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

VERBATIM REPORT.

FORTY-FIRST MEETING OF COMMISSION "A"
(Articles 25 & 27, 26, 28 & 29)

HELD ON FRIDAY, 15 AUGUST 1947 at 2.30 P.M.

IN THE

PALAIS DES NATIONS, GENEVA.

M. Max SUTENS (Chairman) (Belgium)

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CHAIRMAN: The Meeting is called to order.

We shall now take up Articles 26, 28 and 29, which were examined by a special sub-Committee. The report of this Committee is to be found in Document E/PC/T/163. The Chairman of the sub-Committee was Mr. Phillips of the Australian Delegation, and I call upon Mr. Phillips to submit his report.

Mr. J. G. PHILLIPS (Australia): Mr. Chairman, I have the honour to submit this report on behalf of the sub-Committee.

The sub-Committee consisted of the representatives of Australia, Canada, Cuba, Czechoslovakia, France, the United Kingdom and the United States of America. In addition, our work was greatly helped by the representatives of several other Delegations and by the representatives of the International Monetary Fund and the International Bank for Reconstruction and Development. We were able to reach substantial agreement on Articles 26 and 29. On Article 28 dealing with exceptions from non-discrimination various circumstances made it impossible to reach final conclusions within the time at our disposal. As stated in our report, the text submitted is tentative and subject to further consideration by the Governments of the Delegations concerned. In particular, there are two portions in square brackets in that text, and those we were unable to resolve in the time available.

However, subsequent to the completion of our Report there have been further discussions among Members of the Sub-Committee, and as Chairman I am now able to state that a Document will shortly be circulated which has the agreement of the Members of the Sub-Committee and which will remove the necessity for one of the sections in square brackets - that is the section in paragraph 3 (b) of Article 28.

I understand also that discussions among Members of the Sub-Committee will result in some other proposal being put forward to the Commission this afternoon which may have the effect of removing the remaining square brackets, and also of removing some reservations which are contained in our Report.

On behalf of the Sub-Committee I think we should like to apologise for the fact that these Amendments and new proposals may come up this afternoon; but it was impossible to deal with them in the time at our disposal.

I think that is all I need say in introducing the Report, except to thank again the other Delegations who participated in its preparation.

CHAIRMAN: (Interpretation): We shall now take up the examination of the various Articles, beginning with Article 26.

The Delegate of Belgium.

M. FORTHOMBE (Belgium) (Interpretation): The Belgian Delegation considers that the whole of Article 26 is not very felicitous in spite of all the work caused in producing it, and that it would be best to delete it altogether.

Article 26 was exclusively written under the impact of the immediate post-war period. It is a compilation of methods in force in 1947, designed to fight with a very limited success the economic difficulties of 1947, but ought we to overlook the fact that the Charter is not intended to be temporary? We should not conceive the Charter as if the post-war period would never come to an end.

We, too, have also suffered severely from the war and understand the anxieties and difficulties which are expressed in the complicated provisions which are suggested to us.

We do not criticize the methods now used by such-and-such a Government, which is experiencing difficulties. We know that these difficulties derive from the huge war effort accomplished by this country. We know that debts, the policy of austerity, restrictions on imports and consumption - in a word, all the economic disadvantages, are the price of victory and freedom, but there is a total difference between the acceptance of a regime of restriction which is the inevitable result of the war and the approval of texts which would authorize the continuation or revival of an unhealthy regime of restriction when we have again arrived at a peacetime economy. A distinction should clearly be made. We must make a far-seeing effort; then the dangers will appear clearly. We shall see that the texts proposed to us militate against our interests and that they will create the evils which we have met here to avoid.

In the first instance, let us consider the danger of a parallel action between the International Monetary Fund and the ITO. In Articles 8 and 14 the Statute of the Monetary Fund already provides that, when there are difficulties in the balance of payments, this body is entitled to grant permission to restrict imports. One might think that if it was deemed that the question should be dealt with in the Charter, it is because it was considered that the provisions of the Constitution of the Fund could be improved. In the text before us we do not find any improvements, but rather a considerable regression. Two bodies, two statutes, two methods of procedure will, from now on, govern the same matter. The disadvantages are quite striking. We have thus created all the co-ordination difficulties between two international bodies.

A few days ago, in the Chairman's Committee, a similar situation was referred to. Our Commission had voted White on a question of the right of voting of non-Member States. Beyond the Atlantic another Council voted Black on the same question and we find ourselves in a bottleneck

and compelled to appeal to the old diplomacy to find a compromise. We are compelled to wait, perhaps, until the Council of the United Nations should arbitrate in such disputes, with considerable delay, between two bodies which each have their pride and their esprit de corps.

Do you not think that, in spite of the goodwill of the people involved, such an opposition may also take place later between the ITO and the Monetary Fund ? Do you not think that the prices in business will increase whilst diplomats, Ministers, and the Council of the United Nations are exchanging visits and telegrams in an effort to come to an agreement ? The multiplicity of new international bodies is a danger and we may well fear that we shall here reconstruct Byzantium, which was famous in history because, whilst scholars discussed their theories about the sex of angels, the enemy was driving through the gates of the city.

These complicated, and indeed, unduly complicated discussions, will be an open invitation to states who desire to set up an unhealthy protectionism because they will be able to play one Charter against another: the Monetary Fund against the I.T.O., the I.T.O. against the Monetary Fund, and, in fact, do what they desire behind the appearance of solemn texts. We know that the sub-Committee has reflected on such a manoeuvre. It tries to oppose it by the subtlety of the clause of "non-frustration". Do we really believe that we can face up to the evil with this bit of drafting, and in the absence of a remedy would it not be better not to set up or encourage conflicts of competence between permanent bodies and not to create a maze favourable to all men of ill will? Is it possible to make some sacrifice and to think that this lack of organisation is offset by considerable advantages brought by the Charter by a real progress on the provisions of the Monetary Fund? It will perhaps be argued that the possibility of discussing within the I.T.O. Conference is a remarkable progress; henceforth all the countries assembled will be in a position to study what commercial measures should be taken when a state of alarm has been proclaimed in the financial field. We would agree to admit that this would be a progress if immediately after the essential objects were not delated from the subject of the discussion to leave only speeches on secondary aspects. In fact, our Charter creates in the discussions hunting preserves and private domains. We fear that any policy, as soon as it has been labelled a policy of reconstruction or industrial development or raising of productivity levels or of constant increase of demand for full employment, will be taken away from discussions and really made taboo.

We fear that the same will happen as regards these nice formulae as is the case with virtue. You know the cruel words which were said in this connection: "Oh virtue what crimes are committed in thy name!" We could similarly say: "Oh, reconstruction; oh, economic development; oh, increasing demand, how many commercial restrictions are made in your name!"

Another restriction of commercial matter is equally and in the same way taken away from the discussion. It will be prohibited to make reference to it, except to arrive at platonic academic recommendations. I refer to that matter which provides that frontiers can be immediately closed to everything except to those products that are considered essential.

We authorize, and therefore we endorse, this selfish and short-sighted policy which States have been tempted to apply all the time and which consists in buying only raw materials abroad and selling only finished products, becoming rich through the benefits derived from the conversion.

In this first Trade Charter, we are restoring the narrow policy of mercantilism, which is condemned by experience, condemned by economic doctrine for almost two centuries, condemned by a memorable revolution which took place beyond the Atlantic in 1776. It is necessary to repeat here that imports/^{which} are considered as non-essential for the consumer are considered essential for the producer. For instance, the importation of wines is superfluous, but the export of wines is essential for a country of wine growers which has capital invested in the vines. The same applies to the import of automobiles, radios, refrigerators, coffee, sugar, textiles, etc., we can do without them, but the producer country cannot stop producing and selling them.

The economy of all the countries which are represented here, as well as others, depends for its equilibrium upon the exchange of non-essential products. There are no non-essential products in our highly developed modern economy. The qualifications introduced by paragraph 3(c) (ii) is only in appearance a delusion. Recent experience has shown that symbolic importation was of no

help to the industries suffering from restrictions.

To allow a State which is experiencing financial difficulties to close its frontiers immediately, except for the purchase of raw materials or investment goods, would create, on the basis of the Charter, unemployment and financial losses in the territories of all the neighbouring states - this, without any previous authorization, without even the possibility of having the matter usefully discussed later by the International Trade Organization, since the complaining State will immediately meet a kind of foreclosure. It would be indicated to that State that this discussion is forbidden under the Charter or that its conclusions would be fruitless. We might, therefore, ask ourselves if the advantage of being able to discuss commercial measures remains an advantage, since the discussion will be narrow and limited.

The set-up for those who wish to institute an unhealthy protectionist regime is, therefore, simple. One builds up as one likes a balance-of-payments in disequilibrium, one increases it on imports by some programme or other;- (i) by re-equipment of roads and railways, (ii) by construction of houses for the workers and social installations, and (iii) by town planning development. On the other hand, one restricts exports to lower the prices and raise the standards of living. Next, the International Monetary Fund and the International Trade Organization must approve these plans. Then, one closes one's frontiers to all but raw materials which are not found in the country. Finally, should someone raise an objection, a reference is made to article 26. Thus we arrive at the capital mistake in the text.

This article contains a method to create economic depressions. Pre-war experience has shown that when a country is threatened with

balance-of-payments difficulties, it is necessary to sound the alarms urgently and to warn that by some instinctive reflexes, which are frequent in the case of panic, it does not take defensive measures such as are likely to lay the evil upon its neighbour.

Article 26, instead of circumscribing the source of evil makes it possible, without any discussion and with the formal authorisation by the Charter, and therefore with a kind of injunction from the Charter itself, immediately to spread economic vices. This Charter contains an automatic multiplier of economic disequilibrium, and Article 26 is a machine to manufacture, spread and propagate economic vices similar to the ones which happened between 1929 and 1935, a universal fundamental depression which upset world business and political order.

We make an urgent appeal to the Commission to realize the harmful effects of Article 26. We can now see with a certain unconcern the closing of frontiers, since it will always be possible to sell elsewhere. Buyers are not lacking. But we should think of the slippery slope of depression. . The first State which loses its footing on the balance-of-payments ascent may, under the Charter, push a second State down. Then that one will also pull down a ~~third~~ one, and, like Alpine climbers in distress, they will all fall down at an increasing pace. In a word, it will be a crisis on behalf of the Charter and in conformity with the provisions of the Charter.

Article 26 seems to have forgotten to such an extent that there may be periods of economic depression, that it contains in this connection only a narrow provision at the end of Section 5, when it is provided that after it has been found that the disequilibrium is general, a Conference may be convened to advise upon ways and means.

We imagine that this Conference will be more or less like the one which met in 1933 to study what remedies could be found for the crisis which had started in 1929. Is it not feared that once more we shall come too late? Is it not necessary to provide at least for the obligation to call a Conference urgently as soon as the germ of the economic disease is detected in a country, in order to prevent spreading contagion?

We hope that the Commission will realize that we have asked, even at a belated time, for a new effort, in order that we shall not appear later as people who, instead of avoiding fires, have created a whole machinery in order to spread them, and have taken every step to ensure that the fire brigade shall

systematically arrive late.

If we do not delete that text, the Charter, instead of being a Charter for economic development, will be a Charter for depression; instead of economic co-operation we shall have autarchy; instead of a Charter for full employment, we shall have a Charter of unemployment.

CHAIRMAN (Interpretation): I have listened with the greatest interest to the statement just read by M. Forthomme. This statement suggests the deletion of Article 26.

M. Forthomme has raised a number of points, and I think that if I allowed a discussion to take place now, it would last the whole afternoon. As we must conclude the examination of Articles 26, 28 and 29 today, I shall, with your permission, ask one Delegate, and one Delegate only, to speak in favour of Article 26. After that, if M. Forthomme insists, we shall take a vote on the deletion or maintenance of Article 26.

Is there any Delegate who wishes to speak for the maintenance of Article 26?

Mr. J.R.C. HELMORE (United Kingdom): Mr. Chairman, I think that those who have been concerned with the project of the I.T.O. since before 1945 might be forgiven for supposing that the principle of Article 26 was generally acceptable to the countries which have been on the Preparatory Committee, and therefore if my remarks about it are somewhat impromptu it is for that reason.

Obviously, everyone here who is concerned with the expansion of international trade must sympathise with the desire that trade should not be subject to restrictions on balance-of-payment grounds. But, unfortunately, we know

that countries are in balance-of-payments difficulties, and I do not think that anyone here would be prepared to guarantee that they will not be in balance-of-payments difficulties again even after the so-called transitional period.

We should, therefore, not be doing our duty if we failed to provide for a set of rules to ensure that those restrictions were applied only when necessary, and only to the extent necessary. The alternatives would be to allow them to be applied whenever anybody thought fit, without any rules, which would be far worse for international trade - and, I suggest, for international peace - than Mr. Forthomme has suggested; or we should not provide for balance-of-payment restrictions to be used at all, in which case I am absolutely certain there would be no International Trade Organization.

As so often, we have attacked these difficult problems on the basis of trying to understand them; trying to see what it is that causes particular countries to use particular methods; trying to see what difficulties those methods cause for others, and arriving at a synthesis of that thought in a set of rules which look complicated. It is much better, it seems to me, to have complicated and reasonable rules which can be understood after study, than to have no rules.

Now, I hope Mr. Forthomme will forgive me for suggesting that he has not really digested Article 26 in its present form. It is quite true that, as he says, in the name of development, social policies and so on (I have said it so often I have forgotten how it goes now!) a Member can decide priority as between the various classes of his imports. It seems to me very strange that if that is so wrong in the future, the Belgian Delegate himself should have said that he understood exactly what it was being done now. Either a country has foreign exchange resources to buy all it wants or it has not.

If it has not the exchange resources to buy all it wants, then it must buy some things it wants more than others. I think I have said before in this Commission that it is the habit of many people who are not in balance of payments difficulties to assume that those countries which are in balance of payments difficulties rather enjoy restricting their imports.

I can assure those countries, if there are any, that it is not at all an enjoyable thing. One buys one's bread before one's jam, but there is no pleasure whatever in eating dry bread; nor, indeed, in knowing the grocer who sells the jam. And we do see immediately in the sub-paragraph immediately after the sub-paragraph which allows that order of priority to be drawn up, that countries which apply the restrictions shall do so in such a way as to avoid unnecessary damage to the commercial or economic interests of any other Member.

I do not believe, Mr. Chairman, that those words are there for fun. They are there as part of an undertaking which we suggest countries should comply with, and after all, the United Kingdom is not only in balance of payments difficulties itself, it is suffering quite considerably from other people's balance of payments difficulties, and I have no hesitation whatever in saying that if other countries were to use their balance of payments difficulties - as I do not believe they would - to inflict unnecessary damage on the commercial or economic interests of the United Kingdom, I should have no hesitation in taking them up under that sub-paragraph, and I hope that every other country would do the same, if it similarly thought that unnecessary damage was being done.

We have some other things, too, in this Article which are

worth remembering. In the first place, we do not say that once you are in balance of payments difficulties you can restrict as much as you like. We say that when you are in balance of payments difficulties you can restrict to the extent necessary. It is an exceedingly important distinction between the blank cheque once you are in difficulties, and the liberty or licence to do as much as is necessary to meet with the difficulties; and we go on and we provide that as you get out of the difficulties the restrictions are progressively to be relaxed.

We provide many other safeguards. We provide for complaints, for consultation, and in extreme cases for a Member to be told that he must either alter his ways or leave the Organisation; or, as it says in the Article, he must either amend his ways or have unpleasant things done to him - which, of course, means the same thing. That is quite a serious deterrent.

Finally, we provide that if there is persistent and widespread difficulty, the Organisation itself shall take the initiative to see what can be done, and I do not think, Mr. Chairman, we ought to look at this Article in isolation. There are many other things in the Charter which we hope will cure the circumstances that give rise to balance of payments difficulties. There is the Employment Article, there is the Draft Resolution which in due course we hope will go before the Economic and Social Council, which we drew up in London and omitted to mention at the Geneva Meeting, because presumably it was generally understood to be a good Resolution and one which had come forward at the right time. There we provided for a whole series of types of action designed to prevent the loss of markets, which may be the first sign that balance of payments difficulties are going to develop in the future.

I am afraid, Mr. Chairman, that these have been somewhat halting remarks, made completely impromptu; but so far as I have been able to, I have endeavoured to answer the views which have been put forward.

CHAIRMAN (Interpretation): I will ask M. Forthomme whether he is prepared to reserve his position until we have concluded the reading of Article 26. Some amendments may be submitted which may alter the aspect of this Article. Therefore, at the conclusion of the reading of Article 26 we will ask M. Forthomme whether he insists on his position.

The Delegate of Belgium.

M. FORTHOMME (Belgium): Mr. Chairman, I do not wish to hold up this debate and I would be perfectly willing to agree with your suggestion, but before doing so I would just like to add a few words. The Commission should not remain under the impression that in my proposal I had lost sight of the necessity in which many countries are placed nowadays, through balance-of-payments difficulties, of adopting exceptional measures.

In the original speech I made, I mentioned my understanding of these circumstances, an understanding which is prompted by the fact that my own country is one of the countries which has suffered from the war and is, moreover, a partner in a customs union with a country which has suffered even more from the war.

It reminds me of Cuauhtemoc, Emperor of Mexico, who was being roasted on the grill with a number of retainers and allied kings and, when they were all complaining and screaming at one moment, turned round and said: "Do you think I am lying on a bed of roses?"

Therefore, before we go on to the debate on Article 26, I would just like to add this: my proposal that Article 26 should be deleted should not be understood as a sterile and bare proposal of sheer deletion. I do think that some

provision should be made in this Charter for this transitional state of affairs.

I think that the whole of Article 26 is too elaborate, opens too many possibilities for abuse, and is of too definitive a character for the purpose, but I do think that the wise thing would be to delete Article 26 and put in a provision to deal with the immediate balance-of-payments difficulties, rather on the lines of the present Paragraph 3(a) of Article 26 which we have before us. It would then be possible, later on, for the Organization to study and, in view of the circumstances which will have arisen, in, say a year or two's time, draft a definitive Article in which more mature principles could be embodied.

CHAIRMAN (Interpretation): We shall now take up the study of Article 26, paragraph 1. Are there any remarks?

Paragraph 2, sub-paragraph (a). No remarks?

Sub-paragraph (b)?

Paragraph 3, sub-paragraph (a): sub-paragraph (b).

Mr. L.C. WEBB (New Zealand): Mr. Chairman, I have been instructed to ask for the insertion of some words: "notwithstanding the provisions of paragraph 2 of this article", after (i). I have circulated the text of this amendment. It is not an amendment of substance. It merely removes a slight difficulty which we have found about the word "necessary" in 2 (a). It has seemed to us possible that the word "necessary" must be construed to mean that the maintenance of import restrictions would not be necessary because there is after all something else you could do to avoid the maintenance of the institution of those restrictions. That situation is dealt with in 3(b)(i), but it seems to us that it will be an improvement to make the matter clear by the insertion of the words we have suggested to make it clear that the Organisation may not interfere with certain domestic policies.

Mr. G. BRONZ (United States): Mr. Chairman, paragraph 2 (a) provides that restrictions may be instituted, maintained or intensified only to the extent necessary to carry out certain changes or directions in the monetary reserve position. Paragraph 3(b) (i) says that assuming that such restrictions are necessary "no Member shall be required to withdraw or modify restrictions on the ground that a change in such policies would render unnecessary the restrictions...."

It seems to me that 3 (b) (i) is perfectly clear in that respect, but the amendment proposed by the New Zealand delegation would be redundant and would probably be unfavourably received by the Legal Drafting Committee who worked over the text, and I suggest that it is quite unnecessary, and that the aim of the New Zealand delegation

is attempting to achieve is amply covered by the present text.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I have some difficulty in understanding this paragraph, and it might be that some member of the sub-Committee could enlighten me there. In 3 (b)(i), the same paragraph that the delegate of New Zealand referred to, it is said "No Member shall be required to withdraw or modify restrictions on the ground that a change in such policies would render unnecessary the restrictions which it is applying under this Article." Now later on in the next paragraph, with which we have not dealt, I would like to ask a question. Under 4 (d) where we have the consultation clause we read: "If no such settlement is reached and if the Organisation determines that the restrictions are being applied inconsistently with the provisions of paragraphs 2 or 3", and there I get a little bit muddled. If you say here that "No Member shall be required....." and so on, and in the next paragraph you say that it is inconsistent with the provisions of paragraphs 2 or 3, is it then not the case that a Member can always say "Well, that is interference in my domestic affairs, and you cannot ask me that because it is fully consistent with 3(h) (i)

MR. J.G. PHILLIPS (Australia): Mr. Chairman, I do not think that there is any contradiction between the two things. In the view of the sub-committee, I think, paragraph 4 (d) provides that if restrictions are held to be in conflict with the criteria laid down in paragraph 2, or particularly in conflict with the undertakings in paragraph 3(c) (i), (ii) and (iii), then the Member can be required to modify or withdraw its restrictions, but paragraph 3(b) (1) says only that you cannot be required to withdraw or modify restrictions on the grounds that a change in your domestic policy would make them unnecessary. I do not think that there is any contradiction between those things.

If they are necessary in the sense of meeting the criteria on paragraph 2, if they are administered in a way which is in accord with the undertakings in paragraph 3(c), then you cannot be required to withdraw them on the grounds that ^{you} if/adopted a policy of deflation or ceased reconstruction, you would no longer be in difficulties, but if you undertake restrictions which do not meet the criteria of paragraph 2, or if you break the undertakings given in paragraph 3(c), then you may be required to withdraw the restrictions.

DR. A.B. SPECKENBRINK (Netherlands): Mr. Chairman, as I right in understanding that paragraph (i) of paragraph 2 specially gives the principle, and in paragraph 3(c) you have the first effects of certain measures, and if you have first effects and you can show to the Organization that you really are harmed by this, then there is a case to ask for a change in domestic policy.

MR. J.G. PHILLIPS (Australia): I have not quite understood the point. Does Mr. Speckenbrink maintain that the first effect

of applying restrictions will be to break the undertakings in paragraph 3(c)?

DR. A.B. SPEEKENBRINK (Netherlands): Yes. What I am afraid of here, Mr. Chairman, is that paragraph 3(b) (i) might make an escape clause, and so I would prefer to have here "No Member shall be required to modify restrictions only on the grounds.....".

CHAIRMAN (Interpretation): Gentlemen, we have now two amendments before us, and I am afraid that the second amendment has made us forget the first one submitted by Mr. Webb. We shall, therefore, refer to the first amendment.

You remember that the New Zealand Delegation proposed to add the words "Notwithstanding the provisions of paragraph 2 of this Article" at the beginning of paragraph 3(c) (i) of Article 26. Does Mr. Webb maintain his amendment in the light of the explanation supplied by the United States Delegation?

MR. E.C. WEBB (New Zealand): Mr. Chairman, this is purely a question of whether a cross reference is desirable. Mr. Bronz has suggested that probably such a cross reference, would, in any case, be deleted by the Legal Drafting Committee, but I am not so sure on that point because the uniform policy of the Legal Drafting Committee has not been to suppress cross references, but only to suppress unnecessary cross references, and it seems to us that this is a desirable cross-reference in view of the fact that there is a principle established in paragraph 3(b) (i), and I think that principle is intended to apply to paragraph 2(a) and to this question of necessity. Therefore, I think that the cross-reference is desirable to make that plain. In other words, it is desirable to make it plain that no one can come to you and say: "Well, if you did not pursue a certain domestic policy in connection with your economic development and full employment, then you would not need to apply this restriction". It seems to me that that is not perfectly clear from the text and, therefore, the cross-reference would be useful.

CHAIRMAN (Interpretation): In these circumstances, gentlemen, are we agreed that we shall accept the New Zealand amendment?

Dr. A.B. SPEEKENBRINK (Netherlands): Could not we leave it to the Legal Drafting Committee?

CHAIRMAN (Interpretation): The question must be settled here.

Two opinions have been expressed, for and against. Are there any Delegations against the amendment?

(A few Delegates raised their hands).

I conclude that the others are in favour of the amendment?

The amendment is adopted.

The amendment of the Netherlands Delegate reads: "No Member shall be required to withdraw or modify restrictions on the sole ground," etc.

Mr. George BRONZ (United States): Mr. Chairman, I want to return for a moment to the question of the New Zealand amendment. I am afraid it was decided on silence by the greater part of the Delegates present, and while I did not want to go too far into it, perhaps we ought to go a little further.

I am afraid that adding the words as proposed by the New Zealand Delegate would involve a danger, and that is the danger that paragraph 3(b)(i) would be construed to mean that even if the restrictions are not necessary in the light of paragraph 2(a), they might nevertheless be imposed.

While/I commented previously I only directed my attention ^{when} to the necessity for the words, in the light of the construction placed by the New Zealand Delegate, I think it is important to point out that there is a positive danger that even if a

country is not losing monetary reserves and is not in imminent danger, or not otherwise meeting the tests of 2(a), this additional language might be construed to mean that import restrictions may be maintained. It seems to me that the amendment is dangerous in view of that possible construction and wholly unnecessary to achieve the construction found by the New Zealand Delegate.

CHAIRMAN (Interpretation): The amendment has been carried. It will be submitted to the Legal Drafting Committee with the remarks made by the United States Delegate.

Mr. George BRONZ (United States): Mr. Chairman, in view of the fact that only a few positive votes were registered, I would ask for a re-count.

CHAIRMAN (Interpretation): Those in favour of the New Zealand amendment please raise their hands.

Those against?

H.E. Z. AUGENTHALER (Czechoslovakia): A point of order. I think we have already taken a vote "against".

CHAIRMAN (Interpretation): The United States Delegate asked that the vote should be taken again, to avoid any ambiguity.

Those against?

The amendment is carried by seven votes to four, and will be transmitted to the Legal Drafting Committee with the remarks made by the United States Delegate.

We revert to the amendment of the Netherlands Delegate: "No Member shall be required to withdraw or modify restrictions on the sole ground," etc.

Any objection to this amendment?

Mr. L.C. WEBB (New Zealand): Mr. Chairman, I would object to this amendment, because I think we have established clearly that certain policies are outside the competence of the Organisation to interfere with. It seems to me that Mr. Speekenbrink's point is adequately covered by (c)(iii), and also by the general process of complaint and redress under Article 35(2) -wherever Article 35(2) has come to rest, because there the scope of complaint which a Member has is in no way limited by anything in the Charter, and it seems to me that that provides for his point quite adequately.

M. Pierre FORTOMME (Belgium) (Interpretation): Mr. Chairman I consider that the discussion which has just taken place points out the extreme weakness of the means of defence against any abuse of restrictions, and therefore I support the amendment of Mr. Speekenbrink.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. HELMORE (United Kingdom): Mr. Chairman, I would be reluctant to see any change in the sub-paragraph, which I know has been discussed and re-discussed, drafted and re-drafted, in order to give satisfaction to several delegations who are already reasonably satisfied with that particular point of view.

The reason why I intervened was to quote a precedent from a document which Mr. Fortomme quoted at the beginning of this discussion with such approval - that is the Articles of Association of the International Monetary Fund. I see they had the same problem in drafting and they said "shall not object to a proposed change because of the domestic, social or political policies of the Member proposing the change". I suspect that if they had agreed with Mr. Speekenbrink, they would have said "solely because" of that. They did not say that, and I suggest we follow their example.

CHAIRMAN: The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, I am sorry I cannot ^{agree} especially with what Mr. Webb just said, that our policies are clearly outside the scope of the International Trade Organisation. It increases my fear, again, of making an escape clause.

CHAIRMAN (Interpretation): I therefore insist that your Amendment be taken into consideration.

Considering that the opinions are widely different on this subject, I shall ask those who are in favour of Mr. Speekenbrink's Amendment to raise their hands. There are 4.

Those against? There are 9 against. Defeated.

Any further remarks on 3 (b)? 3 (c)?

The Delegate of the United Kingdom.

Mr. HELMORE (United Kingdom): Mr. Chairman, Members of the Committee will be aware that this is a United Kingdom reservation against c (ii), which refers to the question of "importation" on which we had considerable discussion in the Commission before this article was sent to the Sub-Committee. I would like, very briefly, if I may, for the benefit of those Members of the Commission who are not on the Sub-Committee, to explain our reasons for this reservation.

As the United Kingdom Delegation explained in the discussion in the Commission, we were very nearly the inventors of what is known as the "total import" policy, and we have been applying it since 1945. It may, therefore, be somewhat surprising to say that we could not accept this paragraph for total imports. The reasons are that, although the paragraph is not in the comprehensive form which caused considerable objection when we discussed it in the Commission before, neither is it in the form which we said was essential for us in order to accept it, namely, that obligations which could be shown to be equal were imposed on all Members of the Trade Organisation. In particular, the words, "to avoid the application" seemed to us extremely weak, and the word "unnecessarily" in the next line seems to us to be open to a completely subjective interpretation by any Member of the Organisation. That is to say, if this were stated by a country to be a necessary restriction, nothing could be done about it.

We would be anxious, Mr. Chairman, to get rid of this reservation if some changes can be made to meet us, and I think I should say straight away that we would, with some misgiving.

accept this paragraph if the words "to avoid the application of" were omitted, and the words "not to apply to" were inserted instead, and then leave out "which would unnecessarily", and insert "so as to prevent unreasonably". The first part of it would then read, in full: "Not to apply restrictions so as to prevent unreasonably the importation" etc.

Without some such change as that we should be compelled to maintain our reservation against this sub-paragraph.

CHAIRMAN (Interpretation): Gentlemen, we have now before us an amendment submitted by Mr. Helmore which, if adopted, would make it possible for the United Kingdom Delegation to withdraw their reservation. Is the Commission prepared to consider this amendment?

Are there any objections to this amendment?

Mr. J.G. PHILLIPS (Australia): Mr. Chairman, this amendment would be acceptable to the Australian Delegation provided there were another amendment lower down in the paragraph: the deletion of the word "of" before "restrictions."

CHAIRMAN (Interpretation): Are there any further objections? Is everybody agreed?

The amendment is therefore carried and the United Kingdom Delegation withdraw their reservation.

Mr. HELMORE (United Kingdom): Yes, Mr. Chairman.

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

The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, as far as I understand it, when the question was discussed in the sub-committee we raised a point. We feel it important that under this idea of minimum commercial quantities there should be an understood priority for the import of spare parts, ~~because, by prohibiting~~ the import of spare parts into a country, you are making it impossible for other countries to export machinery. I do not wish to move an amendment here, but only to have this ^{the} on record.

CHAIRMAN (Interpretation): That will be done.

Are there any further remarks?

(Agreed)

Gentlemen, I think we shall have a very heavy day and we may have to contemplate a night meeting; therefore it is necessary to have a recess. I suggest that we adjourn now until 5.15. This will be all the more necessary because we have just received the Report of the Legal Drafting Committee on Articles 26, 28 and 29, to which it will be necessary for us to give our attention. When we meet again we shall first take up the amendment to Article 25.

The Delegate of France.

M. BARADUC (France) (Interpretation): When you suggested a night meeting, Mr. Chairman, I take it you forgot that tonight India is celebrating her independence and that we have all been invited.

CHAIRMAN (Interpretation): I have not received an invitation and therefore did not know there was a party.

Mr. BELMORE (United Kingdom): Mr. Chairman, I hasten to say that on August 15 I am no longer in a position to do anything with the Indian Delegation to secure you an invitation. Nevertheless, I would very much like to suggest that we should not contemplate an adjournment for dinner but that we should work straight on; I suggest that the absence of dinner might increase the speed and that, with luck, we should finish by nine o'clock. I have every reason to believe that, in addition to the more normal refreshments at an evening party, we might find a sandwich.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADAKAR (India): Mr. Chairman, I must apologise on behalf of our Delegation for this lapse on the part of the office of the Delegation in not seeing to it that the invitation intended for you was delivered in time.

Chairman: We will meet again at 5.15 p.m.

(The Meeting adjourned at 4.50 p.m.)

(The Meeting resumed at 5.25 p.m.)

CHAIRMAN (Interpretation): The Meeting is called to order. We shall first examine the amendment proposed by Mr. Shackle to paragraph 3 of Article 25, which has been circulated. Everybody has read it. Is there any objection to this amendment?

Mr. George BRONZ (U.S.A.): Mr. Chairman, the amendment in substance is acceptable to us. I suggest that we should save quite a few words if we kept the first two lines as given in the text and then struck out the rest and said instead:

"... made effective through state-trading operations."

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, that suggestion is entirely acceptable to me.

CHAIRMAN (Interpretation): Does everybody agree to this amendment in its new form?

The amendment is carried.

We continue now with the discussion on Article 26, paragraph 4 (a). Are there any remarks?

Gentlemen, I suggest that from now on instead of referring to Document 153 we continue our discussion on the basis of Document 171 submitted by the Legal Drafting Committee.

Paragraph 4(a) on page 7. n Are there any remarks?

Sub-paragraph (b)

Sub-paragraph (c). Are there any remarks?

Sub-paragraph (d).

Sub-paragraph (e)

M. PIERRE FORTHOMME (Belgium): (Interpretation): Mr. Chairman, concerning the insertion of this new sub-paragraph (e), is it really necessary to maintain the last sentence in paragraph 4(a),

which reads: "No Member shall be required in the course of consultations under this sub-paragraph to indicate in advance the choice of timing of any particular measure which it may ultimately determine to adopt." We would prefer here to insert the secrecy clause.

CHAIRMAN (Interpretation): Has everyone heard the amendment suggested by Mr. Forthomme? Could I now ask Mr. Phillips to give his opinion on this amendment?

Mr. J.G. PHILLIPS (Australia): Mr. Chairman, I do not think I could express an opinion on behalf of the sub-Committee on this point as I do not remember that it was specifically discussed.

Well, for my own part, as the delegate for Australia I think that the two provisions might still be retained even though I do agree with Mr. Forthomme's idea that they do more or less relate to the same point, but personally I would prefer to retain both even though the secrecy provision has been added. There is still some point in not requiring a Member in prior consultation to indicate exactly what he may do. I think the consultation is likely to be more valuable in principle if a member does not feel forced to disclose what he proposes to do, and when.

CHAIRMAN (Interpretation): Since Mr. Phillips enjoyed the confidence of the sub-Committee, his opinion would reflect that of the sub-Committee.

M. PIERRE FORTHOMME (Belgium) (Interpretation): Mr. Chairman, may I add this: that even before sub-paragraph (e) was inserted, I considered already that the last sentence in sub-paragraph (a) took away most of the scope of the authorisation given on measures

rather indeterminate, and now sub-paragraph (e) does away with one of the real dangers that existed, and which were concentrated in the last sentence of sub-paragraph (a). Therefore, this last sentence can only serve now to limit the possibility of examination by the Organisation of measures that are contemplated in the interests of the use of legitimate restriction. I think that it would be a good thing if the Organisation were duly informed of those restrictions.

CHAIRMAN (Interpretation): Does anyone else wish to speak on this amendment?

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, we would like to have both texts retained as they are at present, because we believe that the position covered by the two paragraphs is not the same. Paragraph (e) applies to the ^{which is} general clause/provided for the secrecy of consultations, whereas paragraph (c) simply provides that the Member will not have to communicate in advance the kind of measures he will eventually adopt. Furthermore, the necessary possibility is left since paragraph (e) speaks of alternative corrective measures which may be available.

CHAIRMAN: Dr. Speekenbrink.

DR. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I also have some doubts here. The particular sentence to which the Belgian Delegate referred must also, I think, be read in conjunction with the last part of sub-paragraph (c), where it says "as a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question insofar as the general extent, degree of intensity and duration of the restrictions are concerned. To the extent to which such approval has been given given....etc.", and then we are not acting contrary to the principles, but I am wondering, if you do not say anything about the choice or timing of any particular measure, how will you ever be able to give approval?

MR. J.G. PHILLIPS (Australia): Mr. Chairman, there is another aspect of this matter, and I think it might help if I describe briefly what sort of procedure the sub-committee had in mind under

the various paragraphs of this article, or rather, the various sub-paragraphs of paragraph 4.

Paragraph (a) provides for the prior consultation between the Member of the Organization before the restrictions are instituted, and very likely, we hope, before the Member has made up his mind whether he needs restrictions at all. The prime purpose, as the sub-committee saw it, of this first paragraph, sub-paragraph (a), is to allow or require the Member to go to the Organization when he thinks he may need restrictions. He would then consult with the Organization and the International Monetary Fund as to the nature of his balance-of-payments difficulties, the alternative corrective measures which may be available and the possible effect of such measures on the economy of other Members. This might well be before he had made up his mind either whether he needs restrictions or, if so, what form they should take. In fact, I think I am right in saying that the sub-committee hoped that this would be so, because there is a better chance of persuading the Member to adopt a reasonable course of action if he has not already crystallised his ideas about the action he should take. There is, however, no question of approval by the Organization in this sub-paragraph, it is a question of consultation only.

Sub-paragraph (b) provides for consultation with a Member who is already applying restrictions. Sub-paragraph (c) is a provision that a Member, if he wishes, may go to the Organization and get prior approval for restrictions which he thinks he may need in the future, or which he wants immediately, and where he feels he has a strong case for them, thereby avoiding the risk of complaint later on the grounds that he was not justified in applying them. Sub-paragraph (d) is, of course, the complaint procedure.

This sentence, therefore, at the end of sub-paragraph (a) should, I think, be retained not merely on the grounds of secrecy, but also to suggest that when the Member consults with the Organization under this sub-paragraph he should not be required to have completed his plans, he should not be required to have chosen himself what he is going to do. In fact, as I said before, the sub-committee hoped that in most cases he would not have made up his mind, and this sentence says that he shall not be required to indicate particular measures which he may ultimately determine to adopt. It is, as I said, not only a matter of secrecy but a suggestion that the Member need not indicate measures when consulting with the Organization.

I think, therefore, that the sentence should be retained.

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium):(Interpretation): Mr. Chairman, I have listened with great attention to Mr. Phillips' statement, and I have found it ingenious; but I would better understand it if sub-paragraph (a) did not contain the words between brackets "or, in circumstances in which prior consultation is impracticable, immediately after doing so". In fact, there is such a likeness between (a) and (c) that from time to time one has the impression that it is the same paragraph.

CHAIRMAN (Interpretation): Practically every Delegate who has spoken, has spoken in favour of the maintenance of this sentence. In these circumstances, does Mr. Forthomme maintain his amendment?

M. Pierre FORTHOMME (Belgium) (Interpretation): I do not insist.

CHAIRMAN (Interpretation): Are there any further remarks on sub-paragraph (e)?

Paragraph 5. Any remarks? It is adopted.

Mr. J.G. PHILLIPS (Australia): Mr. Chairman, before we pass from Article 26, may I just refer very briefly to the fact that there is an Australian reservation on paragraph 2(b) of Article 26? I did not raise that at the time, because we have no amendment to propose, and I did not wish to provoke discussion.

Our reservation does not imply that we are not in agreement with the general intent of the paragraph, namely, that the severity of import restrictions should be relaxed as conditions improve, and that they should be removed entirely when the Member's balance-of-payments is no longer threatened. We wish to be sure, however, that the criteria applied are not so rigid as to require

that a Member should remove import restrictions prematurely, before its balance-of-payments has been restored to equilibrium on a stable basis. It is because our Government still has some doubts as to whether the present wording gives the necessary flexibility that we are forced to maintain this reservation for the time being.

CHAIRMAN (Interpretation): We therefore take note of the Australian reservation. We now take up Article 28.

M. Pierre FORTHOMME (Belgium)(Interpretation): Mr. Chairman, may I recall that I raised a preliminary question on the whole of Article 26, and I should like to know now whether your decision to take up Article 28 now means that the Commission as a whole is against this preliminary question? If this is the case, my Delegation makes a full reservation on the whole of Article 26 until a thorough examination has been made by the Belgian Government of that Article within the general framework of the Charter as a whole. This reservation extends also to Article 28 and to the whole of Article 29.

As regards Article 28, it is said in the Report of the Sub-Committee that the text is submitted by the Sub-Committee itself subject to its being examined by the Governments of the Members of the Sub-Committee. Now, if the Members of the Sub-Committee, who have studied this Article for a month, must require the approval of their Governments, the other Members of this Commission should all the more ask for a thorough examination. For this reason too, I must lodge a general reservation on Articles 26, 28 and 29.

CHAIRMAN (Interpretation): Note is taken of the reservation made by Mr. Forthomme.

Mr. BARADUC (France) (Interpretation): If I am not mistaken, Mr. Chairman, we have only adopted the English text of Article 26. In fact, we have had no time to examine the French version submitted by the Legal Drafting Committee, and it might be necessary later in the evening to revise the French text, in which we have found a number of mistakes which I should like to have the agreement not only of the other French-speaking Delegations on, but also of the Commission as a whole.

CHAIRMAN: This is agreed.

The Delegate of the United Kingdom.

Mr. HELMORE: (United Kingdom): I was going to ask you whether you intended to ask us to approve the version submitted by the Legal Drafting Committee of this paragraph which was dealt with before. As far as I am concerned on the English text, I am prepared to say that it would be acceptable with the Drafting Amendments submitted by the Committee straight away.

I am a little bit puzzled by the intervention of the French Delegation, since I understood that the French and Belgian Delegations were represented on the Legal Drafting Committee, and it seems to me a bit odd that they should now say there are mistakes in the French version they submitted to us.

CHAIRMAN: Mr. Baraduc.

Mr. BARADUC (France) (Interpretation): May I reply to Mr. Helmore that without disavowing my colleagues (and I think Mons. Forthomme will agree with me) neither myself nor Mons. Forthomme are members of the Legal Drafting Committee, and therefore we have had no time to read these texts.

Furthermore, I have just been informed that the Legal Drafting Committee itself has found that there were a number of

errors, and has just circulated a corrigendum.

CHAIRMAN (Interpretation): Mr. Helmore raised another question. He pointed out that up to paragraph 4 we worked on the basis of the text supplied by the Sub-Committee, and then we continued on the basis of the text submitted by the Legal Drafting Committee.

Is this Commission agreed to accept the version of the Legal Drafting Committee for the first four paragraphs of Article 26?

The Delegate of Chile.

Mr. GARCIA OLDINI (Chile) (Interpretation): I have a third question to raise, Mr. Chairman. I do not consider it is normal that a new text be circulated while a text is under discussion. I do not see why the English-speaking Delegates should have the advantage of being in a position to read a text beforehand, to study it carefully and compare its drafting with another previously existing drafting - supposing they enjoy this advantage.

At any rate, as regards the French-speaking Delegations I cannot admit that a new text should be circulated in the course of the discussion, because we have no time to compare it with the text that is to be found in the Report of the Sub-Committee. Everyone knows that very frequently a change in the wording may entail a change of substance.

CHAIRMAN: The Executive Secretary.

Mr. WYNDHAM WHITE (Executive Secretary): Mr. Chairman, I want to say a word or two on both texts. First of all, I should like to say that there is no reason why the English-

speaking Delegations should appear to be more favourably treated than the French Delegations, since the Report was distributed to them at the same time as the text in French.

I do wish to place on record that this suggestion, and similar suggestions made in Sub-Committees to the same effect, have no foundation whatsoever. There have been certain difficulties owing to the heavy demand on the staff here in certain cases with the French texts, but very special efforts have been made by local staffs to overcome this, and I think the French Delegations were free from any discrimination in this sense not only in this particular case, but generally.

Secondly, it is a bad policy to submit a document at such short notice. The reason why it was done is that the Legal Drafting Committee are working extremely long hours and extremely hard, and have been able to produce their revisions of the Sub-Committee Reports in almost every case in time for them to be taken at the same time as the Sub-Committee Reports. They have done that as an extra convenience for the Preparatory Committee, and I have asked for the co-operation of the Commission in dealing with its Reports as soon as they come forward, as otherwise it may be necessary to envisage a further sitting of the Commission in order to consider points of drafting contained in the Drafting Committee's Reports.

If there are points of drafting which cause difficulties to Delegations, then they can reserve their amendments and we will find occasion between now and the Plenary Sessions to clarify the points.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): I should like to make it clear, Mr. Chairman, that I am very happy that you have given the Executive Secretary an opportunity to supply us with an explanation. I am even happier to find that I was mistaken when I said that in the present case there had been some discrimination, and you must not forget that I added "if any."

Even if it was never the intention of the Secretariat to make any discrimination - of which I am certain - in fact, this discrimination has existed and in many cases the French-speaking Delegations in sub-committees have had to wait during the whole of a meeting before they could get the French translation of a text of four lines.

CHAIRMAN (Interpretation): In conformity with what has been said by Mr. Wyndham White, I suggest that the various Delegations should study carefully the first three paragraphs of Article 26 and make any relevant remarks to the Secretariat, which will find some means of dealing with them.

The Delegate of the Netherlands.

Mr. A. B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to say a few words. I am still a little worried about that famous Article 3(b)(i) and I have not had time enough to think it over. The reason I am so worried is because I do feel that this Chapter, like other Chapters of the Charter, was a compromise between several points of view, but I do think it is a very commendable effort. Nevertheless, just because it is a compromise, I do feel that the powers of the Organization for consultation and even action should be as great as possible. That is the cause of my worry here. I

would therefore like to reserve my attitude with regard to this special sub-paragraph for a few days.

CHAIRMAN: (Interpretation): Notice has been taken of Mr. Speekenbrink's remarks.

CHAIRMAN: The Delegate of the United States.

Mr. George BRONZ (United States): With respect to the same sub-paragraph, I have undertaken to secure the views of the head of my Delegation and I hope to be able to say something on it, if necessary, before the close of the session today. I just wanted to say that before we pass on from Article 28.

CHAIRMAN: We pass now to Article 28, Paragraph 1; Preamble, Page 14 of the Report of the Legal Drafting Committee. The Delegate of New Zealand.

Mr. L. C. WEBB (New Zealand): Mr. Chairman, I just wonder, in this Preamble, whether the Committee which produced this text has not said more than it wanted to say - "to prevent the development or maintenance of bilateral trade patterns as an enduring feature of world trade." I think I see the purpose of that and I think it is a commendable purpose, which is to condemn bilateralism, or what I might almost call the bilateralism of Dr. Schacht. We do not very much like the term, because it seems to us that even in the great period of free trade, under free trade conditions the trade of a number of countries fell naturally into bilateral patterns. Therefore it would be justifiable either to suppress this reference to bilateral patterns or to say "bilateral patterns of a type which are restrictive to world trade," because there are bilateral patterns which I think have an element of stability and expansion.

CHAIRMAN (Interpretation): Is there any remark on this amendment? The amendment is either to read: -

"The Members also recognise the need for close limitation of such departures."

or to continue: -

". . . . to prevent the development or maintenance of bilateral trade patterns of a type restrictive of international trade as an enduring feature of world trade."

For my part, I suggest that the shorter the better. Therefore that we should put a full stop after the word "departures" and delete the last three lines.

Mr. George BRONZ (U.S.A.): Mr. Chairman, it seems to me that the amendment proposed by the Delegate of New Zealand raises a rather fundamental question of policy. The draft of Article 28 which has been presented here represents a very difficult and delicate compromise between different points of view on the subject-matter of the Article.

From our point of view, our insistence throughout this Conference that we are here to formulate a Charter for a multilateral pattern of world trade as against a purely bilateral pattern is well known and has been expressed on many occasions. This is the only reference in the entire Article to the necessity for protecting what we regard as the fundamental principle of the entire Charter - that we are headed toward a multilateral rather than a bilateral trade. This injunction was included as a recognition that the exceptions provided in Article 28 are very definitely to be considered exceptions to meet unusual circumstances as detailed in the Article, but the principle of multilateralism as an objective of the Organization should be kept in mind. It is therefore argued that the inclusion of the sentence as it is is of vital importance to the balance of Art; 28.

CHAIRMAN (Interpretation): I wonder if the two points of view of Mr. Bronz and Mr. Webb could not be reconciled by a sentence in the following terms: -

"The Members also recognise the need for close limitation of such departures "

and then continue:

".... to avoid that the maintenance of bilateral trade patterns should prevent the promotion of multilateral international trade."

Mr. George BRONZ (U.S.A.): I am afraid that such phrasing, at least as given in the interpretation, suggests that we would not condemn the maintenance of bilateral trade patterns except to the extent that they prevent the promotion of multilateral international trade. It seems to suggest that you can maintain bilateral trade patterns while efforts are being made to promote multilateral trade. I think that is rather putting multilateral trade too far off into the distant future.

CHAIRMAN (Interpretation): It is not my part, of course, to intervene in the debate, but this is exactly what I meant. In fact, bilateral trade is not an evil in itself and ^{almost} all forms of trade are bilateral. The statistics of the League of Nations have shown that 75% of the whole of international trade was bilateral while 25% only was multilateral.

M. PIERRE BARADUC (France) (Interpretation): Mr. Chairman, I fully understand your attitude, but I think that in fact the French words "courants commerciaux" are rather unsatisfactory translation of the English "trade patterns" because I think - I do not know if I am mistaken - but I think that the word "pattern" implies something systematic and artificial, while the expression "courants commerciaux" in French is perfectly normal, and to condemn bilateral commercial trends would be to condemn nature itself. But what I think is that in the English phrase there is something which is not to be found in the French phrase, and I suggest that the phrase should read: "courants commerciaux artificiels", or in English "artificial commercial trends."

CHAIRMAN (Interpretation): I would like to point out that Mr. Webb's amendment referred to the English text.

May I make another suggestion? "The Members also recognise the need for close limitation of such departures as to bring about as soon as possible that revival of multilateral international trade."

Mr. GEORGE BRONZ (United States): Could we say "so as not to handicap the revival of multilateral international trade"?

Mr. J.R.C. HELMORE (United Kingdom): I am awfully sorry to intervene in the discussion. I like your suggestion, Mr. Bronz, but I have some objection to the word "revival" which in English is associated a little bit with the Salvation Army, and, in any case, implies that multilateral trade is quite dead. I do not believe it is.

M. PIERRE BARADUC (France) (Interpretation): I think I would make the same remark as Mr. Helmore with regard to the word "revival" because I think that multilateral trade is ready to revive like

Lazarus.

Mr. GEORGE BRONZ (United States): Could we say "achievement" instead of "revival"?

CHAIRMAN (Interpretation): I suggest that we adopt the English version, and we shall then find a satisfactory French equivalent because I am myself not satisfied with my own version.

Mr. PIERRE BARADUC (France) (Interpretation): Could we have the adopted text in English?

Mr. GEORGE BRONZ (United States): "The Members also recognise the need for close limitation of such departures so as not to handicap achievement of multilateral international trade."

M.R. Z. AUGENTHALER (Czechoslovakia): I have a question to ask which I am afraid was not answered in the sub-Committee concerning the words "substantial and widespread disequilibrium". Is it a disequilibrium in countries with whom the other respective countries have a substantial part of their trade, or is it world-wide disequilibrium because I am afraid that it is of little use to me if at this moment it is very cool on the North Pole and I am sitting in Geneva.

CHAIRMAN: (Interpretation): I think you will find a reply in the French text which is perfectly clear.

H.E. DR. Z. AUGENTHALEN (Czechoslovakia) (Interpretation):

It is a very good explanation, but it does not impress me.

CHAIRMAN (Interpretation): We now pass on to sub-paragraph (b).

MR. J.R.C. HELMORE (United Kingdom): Mr. Chairman, in the Drafting Committee's version on page 15, about half-way down the paragraph, there are some words which read as follows "from countries, limiting imports because of balance-of-payments difficulties". We would like to move the omission of those words so that the relevant part of the sub-paragraph would read "departs from the provisions of Article 27 to the extent necessary to obtain additional imports above the maximum....etc.". We think that those words would be unduly limiting in that they would prevent the obtaining of additional imports from a country which was not limiting imports itself but which, nevertheless, had a currency which was inconvertible. It might also prevent the obtaining of additional imports from countries which were prepared to facilitate it by withholding the currency of the buying country, and in any case, we suspect that there might be some incentive to certain countries to endeavour to continue to limit their imports because they wish to be discriminated in favour of.

In any case, there are all the other safeguards in the Article, and in view of the limiting effect of these words we think they would be better removed.

CHAIRMAN (Interpretation): Are there any remarks on this amendment?

M. P. BARADUC (France) (Interpretation): I am entirely in favour of this amendment.

CHAIRMAN (Interpretation): Is everybody agreed?

The amendment is carried.

Is everybody agreed on the text of paragraph (b) on page 15?
Agreed.

Page 16. Are there any remarks on paragraph (i)? (ii)?

Mr. J.H.C. HELMORE (United Kingdom): Mr. Chairman, we have an amendment which we hope will be regarded as almost entirely of a drafting character. It has been circulated on a paper which has no heading, but which has at the bottom No. M. 397/47. It reads, in English, "The Member taking such action does not do so as part of any arrangement" - and here the different wording comes - "by which the gold or convertible currency which the Member currently receives directly or indirectly from its exports to other Members not party to the arrangement is appreciably reduced...." - and then it goes on as before.

We think that the words as they now stand might give some encouragement to the undesirable practice which is existing of payment in the gold of other countries for certain goods, and we believe that the words which we have very carefully express the intention of this paragraph, which is that countries should not be parties to any arrangement which diverts their exports away from markets where they can normally earn hard currency which, of course, is available for expenditure in any party, and thus removes, to that extent, the need for operating under this Article.

CHAIRMAN (Interpretation): Are there any objections to this amendment?

MR. J.G. PHILLIPS (Australia): Mr. Chairman, this was one of the points on which the sub-committee had not really completed their discussion, but I would assume that the Members of the sub-committee would have no objection to this.

CHAIRMAN (Interpretation): Are there any objections?

M. P. BARLUDUC (France) (Interpretation): I have no objection to the English text, but strong objections to the French text which contains at least three fundamental mistakes, but we shall, of course, revise the French text accordingly.

CHAIRMAN (Interpretation): Subject to this reservation, paragraph (ii) is adopted.

Are there any remarks on paragraph (iii)?

Are there any remarks on paragraph (c)?

Are there any remarks on paragraph (d)?

Adopted.

CHAIRMAN (Interpretation): Paragraph 2. Any objections?
(Adopted).

Paragraph 3(a).

Mr. J.R.C. HELMORE (United Kingdom): I am sorry to be taking up so much time, but here again is one of the amendments which will come up on completion of the work of the Sub-Committee. It is proposed to add some words after "prescribed" (we thought it was going to be "specified", but I see the Legal Drafting Committee say it ought to be "prescribed"). The words are:

"for the purpose of ensuring compliance with the provisions of paragraph 1 of this Article, provided that the Organisation shall not require that prior approval be obtained for individual transactions".

Those words have been circulated, together with a motion in French, for which I hardly dare expect any approval whatever, prior or subsequent. The purpose of this amendment is apparent on the face of it: that it is not intended that the limitations which the Organisation may prescribe should go down to the detail of requiring prior approval of individual transactions, which, in our view, would be an impracticable task and indeed a dangerous one for the Organisation to undertake.

I might perhaps finish these remarks by venturing to express the hope that if this amendment were adopted, it would enable the French Delegation to remove the reservation which is contained in Note 5 of the Sub-Committee's Report, and which suggested the addition of the word "general" between "any" and "limitations". I hope they will agree that this amendment has the same effect.

CHAIRMAN: The Delegate of France.

M. Pierre BARLUDUC (France) (Interpretation): I entirely agree with the amendment suggested by Mr. Helmore -of course, in the English version- and if this amendment is embodied in the text of this paragraph, my Delegation will be in a position to withdraw its reservation on this point.

CHAIRMAN (Interpretation): Any further remarks?

M. J. MELANDER (Norway): The Norwegian Delegation would not, I think, be able to accept the draft text as it stands here. We would certainly feel that the British amendment is an improvement and would for that reason be in favour of that. But, at the same time, I think that we would be in favour of deleting paragraph 3(a) altogether.

We feel that as the Sub-Committee's Report is of a tentative nature, it would perhaps not be right to take any final decision on this point, and we have decided that we will just make a general reservation on Article 28 as a whole. Consequently, I am not going to make any special reservation on paragraph 3(a). I just say that I would prefer the British amendment for the text as it stands, but that we do maintain a general reservation on Article 28 as a whole.

CHAIRMAN (Interpretation): Any observations?

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to state that I am in the same position as Mr. Melander, and if it could be allowed, I would like to make a general statement at the end of the discussion on Article 28.

CHAIRMAN (Interpretation): I entirely agree.

Are there any further remarks on paragraph 3(a)?

Paragraph 3(b).

V

Mr. J.G. PHILLIPS (Australia): In my opening remarks when I introduced the Report, I said that there was one point where square brackets had been left in the Report of the Sub-Committee, and where subsequent discussion by the Members of the Sub-Committee had agreed on the proposal, which would remove the square brackets. This is the paragraph where that proposal is made, and the proposal to take the place of the words in square brackets in the third, fourth and fifth lines in the English version is labelled as a new paragraph 5 of Article 29. It has been distributed, I think.

It is suggested that that paragraph be inserted in Article 29, and that the words "or exchange restrictions on payments and transfers in connection with imports" appearing in this sub-paragraph should then be deleted.

I am sorry, the text is now being distributed. I thought it had been distributed.

CHAIRMAN: (Interpretation): Mr. Phillips, the suggestion made is to delete the words between brackets in sub-para. (b), and to substitute for them a new paragraph 5 in Article 29.

Any objection to this Amendment?

Mr. SPEEKENBRINK (Netherlands): May I ask for one explanation, Mr. Chairman. I cannot understand the last part of it. We say here, "if the Organisation considers, at any time," and so on, "it shall report thereon to the International Monetary Fund". What happens then?

Mr. PHILLIPS (Australia): I feel that some explanation is perhaps necessary here. The phrase that was previously in square brackets in sub-paragraph (b) provided that the Organization could in effect disallow exchange restrictions imposed by a Member which were discriminating in a way inconsistent with the exceptions under Article 28. There is, however, or there was in the Sub-Committee, some doubt as to whether there should be a specific provision here which would allow the Organisation in this particular place to disallow exchange restrictions which might have been approved by the Monetary Fund.

The solution of the problem which the Sub-Committee reached was to propose that if the Organisation found that a Member was achieving by exchange restrictions results which he would not be allowed to achieve under the Charter by import restrictions, there are two courses open. The first is the one that is proposed in this Amendment, that the Organisation should draw the attention of the International Monetary Fund to the fact

that this was occurring. The second point is covered in paragraph 4 of Article 29, which provides that a Member shall not frustrate the intent of the provisions of the Charter by exchange action, nor the intent of the provisions of the Articles of Agreement of the Monetary Fund by trade action.

Perhaps that is an adequate explanation.

Mr. SPEEKENBRINK (Netherlands): My objection is that if you say that in the Report, you do not say it might be asked for action to be taken, or something like that. We can only "report".

CHAIRMAN: (Interpretation): Do you suggest any change in the text?

Mr. SPEEKENBRINK (Netherlands): Yes, possibly to ask for action to be taken, or something like that.

Mr. PHILLIPS (Australia): I can only say, Sir, that I think the Sub-Committee felt that if the matter was brought officially to the notice of the Monetary Fund, that was sufficient.

CHAIRMAN: The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): If the Sub-Committee thought that over, I am prepared to follow their judgment.

CHAIRMAN: We agree, therefore, on the amendment suggested by the Australian Delegate.

Agreed.

Are there any further remarks on sub-paragraph (b)?

Not remarks.

(Agreed)

We pass on to sub-paragraph (c).

The Delegate of the United States.

Mr. BRONZ (United States): Mr. Chairman, there has been distributed a document - "Suggested re-wording of Article 28, Paragraph 3(c)" - bearing the number, in the lower left-hand corner, M.399/47. This document has been agreed among a number of Delegations on the Sub-committee, although it had not been presented in time for a Sub-committee meeting.

To eliminate the disagreement involved in the bracketed words "not later than" appearing in the text as reported by the Sub-committee, what has been done in this amendment is to include a new sentence, which begins on the eleventh line of the English text. There is also a change of wording at the beginning. Instead of saying: "Not later than three years after the date on which the International Monetary Fund began operations", we say: "Not later than March 1, 1950", which is a shorter way of saying the same thing; and in the next sentence, which included the bracketed words, we have now substituted for the bracketed words and for the phrase following them, including the reference to the Monetary Fund, the shorter reference: "On or about March 1, 1952."

The substance of the question was whether the Organization would be free before March 1, 1952 to review the question of whether or not there is then a widespread disequilibrium, and the resolution of the difference is in the form of limiting the review in the second sentence of the paragraph to one "on or about March 1, 1952," and to provide, in a new sentence which had been added, "If it appears at any date prior to March 1, 1952,

that there has been a substantial and general improvement in international trade and payments, the Organization may review the situation at that date."

I suggest the adoption of this text.

(After the interpretation):

My attention has just been called to the fact that the Legal Drafting Committee has made one minor change in the English text and apparently it was not indicated by underlining. At the end of the text, the text reported by the Sub-committee read: ". . . shall cease six months after such determination." The Legal Drafting Committee's text is entirely acceptable to me and I therefore suggest that the new proposal should be construed in that way.

(After the interpretation):

Mr. Chairman, just to avoid any possible misunderstanding, the words "not later than" would come in the last line but one of both the suggested re-wording and the blue text; it is not to be confused with the "not later than" clause appearing in brackets much higher up in the text.

CHAIRMAN (Interpretation): Are there any objections to the amendment proposed by the Delegate of the United States? No objections?

The Delegate of New Zealand,

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, I have no objection to that amendment, but I would like to ask for clarification - perhaps I should ask the Chairman of the Sub-committee - concerning the last sentence of this draft. It provides that the provisions of Paragraph 1 of this Article shall be suspended in certain circumstances, and I would like to ask exactly what that means. I have in mind the case that the provisions might be suspended and then, many years later, a disequilibrium might arise again: can Members then take action under Paragraph 1 if it were suspended, in case a disequilibrium were to arise at some future date, or would this mean that Paragraph 1 would be suspended for all time?

Mr. J. G. PHILLIPS (Australia): Mr. Chairman, the intention of the Sub-Committee was that the provisions of paragraph 1 should be suspended only if and when the Organization found that another substantial and widespread disequilibrium had commenced. You will observe that in the sixth and following lines of the text distributed just now the provision is made that "the Organization shall review the question of whether there then exists such a substantial and widespread disequilibrium, and that this shall be done "at such times ... as the Organization may decide". That was intended to imply that at any time the Organization could review the question of whether a substantial disequilibrium existed, and if it found that it did, then the provisions of paragraph 1 would operate.

Mr. G.D.L. WHITE (New Zealand) signified assent.

CHAIRMAN (Interpretation): The New Zealand Delegate is satisfied with these explanations.

Are there any further remarks on the new version of 3 (c)?

M. P. BARADUC (France) (Interpretation): I entirely agree with the United States amendment as submitted in the white paper.

(Further exchange of remarks between M. BARADUC and the CHAIRMAN not fully interpreted)

(Interpreter): The Chairman pointed out that the last sentence had been altered to read: "... shall cease not later than six months after such determination" and the French delegate replied that he could only accept the existing text: "shall cease six months after such determination."

CHAIRMAN (Interpretation): This alteration has been suggested by a Sub-Committee on which there is a French member!

M. P. BARADUC (France) (Not interpreted)

CHAIRMAN (Interpretation): Does the Commission agree with the suggestion of the Legal Drafting Committee? The French delegate thinks that the Legal Drafting Committee has slightly gone beyond its rights. Is there any objection to leaving the text as it was: "... shall cease six months after such determination"?

Mr. GEORGE BRONZ (U.S.A.): I understand that the Legal Drafting Committee had in mind that, since the Member would have the complete freedom to choose whether to cease immediately or to cease three months after, or six months after, there would be no additional limitation on the Member's action, and it felt that it would be rather curious to say that the action must cease at one precise date and not recognise that the Member might cease such action earlier. I do not think it makes any difference in meaning. I think the Legal Drafting Committee had a wise point of drafting, but I do not consider it a matter of substance.

CHAIRMAN (Interpretation): I feel certain that M. Baraduc will agree with the opinion of the United States Delegate.

M. P. BARADUC (France) (Interpretation): I do not attach a very great importance to this question.

CHAIRMAN (Interpretation): Paragraph 4. No remarks?

Adopted.

Paragraph 5. No remarks?

Adopted.

H. E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, Czechoslovakia recognises that the principle of multilateralism

and non-discrimination is desirable for the expansion of world trade. However, she is aware of the fact, and she wishes to emphasise, that, under circumstances of great economic difficulties such as those prevailing in most countries at present bilateral arrangements can contribute also to the expansion of world trade. Further, Czechoslovakia feels that the words "substantial and widespread disequilibrium" should be understood first of all in the sense that it applies to countries with whom the Member has a substantial part of its trade, as it is of little use to the Member that in some other parts of the world there prevail conditions of prosperity.

The Czechoslovak Delegation did not raise objections to the Draft Charter text of Article 28, and had the approval of its Government, as this draft aimed at the desirable flexibility of provisions. With regard to the new draft text, however, the Czechoslovak Delegation is unable to define its attitude until it will be in a position to take into account which States will be likely to join the I.T.O., to what extent their currencies will be convertible, how large a proportion of the aggregate foreign trade of the country will be covered by States adhering to the provisions in question, and, if there are non-Members, how the relations to them will be settled.

That is why we reserve our opinion on this Article which needs the further study of our Government, especially as we were faced with entirely new amendments presented here only during this Session.

M. E.L. RODRIGUES (Brazil): Mr. Chairman, I am sorry to have to make a reservation on paragraph 5 (b), but I could not agree with the present text. We shall have to reserve our position on it, at least provisionally.

M. F. GARCIA OLDINI (Chile) (Interpretation): The Chilean delegation reserve their position on the whole of Article 28. The final decision of the Chilean Government will be taken at the World Conference.

Dr. A. B. SPEEKENBRINK (Netherlands): Mr. Chairman, will you allow me to say a few words with regard to all these reservations that have now come up. I wonder what worth we can attach to the acceptance of all these articles especially those very technical articles which have come to our attention in a final draft a very short time ago. I must say that I, myself, cannot judge all the implications thereof. Nevertheless, I am prepared to agree with them, but I would be in a much more difficult position if this acceptance at this moment should mean also that the articles should go as they stand at present to the General Agreement on Trade Tariffs because we have definite commitments, and moreover, I think that a further study^{at home} of this problem which is so complicated before the World Conference might lead to some argument from our financial people who are much more qualified to judge than I am. That might induce us to put forward some arguments at the World Conference so I think that although I entirely agree that at the World Conference we should as a rule try to keep to what we have decided here, there should be a certain liberty - especially with these very difficult articles - to speak, and even support amendments if they are of a nature to be supported.

I state this here because we can now all enter formal reservations, and I do not know what we are really going to accept at the Plenary Session. I therefore would like to ask the guidance of the Chair with regard to the real importance to be attached to the acceptance of these Articles here, and with regard to the liberty to be able to come forward with amendments.

CHAIRMAN (Interpretation): Mr. Speekenbrink, you have yourself given a reply to your own question when you said that we should, as far as possible, keep to the text adopted here while retaining some freedom, namely, that if after examination at home we find the possibility of making improvements, those improvements should be suggested. I think that this is the best reply to your own question.

As regards the second question, namely, what will be the case of Articles on which reservations are made with regard to the Tariff Agreement, this is a matter which cannot be dealt with here, but should be dealt with by the Committee on Tariff Agreements, and this question should therefore be raised in that Committee.

Does any other delegation wish to speak on Article 28.

Mr. J.R.C. HELMORE (United Kingdom): Mr. Chairman, we have some notes in the report of the sub-committee, and I wonder whether the Commission ought to look briefly at those notes for two purposes: to see whether any of them could be suppressed, or to see what status we intend them to have.

I do not intend at this minute to engage on a problem which has been exercising Dr. Holloway very much in connection with the Technical Articles, the problem of how best to indicate that those notes have a particular status, but I gather that we are to discuss that separately. However, I wonder whether this Commission ought, on these Articles, to indicate whether these Notes have a particular status or not, whether they are of the kind which are necessary to record or remove a reservation.

CHAIRMAN (Interpretation): Referring to the reservations and notes on page 18 of document E/EC/T/163, there is an Australian reservation which has been made, then comes a United Kingdom reservation which has been withdrawn, then a Czechoslovak reservation which has just been repeated, and two French reservations.

M. BALDUC (France) (Interpretation): Regarding the French reservations, taking into account what has just been said by you, Mr. Chairman, with regard to the action to be taken on these texts, which, after all, are only a draft to be submitted to the World Conference, the French Delegation withdraws its reservations.

(The CHAIRMAN read the Note to Article 28, paragraph 5, and said that considering that paragraph 3 of Article 28 had been adopted, this Note could be withdrawn).

MR. G. BLONZ (United States): Mr. Chairman, in the sub-committee, the United States raised a considerable question about the draft of paragraph 3. We followed the general policy in the sub-committee of deleting references to consultation with the International Monetary Fund in view of the new draft of paragraph 29(2), which we have not yet reached for consideration.

However, in the case of paragraph 3 of Article 28, it was our feeling that the deletion of reference to the Monetary Fund might be construed to exclude consultation with the Fund on these questions. Questions of discrimination under Article 28 do involve financial matters, and the question was raised in the sub-committee and the sub-committee agreed upon the text of this note, and we feel that the Note is necessary here in order to avoid a reservation.

MR. J.A.C. HELMORE (United Kingdom): Mr. Chairman, I wonder if I could ask the Chairman of the sub-committee to tell us what the reservation was to that Note?

MR. J.G. PHILLIPS (Australia): I do not think I can completely answer this question, Mr. Chairman. The position was that the Committee agreed to the terms of the Note, and, when it was considering whether it should go into the general part of the Report or into this part dealing with reservations and Notes, the United States Delegate said something along the lines of what he has just said now. In view of that, the Committee left the Note in this part, but I do not remember that there was any specific reservation or that the United States Delegate expressed any specific text.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. J.R.C. HELMORE (United Kingdom): Mr. Chairman, I am very sorry to make a nuisance of myself on this. I think that the Preparatory Committee as a whole is probably going to have a great deal of difficulty in reaching an acceptable solution on Dr. Holloway's point, which I said I would not discuss, and it does occur to me that of all the possible solutions which we may find as to a method of recording these notes along with the text of the Charter in due course (or, I suppose, the text of the General Agreement, although you have said that we must not discuss that) this one would be extraordinarily difficult, because it simply records, as far as I can read it, the result of discussion in the Sub-Committee.

CHAIRMAN (Interpretation): But if this note is approved by the Commission, it becomes a note presented on behalf of the Preparatory Committee.

Mr. J.R.C. HELMORE (United Kingdom): But what worries me is how a note in this form is to be given any status in the light of any of the suggestions that have been made for giving other notes status. I do not want to labour the point now. I would merely like to say that it may be necessary to come to this question as to how this note is to be recorded when we have settled the question of where we are going to put the notes and how we are going to put the notes.

CHAIRMAN (Interpretation): Then we keep the substance of the note and later we shall try to find out what action can be taken with regard to the note.

Article 29 - Exchange Arrangements - paragraph 1.

No remarks? (Adopted).

Paragraph 2.

The Delegate of New Zealand.

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, on paragraph 2 we find the last sentence unacceptable - that is the sentence which provides that the Organisation shall accept the determination of the Monetary Fund on certain matters.

Our view is that paragraph 1 provides for consultation with the Monetary Fund, the first two sentences of paragraph 2 provide for full consultation and co-operation with the Monetary Fund, and that this enables the I.T.O. to avoid setting up a duplicate statistical and research organisation on these matters.

That, in our view, is the correct way that this matter should be handled, and we think that the I.T.O. should give special weight to the opinions of the Monetary Fund; but we are not prepared to go so far as to say that the Organisation shall accept the determination of the Monetary Fund on the matter set out in the last sentence of paragraph 2. We realise that the last sentence is drafted in such a way that certain of the criteria in Article 26, paragraph 2(a) are left to the Trade Organization, and that the final decision in cases involving these criteria rests with the International Trade Organization. But if we say that it is going to be mandatory upon the International Trade Organization to accept the determination of the Monetary Fund on these matters specified, it might be that we would find that Article 26 itself was unacceptable to New Zealand.

The first two sentences of this paragraph provide for this full consultation with the Monetary Fund, to avoid duplication of functions and to avoid also conflicting decisions, and in our view that is all that ought to be provided for. We find this new text is a major amendment of substance as compared with the New York

text on this matter.

We would support the wording proposed by Australia, which would alter the words "shall accept the determination" to the words "shall give special weight to the opinions of the International Monetary Fund". I do not wish to enter a reservation on this matter at this stage, because I think that the wording proposed by the Delegation of Australia should first of all receive consideration by this Commission.

CHAIRMAN: The Delegate of Australia.

Mr. J.G. PHILLIPS (Australia): Mr. Chairman, as is recorded in the Report of the Sub-Committee, we disagreed with the view of the majority of the Sub-Committee on this point. We made a reservation, and we maintain that reservation. I do not wish to go any further into the reasons for our view, because we have circulated a document (W/279) which sets them out in full.

Mr. J.R.C. HELMORE (United Kingdom): Mr. Chairman, I have two things to say about this sub-paragraph. The first is that I hope the Delegations of Australia and New Zealand, on thinking further about this, may be able to come to the view that, after all, the text put forward by the Sub-Committee is, shall I say, "not so bad". I do not expect them to come to the view that it is perfect, but they might come to the view that it is acceptable.

The Organization has a duty of reaching a decision on certain criteria which is set forth in Article 26. In so doing, it is required to accept, in the Sub-Committee's draft, the determination of the I.M.F. on four things: what constitutes a serious decline of a Member's monetary reserves; what is a very low level of its monetary reserves, and what is a reasonable rate of increase, and finally, it is required to accept the determination on the financial aspects of other matters covered in consultation in such cases.

Clearly it would be for the International Trade Organization to have, so to speak, the last word on what was a financial matter. With that definition of the matters on which the ITO should accept a determination of the IMF, I would regard the Sub-Committee's text as acceptable. I would, however, very much prefer not to adopt one of the suggestions made by the Legal Drafting Committee, which is to leave out the word "final" in the third line on page 27. The word "final", I think, was inserted by the Sub-Committee intentionally. I suspect the Legal Drafting Committee removed it without appreciating the nuance that was intended to be given by using the rather less usual phrase "final decision".

I might perhaps add that I mentioned to Dr. Gutierrez my intention of suggesting that the word "final" was retained, and he said that speaking not for the Legal Drafting Committee but as a Member of the Legal Drafting Committee, he could see no difficulty in that.

CHAIRMAN: Mr. Rodrigues, The Delegate of Brazil.

Mr. RODRIGUES (Brazil): Mr. Chairman, I fully agree with the Representative of the United Kingdom. We should like to have this word "final" retained.

CHAIRMAN (Interpretation): Now we have to take a decision on the Australian Amendment, supported by the New Zealand Delegation.

Dr. Coombs points out to the Chairman that this is not an Amendment, but a reservation. Now the New Zealand Delegate has proposed an alteration in the text, and this alteration would be in conformity with the Australian reservation. Therefore, if it is adopted, the Australian Delegation will be satisfied.

Mr. WHITE (New Zealand): Mr. Chairman, I do not wish to be put in the position of proposing an Australian Amendment which is not really an Amendment but which is a reservation; and my purpose in raising this matter was to explain our point of view, to hear the explanations of other Delegations on this matter - and I think Mr. Helmore put his explanations - but I do not wish to propose an Australian Amendment, and therefore what I propose to do is to add our reservation to the Australian reservation.

CHAIRMAN (Interpretation): Note will be taken of the New Zealand reservation.

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, I have not so much an objection to accepting the determination of the International Monetary Fund, as to what constitutes here "a decline" and so on; but I find it a little difficult to accept the determination of the International Monetary Fund as to the financial aspects of other matters covered in consultation in such cases.

That is a little bit too loose for my liking.

CHAIRMAN: (Interpretation): The Delegate of the Netherlands, do you wish to add...

Mr. SPEEKENBRINK (Netherlands): Well, I would say I have no objection to it, Sir, but I do not know what are "financial aspects of other matters covered in consultation in such cases". What is the meaning of that?

CHAIRMAN: The Delegate of the United Kingdom.

Mr. HELMORE (United Kingdom): Would it help, Mr. Chairman,

if I give Mr. Speekenbrink an example.

In the previous words there is nothing about what happens in an imminent threat case in that Article 26. That is to say, when a Member is facing an imminent threat, there is no determination reserved to the ITO, and it is perfectly obvious that in many imminent threat cases matters to be taken into consideration may be almost entirely trade questions, such as, for instance, the imminent threat to Australia's balance of payments through the failure of her wheat crop. I say nothing about what would happen if all the sheep died.

Equally there might be, in the case of another country, some financial aspect of the imminent threat on which I should have thought the assistance of the International Monetary Fund would be extremely useful to the ITO.

CHAIRMAN (Interpretation): I hope Mr. Speekenbrink is satisfied with the explanation.

Mr. SPEEKENBRINK (Netherlands): I am not entirely satisfied with the explanation, but I will not insist.

CHAIRMAN (Interpretation): Is there any objection to Mr. Helmore's amendment to maintain the word "final" in the third line of Page 27?

M. BARLUDUC (France) (Interpretation): I think it is absolutely essential to maintain the text as prepared by the Sub-committee, but in French it should read: "its final decision."

CHAIRMAN (Interpretation): The amendment is therefore carried.

Are there any other remarks concerning Paragraph 2?

(Agreed)

Paragraph 3: No remarks?

(Agreed)

Paragraph 4: There is a Note to Paragraph 4 of Article 29.

The Delegate of New Zealand.

Mr. G. D. L. WHITE (New Zealand): Mr. Chairman, I am aware of the Note to Paragraph 4, but I would still like to ask for a clarification of what is meant by frustrating the intent of the provisions. The previous text on this subject referred to the frustrating of the purposes of either

Organization. I have listened to quite a lot of debate in the Sub-committee on this matter, but it seems rather difficult for a country which is not at present a Member of the Monetary Fund to be asked not to frustrate the intent of the provisions of the Monetary Fund, and I must ask for a clarification of exactly what these words mean in such a circumstance.

CHAIRMAN: The Delegate of Australia.

Mr. J.G.PHILLIPS (Australia): Mr. Chairman, I am not sure that I can add much to the first sentence of the Note. It says: "The word frustrate is intended to indicate, for example, that infringements by exchange action of the **letter** of any Article of this Charter shall not be regarded as offending against that Article if in practice there is no appreciable departure from the intent of the Article."

Perhaps I should add that one of the reasons why the word "purposes" as used in the New York text was deleted was because that would probably have referred only to Article 1, and the changes in Article 1 made in this meeting at Geneva gave the Organization, I think, only one purpose, which was, in effect, to carry out the intentions of the United Nations Charter - or the relevant intentions - and the other things which had previously been purposes were named objectives.

I am not sure that I can really add anything to make the point clearer.

CHAIRMAN (Interpretation): Is that explanation satisfactory to the New Zealand Delegate?

Mr. WHITE (New Zealand): Mr. Chairman, I think it is much clearer that way, when you are talking about exchange action

frustrating the intent of the provisions of something in the Charter, than it is when you are talking about the complementary process where you are not, by trade action, frustrating the intent of the provisions of ~~the~~ Articles of Agreement of an organization to which you do not have to belong. I do not think it is at all clear in that case, but I do not press for any further explanation.

CHAIRMAN (Interpretation): Are there any further remarks on Paragraph 4?

The Delegate of Canada.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, we regard the Note to Paragraphs 4 and 8 as essential, as an official explanation of the text, and would want the Note treated in that way in the final disposition of this Report.

Mr. F. Garcia OLDINI (Chile) (Interpretation): I support that suggestion.

CHAIRMAN (Interpretation): That suggestion will be met. We pass to Paragraph 5.

Mr. HELMORE (United Kingdom): This will now be Paragraph 6, Mr. Chairman.

CHAIRMAN (Interpretation): Paragraph 5 Will become Paragraph 6. Are there any remarks?

(Agreed)

We come to the former Paragraph 6, the new paragraph 7.

Mr. HELMORE (United Kingdom): There is a consequential alteration, Mr. Chairman, in the numbering on Page 29 of the Legal Drafting Committee's text. It should read: "A special exchange agreement between a Member and the Organization under Paragraph 6".

CHAIRMAN (Interpretation) Former 7, new 8. - Any remarks?
Former 8, new 9 - and last!

H. E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, as Article 9, paragraphs (a) and (b), was accepted, then we withdraw our reservation on Article 27, but I would request that to this Article should be added a note in the sense that was agreed by the sub-Committee, that is that a Member is permitted to require an import licence or permit to be utilised for the importation of a product from a particular country or source, for balance-of-payments reasons. That is the last remark, No. 8, in the comments of the Sub-Committee.

CHAIRMAN (Interpretation): To what note do you refer, Mr. Augenthaler?

H. E. Z. AUGENTHALER (Czechoslovakia): Note No. 8, under Part III, Comments of the Sub-Committee: English text pages 22 and 23.

CHAIRMAN (Interpretation): Everybody has this note. It is on pages 22 and 23 of the English text, Document E/PC/T/163.

Mr. F. GARCIA OLDINI (Chile): (Interpretation): Has this not been adopted, Mr. Chairman?

CHAIRMAN (Interpretation): No, we have not adopted it. This note should be worded in a different manner and appear, not as a remark of your Delegation, Mr. Augenthaler, but as a general remark.

H. E. Z. AUGENTHALER (Czechoslovakia): Then I would suggest the following:

"A Member is permitted to require an import licence or permit to be utilised for the importation of a product from a particular country or source, for balance-of-payment reasons."

CHAIRMAN (Interpretation): Does everybody agree? The note had already been approved by the sub-Committee.

Mr. GEORGE BRONZ (U.S.A.): The text of the sub-Committee's note is being proposed as a general note? The note as it is given by the sub-Committee is entirely acceptable to us. I do not know whether the re-phrasing as suggested here might raise other questions.

Mr. WYNDHAM-WHITE (Executive Secretary): As I understand the suggestion, Mr. Augenthaler is proposing to amend the note at the foot of page 22 and top of page 23 so as to express the opinion in the affirmative - that the Member is permitted.... Whereas the note of the Sub-Committee merely receives the communication and asks the question.

Mr. GEORGE BRONZ (U.S.A.): Well, Mr. Chairman, the Sub-Committee's recommendation on the subject, contained in its Report, or the note inserted by the Sub-Committee, is:

"The Sub-Committee considered this communication and felt that the text of Article 29, paragraph 8 (ii) in its present form took due account of the problems raised by the communication from the Sub-Committee on Articles 25 and 27."

We discussed it at length in the Sub-Committee and it is not my recollection that the Sub-Committee was prepared to accept a blanket statement that "a Member is permitted to require an import licence or permit to be utilised for the importation of a product from a particular country or source, for balance-of-payments reasons." Obviously if you add that as a provision by itself it would permit discrimination in the application of import restrictions on a whole new and simple standard which is entirely divorced from the standard which we have just finished writing into Article 28.

The much narrower proposal that the Czechoslovakian Delegation had in mind was considered, and it was the feeling of the Sub-Committee - if I may take the liberty of giving my recollection of our discussions - that the present text as amended did take account of the Czechoslovakian point, that it was adequate to cover their point of a single piece of paper covering both import licences and exchange control, but it was not intended to provide a new and sweeping exception to the rule of non-discrimination.

Mr. J.R.C. HELMORE (United Kingdom): Mr. Chairman, I wonder if I could make a suggestion which I think might solve the difficulty quite substantially. It appears from the words in the previous Note at which we were looking that the question was transmitted from one sub-Committee to another and that is why it is here in the form of question and answer. What we suggested doing is to take the Note on page 20 of Document 163 which is called Note to Article 29, paragraphs 4 and 9, and leave it as it is down to where it is typed, and then go on:

"Another example would be that of a Member who specified on an import license the country from which the goods might be imported for the purpose not of introducing any additional element of discrimination in its import licenses but of enforcing permissible exchange controls."

CHAIRMAN (Interpretation): Does Mr. Lugenthaler agree?

Then it is agreed.

Are there any further remarks on paragraph 9?

Article 29 is therefore adopted.

Mr. GEORGE BRONZ (United States): Mr. Chairman, at the beginning of this meeting this afternoon, a New Zealand amendment was adopted to paragraph 3 (b) (i) of Article 26. You will recall that in discussion of that amendment, I raised the question of whether in addition to the construction given by the New Zealand delegation it was not susceptible of another construction which might seriously widen the provisions of Article 26. I have consulted with my delegation and the United States feel that it will be necessary to reserve its position on this amendment unless there can be an explanation to exclude the interpretation which, as far

as I understand it, nobody here considered offensive, and I would therefore suggest that the following Note would make it possible for us to accept the amendment as adopted earlier this afternoon. I shall read it slowly:

"The phrase 'notwithstanding the provisions of paragraph 2 of this article' has been included in the text to make it quite clear that a Member's import restrictions otherwise 'necessary' within the meaning of sub-paragraph 2 (a) shall not be considered unnecessary on the ground that a change in domestic policies as referred to in the text could improve the Member's monetary reserve position."

The phrase is not intended to suggest that the limitations in paragraph 2 are affected in any other way.

CHAIRMAN (Interpretation): What is the opinion of the New Zealand Delegate?

MR. L.C. WEBB (New Zealand): Mr. Chairman, I do not want to raise any difficulties over a purely formal point, but I would like time to examine this Note a little more carefully. I wonder whether Mr. Bronz would be agreeable to send this Note to the Legal Drafting Committee with the text as a whole. The matter, could, perhaps, be settled in that way.

MR. G. BRONZ (United States): I would have no objection to any procedure the Chairman feels would most expeditiously dispose of the matter.

CHAIRMAN (Interpretation): I quite realise that it would be difficult for the New Zealand Delegate to accept this now, but I suggest that he keeps in contact with Mr. Bronz and that both keep in contact with the Secretariat.

DR. SPOEKENBINK (Netherlands): Mr. Chairman, I would like to say that, if a Note to that effect is adopted, and also in view of your answer to my question with regard to our acceptance of the Charter, I would withdraw my reservation.

CHAIRMAN (Interpretation): Thank you.

I will now thank you all for the effort which you have made these last two days.

The meeting is adjourned.

The meeting rose at 8.50 p.m.