I think it would express the essence of what Mr. Shackle has said and also, if I may say so the essence of what Monsieur Royer said - sufficient agreement to justify a decision by the Organization.

(The Chairman made a remark which was not interpreted)

M. ROYER (France) (Interpreted): Mr. Chairman, I am afraid I would not be able to define standards under which we could reach an agreement.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, you yourself and Monsieur Forthomme both know Flemish and French. May I suggest that you try to translate the words "in hoofdzaak". If you can translate these two words into French, you have got the exact meaning of "substantial agreement".

CHAIRMAN (Interpretation): If we just put in the French text the word "suffisant", that would give the meaning. That would mean that we do not need to reach complete agreement, but the agreement must cover the essential points and be sufficient to justify a decision of the Organization.

M. Angel FAIVOVICH (Chile) not interpreted in English.

CHAIRMAN (Interpretation): We are only discussing here sub-paragraph (c), and I do not want to make a ruling on the translation of "substantial agreement", for there are other parts of the Charter where the words appear. We are only discussing this sub-paragraph (c), and here I think the words "substantial agreement" can be translated into French by "accord suffisant".

We therefore accept this translation in this particular case.

M. Angel FAIVOVICH (Chile) (Interpretation): Therefore, should we have to give in the preceding cases a different translation of these words?

M. ROYER (France) (Interpretation): I agree, Mr. Chairman, with what the Chilean Delegate has just said. As the word "agreement" is used in the three cases with the same meaning, I think we should use the same words. I do not want to look for a Russian or Chinese translation, but I think that in French the word "suffisant" is the best translation we have found up till now.

CHAIRMAN (Interpretation): Gentlemen, we shall adopt here the words "accord suffisant" in the French text.

Paragraph 3 is therefore adopted.

We now turn to paragraph 4, sub-paragraph (a). Any comments?

Nobody has any comments to make? Adopted.

Sub-paragraph (b).

H.E. Mr. Wunsz KING (China): After the words "industry concerned", I should like to add the words "or the branch of agriculture concerned".

Mr. WUNSZ KING (China): It is the seventh line from the bottom.

CHAIRMAN (Interpretation): The amendment refers only to the English text. Does everyone agree? Adopted.

Mr. HARRY HAWKINS (United States): Mr. Chairman, the Report of the Sub-Committee on the Draft submitted included a report on paragraph (b), because at the end of paragraph 4, which the Legal Drafting Committee deleted, I think the intention of the Sub-Committee was that that qualification, "having regard to the provisions of sub-paragraph 2 (e)," should appear in paragraph (b), in order to make sure that the sub-paragraph (b) does not override and supersede completely the provisions of paragraph 2 (e).

I should therefore suggest that that clause be moved down to paragraph (b), so that it would read this way: "if, having regard to the provisions of sub-paragraph 2 (e), it is established", and so on.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I feel certain that that accurately reflects the intention of the Sub-Committee and I suggest that for that reason we make the change.

CHAIRMAN: Does everyone agree?

Therefore, the amendment suggested by Mr. Hawkins will be included here.

Any other comments on sub-paragraph (b)?

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, reading here "any other practicable and reasonable measure permitted under this Charter," I was wondering if the Charter does permit of impracticable or unreasonable measures?

Mr. SHACKLE (United Kingdom): Mr. Chairman, I think the Charter permits of series of unreasonable and impracticable measure measures.

M. ROYER (France) (Interpretation): The statement just made by Mr. Shackle is somewhat puzzling, because therefore this would not be allowed under the provisions of Article 13 but would be allowed under other provisions of the Charter, and I wonder who would make a ruling or a decision between these two sets of conflicting provisions.

Dr. H. C. COOMBS (Australia): Mr. Chairman, the provisions are not conflicting. The Charter leaves Members free in a number of respects and in those areas where the Members are free they can take action of any kind whether it is reasonable or unreasonable. The obvious example is in the field of tariffs, where no restriction is made on Members at all. They are permitted to impose tariffs of many hundred per cent if they so wish.

What is proposed here is that Members should on occasion be permitted to use methods which are precluded under the Charter and it is suggested that they should be permitted to use those methods in place only of the more reasonable measures which they could use under the freedoms which they have in the Charter.

CHAIRMAN (Interpretation): Therefore I think it would be better to maintain this expression "practicable and reasonable".

Are there any other comments on sub-paragraph (b)?

Baron P. DE GAIFFIER (Belgium) (Interpretation): The letter (b) is omitted in the French text.

CHAIRMAN (Interpretation): Are there any comments on sub-paragraph (c)?

H. E. Mr. WUNSZ KING (CHINA): Here again - and I am sorry to say I am very agriculture-minded - I would like to add, after the words "the industry", "or industries concerned" in the English text, or, in the French text, "or branches of agriculture concerned."

CHAIRMAN (Interpretation): The amendment will be made in the English text; we all agreed upon it previously.

Are there any other comments on sub-paragraph (c)?

(Agreed)

Paragraph 5(a): are there any comments?

(Agreed).

CHAIRMAN (Interpretation): Sub-paragraph (b)

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I have a very small, purely verbal point to make. It is about the use of the word "similarly" in the fourth line. That is a word which has been introduced by the Legal Drafting Committee, and I think it is clear that their intention was to imply that the condition was laid down in (a), that is to say: "The Organisation shall, at the earliest opportunity, but automatically within 15 days after receipt of the statement.... advise the applicant", and so on. The word "similarly" is meant to bring in the same qualification "at the earliest opportunity" actually within 15 days. I feel that that is too much of a load on the word "similarly", and I would like to substitute this: "in the manner provided for in sub-paragraph (a)."

CHAIRMAN (Interpretation): Does everyone agree with this amendment?

Dr. COOMBS (Australia): It would be better to use the words "in the manner provided for."

Mr. R.J. SHACKLE (United Kingdom): I would agree to that.

CHAIRMAN (Interpretation): Does everyone agree? Are there no further comments on sub-paragraph (b)?

Therefore the whole of Article 13 is adopted.

Article 13 A - Transitional Measures. Paragraph 1.

Mr. WUNSZ KING (China): Mr. Chairman, the same point comes up here again. I would prefer the words: "particular industries or particular branches of agriculture."

CHAIRMAN (Interpretation): Does everyone adopt this amendment? Do you all agree on paragraph 1?

Paragraph 2.

Mr.HARRY HAWKINS (United States): Mr. Chairman, paragraph 1 iiprovides that notification shall be given by a Member before a signature. I think that the sub-Committee will agree that the notification of restrictions that would have been maintained should be given before others, so that the extension of those lists could be considered by other Members and could apply to similar obligations. Now, if that is correct and concrete, it would require this change.

In (ii)(b), I would change the words "Member has notified the other signatories of the Agreement or of the Charter, prior to such signature", to read "prior to their signature."

M. ROYER (France) (Interpretation): Mr. Chairman, we are faced here with a legal difficulty because the way to become a Member of the Organisation is not by signing the Charter, but the new means provided for adhering to the Organisation is that Members should deposit an instrument of acceptance, which is the new word for "instrument of adhesion" to the Charter, and therefore it may happen that a State will never sign the Charter and yet become a Member of the Organisation, and if a Member were not to sign the Charter , then I wonder how this provision could be applied.

Now as to the exact moment when this notification should take place, there is another difficulty if we say here that this notification should be made to the other Members before they sign the Charter, because this will be a practical difficulty. Take an example: if in two years time a Member decides to join the Organisation, how will he then be able to notify, let us say 17 other countries, of the measures which he intends to take if these other States have already signed the Charter? This is a practical difficulty, and I do not see exactly how we could solve it.

CHAIRMAN: (Interpretation): Have you got a proposition to make in that case?

M. ROYER (Interpretation): Mr. Chairman, I think that we ought to take the same time limit which will be the time when the State becomes a Member of the Organisation, and that is to say a time when this Member deposits his instrument of acceptation or ratification with the United Nations because, as I have stated, there may never be a signature, and the time will have to be decided for when the State becomes a Member of the Organisation.

BARON P. de GAIFFIER (Belgium) (Interpretation): If it is only a question of date, could we not modify the text so as to read "at the time when the Member deposits instrument of acceptance".

Mr. A.J. SHACKLE (United Kingdom): I venture to think that the right time to take is the time before the authentic text is established and, in the case of the General Agreement, that would be the time of signature. If it is not accepted, it should be before the date on which the authentic final text is established. The reason for that is that it is necessary, when the final text is established, for every participant in the conference to know what is envolved in this provision, and therefore that should be the limit of time. If you defer it to the time of acceptance, other things may happen which the other participants of the conference would have no means of knowing and they may have bought a pig in a poke. The way to get over it, I suggest, is to say in the fifth line "or if not a signatory of that Agreement when prior to the establishment of the authentic text of the Charter". That, I think, is the way to cover it in the first part.

Then, in (b) I think one would say "such Member has notified the other signatories of the Agreement or of the Charter prior to their signature or to the establishment of the final text of the Charter".

I am afraid it is very complicated, but I hope I have made the idea clear.

BARON P. de GAIFFIER (Belgium) (Interpreted): Mr. Chairman, I would like to state that the Belgian Delegation is not entirely satisfied with the draft of Article 15A; I would not like to waste

the time of the Commission now and therefore, with your permission, I would like to know if we can get in touch with the Secretariat tomorrow and suggest a few drafting modifications here which only refer to the form of the draft itself?

DR. H.C. COOMBS (Australia): There seem to me to be certain further practical difficulties about the suggestion, even as the United Kingdom has mentioned it.

If, at the time the Charter comes into force, a country has no intention of joining the Organization, it obviously would not advise other Members of the measures which it was operating which were in conflict with each other and which it wished to continue, but if, some years later, it saw the light, it would be precluded under this measure from making applications. It would seem to me to be reasonable that, in such cases, the Organization could ask for information when the application was made for membership to decide beforehand what should be done about it, whether they would be permitted to continue those measures or whether they would have to amend them before being granted membership. I am not quite sure what the precise wording should be to meet that point, but that is a further complication on top of what the United Kingdom Delegate has suggested.

MR. R.J. SHACKLE (United Kingdom): I am inclined to suggest, Mr. Chairman, that all we can feasibly hope to cover in this article is the case of the original signature of the original adherents. I feel that as regards later adherents, it will have to be a question, as it were, of their negotiating with the Organization the terms on which they come in. One cannot foresee particular cases and so I do not think we need to mention them. Then, it would be possible to arrange with each new adherent what would be suitable terms.

CHAIRMAN (Interpretation): Gentlemen, as far as the date where transitory Members become effective is concerned, we have two proposals, one by Mr. Shackle and the other one by Monsieur Royer.

M. ROYER (France) (Interpretation): Mr. Chairman, Mr. Shackle's proposal and my proposal differ because they are not considered in the same light. I think that Mr. Shackle shows less Christian indulgence to the recanting sinners and that he wants to reserve the advantages of the club for the original members of it, and feels that the flock who have found their way again into the fold of the Organization should not be granted the same advantages.

I will not press my point here, however. The only thing is that I doubt if the Organization will have the right of negotiation with future Members, because I do not know of any provisions of the Charter which enable the Organization to waive certain obligations in favour of joining Members in certain cases.

Mr. R.J. SHACKLE (United Kingdom): I hesitate to express a very off-hand opinion, but it does seem to me that as far as the question of arranging conditions for the entry of later comers is concerned, that is probably provided for under paragraph 2 of Article 65, as now suggested in the Report of the Committee on Chapters I, II and VIII.

If you look at paragraph 2 of Article 65 - Membership, it reads like this: "Any other State whose membership has been approved by the Conference shall become a Member of the Organization". Well, the power to approve implies the power to disapprove: the power to disapprove implies the power to approve on conditions. I think that is logical.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, I would strongly oppose the idea that there should be different conditions on entry as regards this Article for States which may join the Charter

after the original Members. I do not think it is a satisfactory proposal at all. I think the rights under Article 13A should be the same for both classes.

Mr. R.J. SHACKLE (United Kingdom): I do not want to prolong the debate unnecessarily, but I would observe that there is an essential difference of circumstance as between the original adherents and later adherents.

In the case of the original adherents, what they are doing is known at the time when the General Agreement or the Charter, as it may be, is drawn up. Each of the negotiating countries knows what the other is doing. But that is impossible in the case of later adherents, and it seems to me that that is the objection to making the date of adherence the determining moment at which you have to notify the other Members.

It seems to me, for that reason, that that difference of circumstance does justify having some arrangement before the Organization can make reasonable conditions with later adherents on this question of transitional measures. There are essentially different circumstances which need to be treated by different methods. I do not regard it at all as a case of discrimination.

Dr. H.C. COOMBS (Australia): I do not know whether it is desirable to continue this discussion, Mr. Chairman, but there does seem to me to be some difference between the two cases.

As I understand the purpose of this clause, it was to provide prospective Members with the protection that they could stay out if they thought this provision was going to be unduly abused by the other prospective Members, and therefore, before they decided to come in they were entitled to know what measures other countries were going to maintain under this. Once they

have, however, become Members and it is a question of new Members, the position is rather different. The protection they have then is not staying out of the Organization but keeping other people out. The requirement does seem to me to be that they should be advised of what measures a country wishes to maintain at the time of making its application. But if it is decided to admit the applicant Member when they know, it seems reasonable that, as the Delegate of New Zealand has suggested, the incoming Member should be given the same conditions.

If that suggestion is considered worth while, it could be implemented by limiting the provisions of the present Article to Members who have become Members on or before the date on which the Charter comes into force, and have an additional one which enables a Member who joins after that date to get similar provisions provided that all Members are advised what he wants to maintain before or at the time his application for membership is received.

Mr. R.J. SHACKLE (United Kingdom): For my part, I should think that was satisfactory, Mr. Chairman.

CHAIRMAN (Interpretation): Does everyone agree to the proposal that was made by Dr. Coombs?

Everyone agrees.

CHAIRMAN: (Interpretation): Gentlemen, a further small effort to make.

Paragraph 3.

Mr. AUGENTHALER (Czechoslovakia) (Interpretation): Mr. Chairman, this remark refers to the French text, and under (iii) there is no French word corresponding to the English word "provided", and therefore the provisions here are not introduced as they are in the English text by a word, and therefore the French text ought to be amended to read as the English text does.

CHAIRMAN: (Interpretation): Due notice will be given to your remarks.

Any other remarks? 13A is therefore adopted.

Mr. TORRES (Brazil): Mr. Chairman, just a minor point. I think it would improve the arrangement of this Article if we could make 3, 2, and 2, 3. It would be the more logical order.

Mr. DEUTSCH (Canada): Mr. Chairman, have we passed over para. 2 at the bottom of page 23? I get confused here with these various numbers.

CHAIRMAN (Interpretation): You are quite right, Sir, paragraph 2 has not been examined. Any comment to make on paragraph 2?

Mr. DEUTSCH (Canada): Mr. Chairman, on the top of page 24, the second line, there are some words in brackets "including negotiations affecting preferential margins". A similar statement is contained in paragraph 5 (a) on page 13, about the middle of the paragraph, the same statement is presented,

but there are no words in brackets. This difference between the two texts might give rise to some misunderstanding. In one case we have inserted the words in brackets, and in the other we have not. If it is agreeable to the Committee I would suggest that we drop the words in brackets, provided it is understood that in both cases the obligation referred to - in the case of paragraph 2 on page 23, the word "obligation" in the fourth line - that "obligation" refers to both obligations respecting the binding of tariffs and obligations respecting the binding of preferential margins.

If it is understood that that obligation refers to both situations, then we can drop the word in the brackets, and remove the possible confusion.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I would like to support the suggestion of the Canadian Delegate concerning the words in brackets. It seems to me quite clear that the words must necessarily include preferential margins.

CHAIRMAN (Interpretation): Therefore, it seems that these two sections of words could be deleted without any trouble.

Therefore, Gentlemen, we have to examine Article 15B.

Mr. TORRES (Brazil): Mr. Chairman, is it agreed that we invert the order of these two paragraphs?

CHAIRMAN: Yes.

Mr. WEBB (New Zealand): Mr. Chairman, page 2 of the Committee's Report refers to certain reservations on certain aspects of this Article. I assume that those reservations will be carried forward?

CHAIRMAN: The Delegate of China.

Mr. WUNSZ KING (China): I am pleased that this point was raised. As a matter of fact, the Chinese Delegation did make a reservation to Articles 13 and 13A. For this purpose, with your permission, I would like to read a short statement.

The Chinese Delegation appreciates the painstaking efforts made by a number of Delegations to reach a satisfactory solution for this Article. Unfortunately these efforts have not succeeded in producing a formula which will lead to a unanimous acceptance.

We still believe that the principle of prior approval should not form the basis of this Article. The reasons are obvious enough. In the first place, we have not been convinced how this principle is to be applied with sufficient elasticity, if applied at all, to cases where measures are to be taken in order to meet balance of payments difficulties and other similar cases. Whereas in cases where a country desires to resort to protective measures for the purpose of economic development, this same principle is held to be sacrosanct, and must be applied in a far more rigid manner.

Secondly, the implementation of this principle will, we are afraid, have the effect of defeating the very purpose of fostering economic development.

While maintaining its Reservation which was referred to in Document T/162, on page 2, the Chinese Delegation is nevertheless prepared, in the interests of unanimity and solidarity, to recommend Articles 13 and 13A as they are at present worded to the Chinese Government for its further consideration, without, however, committing the Government to these Articles without claiming their re-examination at the World Conference.

CHAIRMAN: The Delegate of India.

Mr. B. N. ADARKAR (India): Mr. Chairman, the Indian Delegation has also maintained its reservation to Article 13 and the whole subject dealing with quantitative restrictions for protective purposes, but they would like to inform the Commission that they have also reported Article 13 as now revised to their Government and, if the Commission will permit them, will make a further statement on the subject within a few days, as soon as they receive orders from their Government.

CHAIRMAN: The Delegate of the Lebanon.

Mr. A. NASSIF (Lebanon) (Interpretation): Mr. Chairman, I have been entrusted by the Lebanese Delegation to make a formal statement here. The Lebanese Delegation is happy to see that some evolution has taken place in Geneva as regards the texts which were formally proposed and adopted in London and New York. Nevertheless, taking into consideration the Agreement which binds Lebanon to the States of the Arab League, and which foresees the economic development of these countries after common agreement, the Lebanese Delegation maintains the reservation it has made and asks to postpone its decision on this Article until all the States of the Arab League are gathered at Havana.

CHAIRMAN: The Delegate of New Zealand.

Mr. L. C. WEBB (New Zealand): Mr. Chairman, I only wish to state that the New Zealand Delegation is in the same position as the Indian Delegation. We have submitted the revised text of this Article to our Government and have no instructions.

CHAIRMAN: (Interpretation): The Delegate of Chile.

Mr. Angel FAIVOVICH (Chile) (Interpretation): Mr. Chairman, the position of the Chilean Delegation in regard to Articles 13 and 13(e) will depend upon the fate of the amendment introduced to Article 25 and on the fate of Article 25 itself.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovak): Mr. Chairman, as to Article 13(b) I would like only to state that the matter is of such importance that, in my view, it would be advisable that the Organization should take, in such cases, the prior opinion of the Economic and Social Council.

CHAIRMAN: May I ask Mr. Augenthaler why, and in what circumstances, the Organization should ask the opinion of the Economic and Social Council?

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, the Economic and Social Council may be consulted if there is a question of forming new preferential arrangements or new preferential blocs. That is why I think it would be advisable to have the opinion of the Economic and Social Council.

CHAIRMAN (Interpretation): Gentlemen, due notice will be taken of the reservations which have just been made here.

Are there any further comments on Article 13 (b)?

The Delegate of Chile.

Mr. ANGEL FAIVOVICH (Chile):(Interpretation): Mr. Chairman, since the opening of the debate in this Conference, the Chilean delegation has made known its position as regards preferential agreement to foster economic development, and the Chilean delegation states that in cases of such new preferential arrangements it could not agree to the principle of prior approval. Therefore we had to maintain a reservation which we had made on previous occasions. I would like to add a few words on the question of a quorum which is necessary to the procedure for the approval of the Organisation. In spite of the fact that the sub-Committee did not make a final decision on this question, nevertheless the quorum of two-thirds of the members present and voting which is suggested seems to me to be quite exaggerated and would constitute a threat to requesting Members. The result would be that all possibility of action which is given to the Members in the provisions of this Article would vanish, and therefore if this quorum as suggested here is maintained, the Chilean delegation would have to reserve its position on the whole of Article 13B.

CHAIRMAN (Interpretation); Gentlemen, the Chilean delegate has raised an important question; the question of the necessary quorum in order to have an affirmative vote of the Conference. In fact, the sub-Committee did not propose any formula: we only find in the text in brackets "by an affirmative vote of two-thirds of Members voting", and this is an important issue, that the Commission should decide on.

M. J. TORRES (Brazil): Mr. Chairman, the position of the Brazilian delegation regarding the question of the new preferential arrangements has been, during the time in which this Conference has met, clear and unequivocal. If we have collaborated in the sub-Committee to reach some agreement regarding this matter, it was only

because we wished to have a candid attitude, but I am afraid we would only continue in this attitude if the two-thirds vote is adopted. If, however, this form of voting should be substituted by one of equal majority, we would not recommend this to the consideration of our Government, and we would have to reserve our position.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I think that we are here faced with a considerable difficulty. How can we know whether we could have a quorum of two-thirds or threeefourths or even have a simple majority, if we do not know what the votes are worth? I have seen from the report that the Committee on Chapter VIII has not settled the question of voting, so we do not know whether we will have weighted voting or another type of voting. If we do not know that I do not see how we can decide on the question of whether we should have a simple majority or a two-thirds majority.

M. Angel FAIV VICH (Chile) (Interpretation): Mr. Chairman, the question which has been raised here is a very difficult question of substance for the reasons which were just given by the Netherlands Delegate, and I think we ought to leave the solution of this problem to the World Conference. Actually, any decision taken here by 17 Members may not reflect accurately the point of view of 70 States which will probably take part in the World Conference.

Chapter VIII will be sent for examination to the World Conference and there the World Conference will be able to make a decision also on this problem and choose just criteria and make a decision which will correspond to the large majority of the States participating in this World Conference.

CHAIRMAN (Interpretation): Gentlemen, it is already very late. I would like to ask the question: do you want to pursue the Meeting now or adjourn and resume our Meeting in an hour's time?

Mr. WUNSZ KING (China): Mr. President, as Chairman of the sub-Committee on Voting I would like to suggest that the question of voting in connection with this paragraph be postponed until the Report on Voting is taken up by Commission B one of these days and a decision, if there is any decision at all, is reached on this very difficult and important matter.

CHAIRMAN (Interpretation): Gentlemen, we are faced now with a formal proposal by the Chinese Delegate to adjourn the discussion on paragraph 1 of Article 13B on this question of voting, and, therefore, this means that we should not take up this discussion now but leave the solution of the problem to a further and later examination. If you agree to this proposal this would mean that the whole question of tackling 13B would be adjourned to a later date.

Mr. J. TORRES (Brazil): Mr. Chairman, I just want to add that when I spoke a while ago I was, of course, speaking on the assumption of the "One country, one vote" basis. I think in that regard the position of the Brazilian Delegation is also clear and unequivocal. I think that this Conference should indicate to the Third Conference what is its opinion on the matter. But I have no objection to deciding this later on during this Session.

Dr. G. GUTIERREZ (Cuba): Mr. Chairman, taking into consideration the stage of our work, we do not feel it convenient to postpone the discussion on any of the matters that are common to the consideration of the Commission, but it is preferable to settle them and especially when we know that the question of voting is going to be subject to many discussions. And, after all, we are only preparing a draft for another Conference, and as we have taken this matter from the beginning I think that the suggestion made in the beginning by the Delegate of Chile is very wise: we should leave the two texts with the words as they are in brackets and show that there are two possibilities and leave the decision to the World Conference. I make the suggestion in that sense, that we leave the text like it is and subject it to the decision of the World Conference.

Mr. Harry HAWKINS (United States): Mr. Chairman, the only difficulty with the suggestion that I see is that we have to decide fairly soon what goes into the General Agreement on Tariffs and Trade. I take it that if the proposal of the Chilean Delegate is adopted, the first paragraph of Article 13B would not be included in the General Agreement.

Mr. R.J. SHACKLE (United Kingdom): I would like to support

that suggestion. It seems to me that in the meantime the matter can be dealt with by correspondence with Article 38, paragraph 4, and also correspondence with the provision regarding general dispensing power which would ultimately reside in the Organization. I suggest that is the best way to leave the matter.

Dr. H.C. COOMBS (Australia): Mr. Chairman, it does not seem to me to be necessary for us to take into account here whether or not this Clause goes into the General Agreement. This is not the only clause or Article of the Agreement about which there is not unanimity and it is far from decided as yet what will, in fact, go into the General Agreement, or whether it will take the form of the draft we now have presented to us, and, therefore, it does not seem to me we need worry about whether this does or does not go into the General Agreement. If it seems wiser to defer the decision because of the nature of the problem to the World Conference, then I think it should be so postponed without worrying about the effect of that decision on the General Agreement.

CHAIRMAN (Interpretation): Gentlemen, we are faced with the proposal made by the Chinese Delegate to leave the solution of this problem to the world Conference. This suggestion was seconded by a certain number of Delegations. What is the Commission's opinion on this question? Is any one opposed?

DR. A.B. SPEEKENBRINK (Netherlands): No, provided that we have no solution of the voting questionhhere in Geneva.

CHAIRMAN (Interpretation): Of course, it is understood that if we see any possibility before we break up in Geneva of solving this problem, we shall do so, but otherwise we shall leave the question open until the World Conference.

M. J. TORRES (Brazil): Mr. Chairman, I am for deciding this question here and now. If it is left as it is, I will have to enter a reservation pending a decision on the voting question.

CHAIRMAN: Monsieur Royer.

M. ROYER (France) (Interpretation): Mr. Chairman, the French Delegation has no objection to leaving this question for a solution by the World Conference, but for a solution which will be taken by the World Conference at the same time as the solution on the question of voting as a whole.

I want to refer here to observations made by the United States Delegate and supported by the United Kingdom Delegate. These observations referred to the implication of the deletion of Article 15 B in regard to the General Agreement on Tariffs and Trade.

There are two solutions in this respect. The first one is that provisions should be included in the General Agreement on

Tariffs and Trade which would be of a different character than the provisions which might be adopted at Havana. The other solution is the complete deletion of Article 13(B) from the General Agreement on Tariffs and Trade, and I would like to ask the countries which are interested in this Article 13(B) what solution they would propose to this problem?

The sub-committee made a proposal, and I would not like to refer to this proposal now, but I would like to offer a possible solution which would be similar to the one which was adopted in the case of paragraph 4 of Article 38, that is, to leave the conditions on the voting problem and the conditions on procedure to the Organization, as is provided for in Article 71. I wonder whether the Members which are interested in Article 13(B) would adhere to this solution? Otherwise, if we leave the solution of this problem to the World Conference, we might be faced with a dead-lock as regards the General Agreement on Tariffs and Trade at that time.

CHAIRMAN: The Delegate of Cuba.

Dr. G. GUTIERREZ (Cuba): Mr. Chairman, when the Cuban Delegation seconded the motion made by the Chilean Delegation, they did not wish to make any reference to the General Agreement on Tariffs and Trade, because we have very peculiar views on the matter and we prefer to leave this matter to the World Conference in order to give enough time to all the delegations to make a decision, because we know that it is a matter of importance.

However, now that it has been mentioned as a question to be considered as a provision of the General Agreement, I must say that the Cuban Delegation feels that they are beginning to think that it is impossible to sign an Agreement with certain provisional texts that are going to be modified two months afterwards, texts that

are going to be taken to Parliament, open to discussions and to debates of administration and operation, only to be modified a few days afterwards, and at the next meeting of the Tariff Committee we are going to present a motion formally that not one single article of the Charter be inserted in the Trade Agreement, but that the Trade Agreement be only and exclusively a Trade Agreement and that it should wait for the last text of the Charter to be signed. That is the technical position. Trying to sign an agreement on a text that has not been agreed upon is no agreement at all. However, we do not want to stress this question here now, but we will stress it in full force in the Tariff Committee, and that is why I think that there is no importance for us in the question whether the article should be or should not be incorporated in the Trade Agreement.

CHAIRMAN (Interpretation): Gentlemen, the situation is, therefore, as follows: A certain number of Delegations suggested that the question should be referred to the World Conference for a solution. Other Delegates stated in reply that this delay might create certain difficulties with regard to the conclusion of the General Agreement on Tariffs and Trade, which is in the process of being negotiated. Two Delegates indicated the inconveniences of such a delay, and two other Delegates indicated that these inconveniences should not be taken into consideration and influence our decision here.

It seems to me that as the discussion is now exhausted and the position is somewhat confused, the best course is to take a vote on the question. Therefore, we shall now take a vote on the Chilean proposal, which is to refer the examination of Article 13(B) to the World Conference at Havana. Will all those Delegates who are in favour of referring this question to the World Conference please raise their hands?

(Nine hands were raised)

Who are the Delegates who wish to vote against that proposal?

(The Delegate of Brazil raised his hand).

The proposal made by the Chilean Delegate is carried.

Gentlemen, before we adjourn, we still have to consider two notes.

M. J. TORRES (Brazil): Mr. Chairman, may I ask that the reservation of Brazil, pending the decision of the vote, be noted?

CHAIRMAN (Interpretation): The reservation made by the Brazilian Delegate will be taken into consideration.

Gentlemen, you all now have before you the provision to be

added to paragraph 2 of the comment on Article 12A, This reads as follows:

"It has also been recognized that the provisions of paragraph 2 (a) (iv) and 2 (b) are not applicable when the measures of transfer of ownership have been effected pursuant to the terms of a treaty of peace or in conformity with other international agreements related to the conclusion of the war".

I suppose that everyone agrees to this text?

(Adopted).

There is still another text to read: We now have before us the revised text of the Explanatory Note on Transferability which was submitted to us by Dr. Coombs. It reads as follows:-

"Page 5, paragraph 3, lines 11 - 13:

Delete the words ". . . but subject to any other international obligations of that Member which are not inconsistent with its obligations under the Charter."

Substitute the following:

"This should not prevent a country taking action to give effect to any greater obligations in respect of such transfers as it may have accepted in an international agreement provided that such action is consistent with its obligations under the Articles of Agreement of the International Monetary Fund."

Mr. Seymour RUBIN (United States): I would suggest the substitution of the word "shall" for the word "should" in that sentence.

M. ROYER (France) (Interpretation): Mr. Chairman, it seems to me that although I thought I knew the English language, I was

mistaken, because the word "Charter" seems in every instance to be translated by the words "International Monetary Fund". I thought that the obligations ought to be consistent with the obligations under the provisions of the Charter, but it seems to me that the word "Charter" has been translated as "obligations under the Articles of Agreement of the International Monetary Fund".

Do we assume that the obligations under the Articles of Agreement of the International Monetary Fund have a more general character than the obligations under the Charter?

We proposed a draft in this matter, and we were asked to drop this draft; but nevertheless it appears to me that when we started the discussion in the beginning we decided to set up an international code which was to be considered as a Charter on trade and employment. I wonder if the text which we have been asked to elaborate does not seem to be too mediocre, and the guiding text - "the Bible" - is always the Articles of Agreement of the International Monetary Fund.

If that is so, I do not see why we have wasted time setting up provisions on investment. It would have been easier, perhaps, to have written something into the Articles of Agreement of the International Monetary Fund. Or do we think that the Charter that is our text is only a minor text, and that the Articles of Agreement of the International Monetary Fund should be considered as "the book of reference"? Mr. Chairman, I would, therefore, ask that the text which the French Delegation proposed here should be adopted.

CHAIRMAN (Interpretation): Mr. Royer, I think there is nothing very alarming in this text here, and in a sort of way it represents only a "good neighbour" attitude towards a specialised Agency which is more ancient than our own forthcoming Agency, and if we read the text here, we see that this should not prevent a country from taking action to give effect to any obligation in respect of such transfer as it may have accepted in an international agreement, provided that such action is consistent with an obligation under the Articles of Agreement of the International Monetary Fund.

There is, as I have stated, nothing very alarming in this provision, but to satisfy you we might add also"if consistent with its obligations under the Charter".

Mr. RUBIN (United States): Mr. Chairman, I am in perfect agreement with the substance of the suggestion you have just made, but I wonder whether you would not take care of the problem in a much more simple way.

As I understand it, the difficulty found by the Representatives of the Fund is that there might be some international obligations on a Member not inconsistent with the obligations under the Charter, but which might, however, be inconsistent with the obligations undertaken by a country which is a Member, and also a signatory, of the International Monetary Fund.

Now it seems to me that perhaps we might take care of that entire problem by adding one word to the text which we already have before us in Document T/162. As we merely say "but subject to any other international obligations of that Member which are not inconsistent with its obligations under the Charter", let us add the word "existing" after the word "other" and before "international". It seems to me if we do that we will take care automatically of the possibility that a Member

may have had obligations inconsistent with the Fund prior to its signature of the Fund Agreement. If it did, and if it had signed and put into effect the Fund Agreement, then those obligations would never have existed. So by adding "existing" after "other", it seems to me we can eliminate this entire Amendment, and eliminate another, perhaps unnecessary, reference to the Fund.

CHAIRMAN: Agreed?

Mr. ROYER (France): Agreed.

Dr. COOMBS (Australia): Agreed.

Mr. BASCH (International Bank): I was present at the Meeting of the Sub-Committee, and I know how difficult it was to reach an agreement on this particular Explanatory Note.

It was considered important by some Members of the Committee and when Mr. Royer said this Note should mean something to the ITO, nobody thought of that, it was nobody's idea.

The simple idea was, that Members of the Sub-Committee should ask the Fund and the Bank, what will be the position in the case of paying compensation - what are the provisions in the Fund Agreement? This referred to the transfer of payments, and we tried to summarise in the Note what the situation really is. Therefore, when we found in this Note that in c (ii) the last sentence reads: "but subject to any other obligations of that Member which are not inconsistent with its obligations under the Charter", the Representative of the Fund asked, what are financial obligations not inconsistent with obligations under the Charter? Because that whole sentence and text of this Note deals only with the provisions as interpreted and/or stated in accordance with the Agreement of the International Monetary Fund.

This was the reason why it was suggested it would be more logical to make the whole Article read consistently, and to amend it as was suggested now by Dr. Coombs, so that there should be no misunderstanding that there might be some other Agreement which would provide for payments - but only if they are not inconsistent with Members' obligations under the Articles of the Fund.

It is a discussion which took many hours in the Sub-Committee, and which finally satisfied the Members of the Sub-Committee; and therefore I would like on behalf of my colleagues of the Fund to suggest, if possible, acceptance of the form as proposed by Dr. Coombs.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I venture to think that the representative of the International Monetary Fund and the International Bank can be fully satisfied with the amendments Mr. Rubin has proposed, because clearly the Articles of Agreement of the International Monetary Fund and the Statute of the Internationall Bank are existing international obligations. I hope no one will discover they are in conflict with anything in the Charter. I think this covers everything which concerns the Bank and the Fund.

CHAIRMAN: The Delegate of Australia.

Mr. B.W.HARTNELL (Australia): Mr. Chairman, I have indicated that I am in accord with the proposals of Mr. Rubin and I continue to be in accord with them, but, in view of the observations of the representative speaking on behalf of the Fund, and in view of the fact that there does not seem to be any particular virtue in the words which stand already in the Report which is the subject of our discussion, I wonder whether we could not satisfy everybody concerned by adopting the proposal which you yourself made, Mr. Chairman, which was to delete these words now standing in the Report, to incorporate the words proposed by Dr. Coombs, and to add to those words, after the word "obligations" in the last line but one, the words "under the Charter and.", Then I think M. Royer would be satisfied; I think the Bank would be satisfied; and I think it would not detract from the general purport of the Report.

CHAIRMAN: (Interpretation): Gentlemen, Mr. Rubin marked his agreement of this suggestion, M.Royer agreed to this modification of the text, and the Australian Delegate adheres to it now. Therefore, as it is very late, I would suggest that everyone should adhere to this text. Is that agreed?

(Agreed).

The Meeting is adjourned.

The Meeting rose at 8.45 p.m.