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

VERBATIM REPORT

SECOND MEETING OF COMMISSION B

HELD ON THURSDAY, 29 MAY 1947, at 3 p.m. IN

THE PALAIS DES NATIONS, GENEVA

HON. L. D. WILGROSS (Chairman) (Canada)

Delegates wishing to make corrections in their speeches should address their communications to the Documents Clearance Office, Room 220 (Tel. 2247).

CHAIRMAN: The Meeting is called to order.

Before we adjourned for lunch the Commission had a very thorough discussion of the question of the inclusion or the exclusion of services in the scope of the Draft Charter. We stopped at Chapter 6. The way the situation appears to the Chair is that there are three propositions now before us.

The proposition which has been before the Preparatory Commission for the longest period of time is the reservation of certain Delegations who wish to have services included in Chapter 6.

The next proposal in point of time is that of the United Kingdom, who wish to have services excluded from the scope of Chapter 6. We have also this morning listened to the proposal of the Delegation of India, who wish that services should neither be specifically included nor excluded. If, therefore, these propositions can be put to a vote I propose we should first of all vote on the proposal of the Delegation of India; secondly I propose that we vote on the proposal of the Delegation of the United Kingdom; and then, if neither of these are carried, on the proposal of the Delegations who are proposing that services be specifically included.

But before putting the matter to the vote I would like to know if any Delegation has any proposal to put forward which may be a means of reaching a satisfactory settlement to which the majority of Delegations can subscribe.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, after having a talk with some of the Delegates who presented a dissenting view of the criterion of the British Delegate this morning, we wondered if it would be a wise procedure to start now with a discussion of Chapter VI following the Articles in the order in which they are, beginning with Article 39 and eventually arriving at Article 45; and we will try in the meantime to draft a formal paragraph that incorporates the views of all those participating in the matter, not only of this side of the table but also those of the Delegates of India and Great Britain. In that manner we think we can expedite the work of the Commission and in the meantime try to find a way of satisfying every one of the views expressed here this morning.

CHAIRMAN: The Delegate of the United States.

Mr. Robert P. TERRILL (United States): Mr. Chairman, I was about to make a suggestion similar to that which the Cuban Delegate has made. I think that before any opinions are definitely crystallised here by way of a vote, the situation should be clarified. Some of the issues, to say the least, are not at present crystal clear to us as to the meaning of these alternatives.

I would like to suggest that the Commission considers the possibility of appropriately modifying the original provision contained in the United States suggestions for the Draft Charter in Article 40. Those provisions, together with the suggestions, perhaps, of the Indian Delegate, and the

Delegate of the United Kingdom, might form an appropriate basis. I need hardly add that this would not be an appropriate task for Commission B as a whole, but would be more appropriately assigned to a sub-Committee as its first order of business.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, I was very interested to hear the proposal of the Cuban Delegate, and I think that it probably holds the possibility of a settlement of this important question by agreement. I confess to a lively curiosity as to the exact rabbit which M. Gutierrez is going to produce out of his hat: but I still think that it is certainly not beyond combined ingenuity basing ourselves on the various proposals that have been made, and I think we might also arrive at an arrangement on the text of our own proposed revision of Article 45.

I had felt before that the matter was perhaps not quite appropriate for sub-Committee treatment, as there seems to be rather a wide gap between us, but I myself would be happy to fall in with the suggestion made by the Cuban Delegate that we should proceed with the other Articles and allow ourselves a little time to see what could be produced by way of an agreed text for Article 45.

CHAIRMAN: It has been proposed by the Delegate of Cuba that this matter be deferred until we come to consider Article 45. To that proposal an amendment has been made by the Delegate of the United States, seconded by the Delegate of the United Kingdom, that this question of the inclusion or exclusion of services be referred to a sub-Committee. I will first put to the Committee the proposal of the United States Delegate that this question be referred to a sub-Committee. Does that meet with approval?

The Delegate for New Zealand.

Mr. G. LAURENCE (New Zealand): Mr. Chairman, in the event of the subject being referred to a sub-Committee, would those countries who are not represented on the Committee have access to the proceedings of that Committee, and if desired, have the opportunity to present a statement to the sub-Committee?

CHAIRMAN: It is the same procedure as in the case of the sub-Committee of Commission A. The Delegations can express their desire to be heard, and they can be invited to express their views.

I take it that the proposal to refer this matter to a sub-Committee is approved. I would, therefore, like to nominate now the following Delegations to constitute the sub-Committee; the Delegations of Cuba, Czechoslovakia, India, the Netherlands, United Kingdom and the United States. If the composition of the sub-Committee is approved, I would suggest that the sub-Committee meet tomorrow morning whilst Commission A is meeting, so that they can have their first meeting and deal with this subject before we have to refer other questions to a sub-Committee.

Mr. C.H. CHEN (China): The Chinese delegation wishes to make a suggestion to the Sub-Committee.

CHAIRMAN: I am sure the view of the Chinese delegation will be taken into account by the Sub-Committee, and the Chinese delegation will be invited to express their suggestion.

We now pass to the next point on our agenda. On page 2 of document W/132 we find that there has been a reservation regarding compulsory registration of restrictive business practices. This reservation is made by the delegates of Brazil and Chile, seconded by the delegation of Czechoslovakia. I propose, however, that we discuss this subject when we come to paragraph 1 of Article 39, because the Brazilian delegation have already submitted their amendment regarding this particular subject. We will then take up paragraph 1 of Article 39. There have been two proposals in relation to this paragraph. The Canadian delegation have proposed the revision of this paragraph, and so have the delegation of Belgium. Are there any delegates who wish to speak regarding these two proposals?

Mr. F.M. MCGREGOR (Canada): Mr. Chairman, the delegates will observe that the proposals we have offered in connection with Article 39 paragraph 1 are more or less drafting changes. I will call attention to two or three proposed alterations that are not purely drafting ones. On the first page of the Canadian document you will see that we have attempted to reorganise paragraphs 1, 2 and 3, and for this reason paragraph 1 in the New York draft includes reference to the type of practice - that is, practices which restrain competitive access to markets, or foster monopolistic control. The next part refers to the harmful effects.

Then later, in paragraph 2(a) you have a reference to the type of organization - "the public or private commercial enterprises" - but in between 1 and 2(a) you have paragraph 2, which says that practices that are referred to here shall be subject to investigation. That is the vital part of that second paragraph.

What we have attempted to do here is to put, in paragraph 1, a statement that members shall take appropriate measures to prevent business practices affecting international trade. These are the words that are used here: "whenever such practices (a) limit access to markets or foster monopolistic control or otherwise restrain competition in international trade ... etc." We could keep the same order: "which restrain competition, limit access to markets, or foster monopolistic control", and we think it is a neater way of doing it.

The next are two types of effects that it is desired to prevent. The third is when they are engaged in or made effective by one or more public or private commercial enterprises. That is an exact transcript of the rest of that paragraph except that at the end we say "and if such commercial enterprises", and there we take the language of Paragraph 2(b) - "if such commercial enterprises, individually or collectively, substantially control or influence trade among two or more countries in one or more products."

I should have inserted a footnote of comment after the changes suggested at the end of that paragraph. The suggestion that the words "possess effective control of" be replaced by the words underlined on that page, "substantially control or influence" is made in order to make it clear that an international combination or monopoly can be subject to investigation, even though it does not have complete or absolute control of world trade.

Effective control could be interpreted as complete control. The word "effective" does not limit the word "control"; it rather expands its meaning and suggests an overall domination that could be possessed by very few combinations of commercial enterprises engaged in international trade. If I were to say that I had control over the Delegate for the United Kingdom - I could not possibly have, of course; he is uncontrollable - it would mean a less degree of control than if I said I had effective control over him.

We have suggested also "two or more countries" instead of "a number of countries." One country should have facilities to safeguard its interests from the operation of a monopoly

in another country. If you have to prove a number of countries, I think you have to prove too much. It may mean world-wide control and that, I think, was not the idea generally in mind at our London Conference.

I submit this very modestly for the consideration of the other Delegations.

I am not too happy about "substantially"; I am not happy about "effective"; I am not happy about "influence", but I want to bring up the question of changing the words "possess effective control" to something that would be more satisfactory.

Then as to the next paragraph - Paragraph 2, which is the one that now appears as Paragraph 3 - I think it is desirable to place it next to the types of practice that we are declaring to be undesirable.

CHAIRMAN: I would prefer, Mr. McGregor, that you confine your remarks to Paragraph 1 at the present time. We can deal with Paragraph 2 at a later stage.

CHAIRMAN: As the Canadian delegate has observed, most of the changes which he proposed are matters of drafting, but there could be certain points of substance which arise out of the Canadian proposal and also out of paragraph 1 of the text of the New York draft. If any members would wish to discuss questions of substance with relation to paragraph 1, I should be glad if they would indicate their desire.

The delegate of the United States.

Mr. ROBERT P. TERRILL (United States): Mr. Chairman, I rather regret that the Chair considers it necessary to confine the discussion on the Canadian amendment to Article 39 to paragraph 1. My reason for that is that, as I see this re-drafting, it consists of substituting a completely new framework for the entire Article and at first sight (we have had only four or five days on this ; we have no clear draft as yet) it is very difficult to read the present draft. Nevertheless, I think it has some very ingenious and important advantages to offer. The former, the original Article, is highly confusing when you start to analyse it. Paragraph 1 of the original draft contains a general and very sweeping obligation on the members. The second part of that Article consists of paragraphs 2 and 3 and relates to the procedures which the Organization will undertake by way of investigation upon complaints, but the second part, consisting of those two paragraphs 2 and 3, is in no way clearly related to the first part, that is to the first paragraph. This has been a source of constant confusion to all of those to whom we in the United States have tried to explain this Article and we think we have become somewhat confused ourselves, but we did not have the wit to recast the Article in proper form to provide continuity in all the paragraphs so that they clearly related to each other and so that the obligations of the Organization were parallel to those of the Members concerned.

Therefore it seems to me that the real question to decide is whether this new framework which includes all the paragraphs of Article 39 is a suitable vehicle, or, at least, is preferable to the framework that we originally had.

I might add, by way of a side-remark that may not be entirely relevant, we are not wholly convinced that the obligation has not been somewhat watered down in the process of this revision, but we could take that matter up when we come to it in due course.

CHAIRMAN: I very much regret that it was necessary for me to interrupt the delegate in the course of his discourse, but I felt that he was going into details in his proposed relation to paragraph 2 and I wished him to confine his remarks for the present to paragraph 1.

I realise, however, that the Canadian proposal goes much beyond this and was really a rearrangement of the whole article. If the Canadian delegate would like to add anything to what he has said with regard to the purpose of the rearrangement I will be very glad to give him the floor now.

Mr. F.A. MCGREGOR (Canada): Merely this, Mr. Chairman: that in paragraph 1 - this may be a repetition, but it is clear that paragraph (a) relates to the type of practice; (b) to the effects, (c) to the kind of people who are engaged in the practices.

Then in paragraph 2, formerly 3, we would amplify or give examples of the type of practice that is referred to in 1(a) of this draft: limit access to markets and otherwise restrain competition. We would say that the practices referred to in paragraph 1 (a) shall include the following: (it is not intended that these shall be the only practices but they shall include these.)

Then in paragraph 3 we take over paragraph 2 of the New York draft. I have to tried to get rid of what we thought of as a rather legalistic phrase without limiting the generality of paragraph 1 and substitute for it a direct statement: "Any practices which are alleged, under Article 40....." (that means that they must be practices which members or other parties are entitled to complain about). " Any practices which are alleged under Article 40, to be as described in paragraphs 1 and 2 of this Article shall be subject to investigation, in accordance with the procedure regarding complaints....."

MR. F.A. MCGREGOR (Canada) (Contd.): The next part of it has been stolen from the United States, and perhaps it might be better if the United States would speak about their own property, except that I have added to their phrase in the second underlined line "whether these or related practices are as described", when we read that these practices shall be subject to investigation in order that the Organization may determine, in any particular instance, whether these or related practices are as described in this Article.

I think it is desirable to have the Organization empowered to examine related practices when they are investigating practices that have been complained about. If the complaint is about one particular practice and in the course of the investigation the Organization observes that other related practices have been engaged in, it surely should not be necessary to go through all the procedure, to go back to the complainer to ask him if he would like to have that included too. The Organization should be empowered to carry on with that.

Those are all my comments on that paragraph.

Mr. Chairman, in spite of my last sentence, may I make a comment on line three of page 2 which suggests that if this wording is adopted it might be better to change the words "individually or collectively" and to put them after the word "if" to read: "if individually or collectively such commercial enterprises substantially control.....". One of the delegates has suggested that it is bad musically to say "individually or collectively substantially".

CHAIRMAN: Are there any other comments with regard to the Canadian proposal?

MR. W. THAGAARD (Norway): Mr. Chairman, on behalf of the Norwegian delegation I will strongly support the amendments proposed by the Canadian delegation. It seems to me that these amendments ~~give the article as~~ a whole a much better form than in the Draft Charter, and I will especially stress the point that these amendments make it quite clear that the International Trade Organization should limit its activities in these fields to the control of real international trusts and cartels. It means that the Organization shall not interfere with Member countries in internal trust and cartel policy, even if some of the national cartels might have some slight influence on the international trade. The condition is that the cartels or trusts which substantially control or influence trade among two or more countries shall be a substantial control or influence. It seems to me that that is the right way to go.

I shall not prolong the debate, it seems to me that the Canadian delegate has very thoroughly given his reasons for these amendments which are proposed.

CH. IRMAN: The delegate of Belgium.

Mr. THILTGES (Belgium) (Interpretation): Mr. Chairman, in the opinion of the Belgian Delegation, although certain proposals might meet with the agreement of the Commission and ameliorate the Draft (and I am speaking of the Canadian proposals), they still present an aspect which somewhat frightens the Belgian Delegation, because it might lead to a new beginning of discussions which have been so difficult to conclude. Indeed, the Canadian proposal contains the engagement for the Members to take steps when certain practices are applied, even if these practices do not lead to effects which may bear a certain prejudice. This is contained in Article 39, paragraph 1 (a).

Now the second point which gives rise to doubts are certain precisions which are brought in by the Canadian Draft and which concern effective control. The Canadian proposal suggests to introduce the words "to an appreciable measure"; but this is not fully satisfactory. For instance, a firm which controls a certain trade - let us say to 20 per cent. of its complete extent - controls the trade in an appreciable measure, but not completely, and it does not exercise the uttermost influence on this trade, although the control is appreciable.

Furthermore, the Canadian Draft contains the deletion of any reference to at least one objective of the Charter. This is not specifically alluded to. However, I would like to mention it, because this gives me the opportunity to explain the Belgian Amendment. Article 39 contains a reference to Article 1, and Article 1 enumerates the various aims of the Charter. Now many countries have proposed either the deletion or the omission or the addition of certain aims of the Charter. A Delegate has proposed a specific addition of a certain aim of the Charter; but I would call your attention to the fact that the text of Article 1

has not been discussed. Article 1 has not been yet fully discussed, and until the text is fully established, it seems to us impossible to establish a certain order of priority. It seems to us impracticable to establish an order of priority of the aims of the Charter - of its objectives - until those objectives are fully determined.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. HOLMES (United Kingdom): Mr. Chairman, like some previous speakers, I should like to say that in general the Canadian rearrangement of the Article seems to us to have a good deal of logic and convenience, but I do not intend to be entirely intimidated by Mr. MacGregor, and I would feel with our Belgian colleague, for instance, that we should have to look rather carefully at some of the Amendments of wording which the Canadian Amendment introduces - that is apart from the general structure.

I would feel, for instance, much sympathy with what the Belgian Delegate has said in regard to substantial control or influence. We should think that in attempting, perhaps, greater precision, the Canadian Draft really fails in its object. Would not, for instance, the word "influence" lead to a good deal of discussion? It is not even clear, according to the words, whether the word "influence" is governed by the word "substantially". So, as Mr. Macgregor explains, he has altered "a number of" to "two or more countries". Now unless we are going to spend a very great deal of time on this revision, we should feel that there was much to be said for adhering as closely as possible to the text established in London. One could point out that two is a number - more than two is a number - but is that alteration really necessary?

I had also something to say about the proposal 1 (a) of the Canadian text. Here I think Mr. MacGregor indicated that he would be prepared to revert to the original order; perhaps he would also be prepared to drop the word, otherwise <sup>which</sup> has now crept in - a word which, I think, does imply a certain judgment and really adds very little to the sense of the text.

I have also a point to make on paragraph 2, or rather paragraph 3 of the Canadian text, but perhaps that can wait for the moment.

CHAIRMAN: The Delegate of South Africa.

Mr. A.P. VAN DER POST (South Africa): I will not detain the Commission long. In general, I think that the Canadian proposal is to be welcomed as a great improvement on the New York Draft; it makes for clarity; but we have, I find, a number of other amendments to consider on the New York Draft Article 39. It is very difficult to consider these and give fair treatment to these various amendments. We seem to be more or less generally agreed that the Canadian text is an improvement on the original, but we have got to discuss this on the basis of the original, and I would suggest for the consideration of the Commission that before entering into the merits of the wording and so forth, we might accept the Canadian draft as a basis for further discussion in that order, because in principle it does not affect the proposals of 39, but it is better to relate the rest of the discussion and the other amendments to a basic draft, otherwise we have to relate the Canadian draft and the other amendments to the original Article 39. If the Commission would agree that the Canadian order is a better order, than the original one, I suggest that we might use that as a basis for discussion.

CHAIRMAN: The Delegate of Brazil.

M. Monteiro de BARROS (Brazil) (Interpretation): Mr. Chairman, in principle the Brazilian Delegation is inclined to accept the text submitted by the Delegate of Canada as a basis for discussion instead of the New York Draft; but in this connection the Brazilian Delegation would like to make two comments.

Our first remark concerns economic development. Already in London we have introduced our amendment in this connection, and we suggested the explicit mention of the economic development in

Paragraph 1 of Article 39. However, at that stage it was pointed out that economic development was anyway implicitly included since it was proposed to mention it explicitly in sub-paragraph 3 of Article 1. We discuss now Article 39 before the draft of Article 1 is definitely established, and therefore we would like to mention again our desire to see an explicit reference to the economic development of the less industrialised countries, if this economic development is not explicitly mentioned in the final draft of Article 1. Our second comment concerns public enterprise. We have formulated a reservation in London and the Brazilian Delegate still fully abides by this reservation.

CHAIRMAN: With regard to the remarks of the Brazilian Delegate, I would like to point out that for the purposes of our discussion of Chapter VI, we have to assume that Article 1 will be accepted in the form in which it is now. As the Brazilian Delegate knows, it will be some little time before the Preparatory Committee comes to consider Article 1. Therefore, for the purposes of our discussion, we have to take it in the form in which it is in the Report of the Drafting Committee. If, however, later on there should be a change in Article 1, we can always come back to Article 39 and make the appropriate changes, or consider the appropriate changes, suggested by the Delegate of Brazil.

M. LECUYER (France) (Interpretation): The representative of Canada, Mr. McGregor, said modestly that he wishes to present some observations to the Commission. It seems to me that Mr. McGregor should not be so modest - in fact, the proposal submitted by the Canadian delegation is a complete structure in itself, worked out very carefully from the judicial point of view, and it proposes in fact, not only drafting changes, not only changes in the form of the Article, but also some changes in the substance of these provisions. It seems to me that it would be premature now to discuss the substance of the Canadian proposal, but in view of the remarks made by the representatives of Belgium and the United Kingdom, I should like to draw the attention of the Commission to certain risks which we would run if we accepted the Canadian proposal as such. For instance, with regard to the point concerning the various restrictive practices, there may be some additional consideration to be presented, and if you take the Canadian draft as such, we might re-open the previous London discussions. I thought at first sight that we might take up for instance paragraph 1 of the Canadian proposal, but I discovered immediately that paragraph 1 was closely linked with paragraph 2, paragraph 2 with paragraph 3 and that in fact, as soon as one begins to analyse the Canadian proposal, not only the whole Article 39 but indeed the whole Chapter VI is involved. This goes to show how carefully we should proceed in examining the Canadian proposal. Mr. McGregor did the work of a distinguished legal expert, and it seems to me that an element of art is present in his work, and I should like to compare it with the work of an architect. It reminds me, for instance, of a considerable work

which was undertaken at the Paris exhibition of 1937. At this time, as it is well known, the old Palais de Trocadero was entirely transformed and out of the building which was constructed in accordance with the style of 1860, came out a brand new palace, although some parts of the previous structure remained. In fact, changes were operated which went very deeply in the structure of the building. Therefore, I think that the Canadian proposal, which may be compared to such an artistic work, should be considered very carefully. As the representative of the United States said, the text has been submitted to us very recently, and there is another consideration which was not mentioned by the United States representatives, and that is that we have also before us a United States proposal which, on some points, deals with the same question as the Canadian proposal. Therefore, I think that we should study them with all the care and attention they deserve to confront the views in order to try to reach a final and satisfactory solution, but I think that it would be difficult to take the Canadian proposal as the basis of our discussion before we have studied the question of the differences which it might contribute from the outset as compared with the original text, and I submit that question to the Commission.

CHAIRMAN: It has been proposed by the Delegate of South Africa that we should take the Canadian proposal as the basis of our discussion and I take it that the Delegate of France is of the view that we should consider the text as given in the New York Draft as the basis of our discussion.

The Canadian proposal has had very general support regarding it being an improvement in arrangement. Certain Delegates have expressed doubts as to certain changes in substance. I think, therefore, it is the feeling of the Committee that the Canadian proposal, along with the proposal submitted by the United States and Belgium in regard to Article 39, should form a proper subject for detailed study by the Sub-committee.

Therefore I would like to propose that in due course these provisions proposed by the Canadian Delegation, the Belgian Delegation and the United States Delegation be referred to the Sub-committee, but before making that proposal I would like to have the feeling of the Committee as to whether we should proceed now on the basis of the original New York Draft in considering the other amendments which have been proposed, or whether we should take the Canadian proposal as a basis for our discussion.

Does the South African Delegate still wish to sustain the proposal that we take the Canadian proposal as a basis for discussion?

Mr. A. P. VAN DER POST (South Africa): Mr. Chairman, I do not see that there is much difference in principle between the Canadian proposal and the original New York Draft and I would suggest that we take the Canadian proposal as the basis.

CHAIRMAN: Is that agreed?

The Delegate of France.

M. LECUYER (France) (Interpretation): Mr. Chairman, it seems to me advisable to avoid taking as a basis for discussion a proposal which has not been fully studied here and which, on the other hand, is somewhat parallel with a proposal submitted by the Delegation of the United States. As you have pointed out, both proposals could be considered on their merits and conciliated within the Sub-committee, but it seems to me that the text established in New York could usefully be taken as the basis for discussion, with any modifications which will be brought later during the course of the discussion, modifications which are necessary and which we all recognise as such after studying the American and Canadian proposals.

It seems to me that the New York text could, for the time being, be taken as the basis for discussion without prejudice to any re-organization of the text which may prove necessary during the course of the consideration of this text.

CHAIRMAN: The Delegate of the Netherlands.

Dr. P. LEENDERTZ (Netherlands): Mr. Chairman, it is not very clear to me which proposal is to be taken as the basis for discussion, and we may not be in the technical sub-committee which may tackle the subject. I do think, however, that there are one or two points of fundamental interest in the new Draft proposed by Mr. McGregor which have a much wider importance than merely a matter of drafting and wording.

Is it your pleasure that these things should be discussed here now or left to the Technical Sub-committee, in order to be discussed later on in full committee?

CHAIRMAN: I do not think the details of the Canadian proposal are suitable for discussion in full committee. They had much better be considered by the Sub-Committee. But any questions of principle arising out of the proposal would be a proper subject for comment in the Committee.

I must confess that I have a great deal of sympathy with the point of view just expressed by the Delegate of France, and that is that we should stick to the New York Draft as the basis of our discussion, as that is the Draft which was approved for submission to the Preparatory Committee, and that would be without any prejudice to the Canadian proposal, because any amendments we might discuss on the basis of the New York Draft could later on be fitted into the Canadian proposal, for, as the Delegate for South Africa has mentioned, there is really no particular difference in essentials between the two proposals; it is more a matter of re-arrangement,

Has the delegate of South Africa any solution?

Mr. A.P. van der POST (South Africa): Yes, Mr. Chairman, if you are willing: I would only point out that so far as have not discussed the original text at all.

CHAIRMAN: The procedure that we propose is to take the text as it is and consider any amendments or reservations. We have before us the Canadian proposal which is an amendment to Article 39. I think we can agree that the Canadian proposal is a subject better suited for discussion in a Sub-committee than a full Commission.

Unless any delegations have any further comments of a general character to make with regard to the Canadian proposal I propose that it be left over to the end of today's Session when I propose it be referred to the sub-Committee.

Mr. A.P. van der POST (South Africa): Mr. Chairman, when I spoke recently it was only with the intention of raising a question of procedure; it was not a question of examining principle and I do not intend to do so now as this will go to a sub-committee. I merely want to explain that in principle, too, the Canadian order of the draft is welcome to us. There may be perhaps some parts of it with which we do not agree altogether, but I would point out, for example, that the wording "two or more" is welcome to us because it relieves two of our doubts as to what the meaning of the word "monopolistic" is, as to how far that does extend. This clearly indicates that the Article has reference to international cartels, and not to action which may be taken in the local interest of a certain industry.

CHAIRMAN: Are there any other comments with regard to the Canadian proposal and the Belgian proposal in relation to paragraph 1? If not, we will then pass on to paragraph 2.

On page 3 of document W. 132 there is a reference to words in paragraph 2 which were inserted by the Drafting Committee. Those words are: "in accordance with the procedure with respect to complaints provided by the relevant articles in this Chapter." These words were inserted on the motion of the delegate of France by the Drafting Committee in order to make it clear that the investigation procedure provided for in Article 40 should only follow upon specific complaint in accordance with Article 40 and not as a consequence of steps undertaken by the Organization in accordance with Article 41. The Drafting Committee was not certain whether this condition constituted a substantive change or not, because it limited the authority of the Organisation to investigate restrictive business practices on its own issue.

The Drafting Committee decided to include the sentence but to refer the question of any substantive change to the second session of the Preparatory Committee.

It would now like to know the sense of the Commission as to whether this change which has been adopted by the Drafting Committee may be approved.

Mr. S.L. HOLMES (United Kingdom): There is only one point as regards Article 1 which we have not in fact touched on, I think. It may be that it is your intention that a sub-committee should deal with it. It is one of the proposals by the Belgian delegate in W. 130, at the bottom of page 2 of W.132.

CHAIRMAN: Yes, I mentioned that. In dealing with paragraph 1 I said that that proposal of the Belgian delegation was to be referred to the sub-committee.

There being no objections, I take it the changes made by the Drafting Committee are approved.

We have a reservation by the United Kingdom with regard to the insertion of the words "public or" in paragraph 2(b). Does the United Kingdom still wish to maintain that reservation?

MR. S.L. HOLMES (United Kingdom): Mr. Chairman, I think it is paragraph 2(a), is it not?

We should feel it very difficult to withdraw our reservation on this point. We feel that to include these new words (that is to say, new in the London text) would probably lead to confusion, and we cannot feel that anyone would be in any way injured if the London text is reverted to. Article 39, paragraph 1 as it stands will give sufficient protection to Members against the possible conduct of a public monopoly acting independently. In a case of that sort the proper course for Members would be under Article 35.

We quite appreciate that here logic may demand that everything is put on the same level, but we feel that this is one of the cases where logic can be a little misleading, and the question is really fully covered by Article 35 which allows for a general complaint against nullification.

CHAIRMAN: Reservations have also been made regarding the inclusion of "public commercial enterprises" in paragraph 2(a) by the delegates of Brazil and China. Do these delegations still wish to maintain these reservations?

M. T.M. de BARROS FILHO (Brazil) (Interpretation):

Mr. Chairman, the Brazilian delegation is not in a position to withdraw its reservation.

MR. C.H. CHEN (China): Mr. Chairman, the Chinese delegation wishes to say that their reasons are very similar to those given by the delegate of the United Kingdom. The United Kingdom reservation is to omit these words "public or", while our reservation is to omit three words "public commercial enterprises", because we are thinking that there are three Articles dealing with state trading under Section E of the same Charter, so it is quite easy for us to have any other special measures in Articles 31, 32 and 33 dealing with State Trading. We have laid down this principle to admit of state enterprise and also any other measures, which is quite sufficient for the interests of other nations concerned, so we think it is quite unnecessary to include "public commercial enterprises" in this paragraph.

CHAIRMAN: The delegate for Czechoslovakia.

Mr. MINOVSKY (Czechoslovakia) (Interpretation): The Delegation of Czechoslovakia, Mr. Chairman, wishes to support those statements and shares the views of the Delegates of the United Kingdom, Brazil and China.

Mr. TERRILL (United States): The United States Delegation expressed its views on this subject at some length in London. I refer the Commission to those views. The substance of them was that if public enterprises were not subject to this Charter, we would in fact be setting up two standards of commercial morality in world trade. We feel that it would be a distinctly backward step in the Charter to change the text as it now appears. It would have unfortunate psychological consequences in the first place, and in the second place, we agree it would be incorrect in principle. Our reason for that, I think, is that Article 35 relates to the impairment of the Charter as an act for which a Member Government is responsible. It was argued in London at great length and very conclusively by many Delegations whose countries operate industry wholly or partially on a State basis that these enterprises which had been nationalised or were otherwise under public control were operating in accordance with commercial principles.

Now if that is so, I hardly believe that the contention which the United Kingdom Delegate has brought forward, and which was supported by other Delegations, can be sustained.

As to the State-trading section, to which the Delegate from China referred, only Article 31 is of significance, I think, for this particular point which is at issue.

Mr. MINOVSKY (Czechoslovakia) (Interpretation): If we want to avoid a double morality we must also alter the Article which

concerns State enterprise, since they are subjected to different regulations than a private enterprise. Therefore, if we want to avoid a double-deal, we must also alter the Article concerning State enterprise.

Mr. MCGREGOR (Canada): All this phrase says is that if it is thought that public enterprises are engaged in harmful practices they should be subject to investigation. Surely that is not too much to impose in this Chapter.

The phrase "public commercial enterprises" is defined in 2 (a) as meaning trading agencies of Governments for enterprises in which there is effective public control. What we are concerned about, for one thing, is the possibility of a commercial enterprise securing immunity from this Article and this Chapter by securing the sanction of the Government of the country in which it is operating.

Before the war we all know of instances where particular enterprises were sponsored by the State and engaged in practices which were definitely harmful. If we do not include it here, then such private commercial enterprises may secure public sanction and work very very serious damage. If there were a State in the Organisation which controlled all traders - each of the commercial enterprises operated by the State - then that State would not be subject to the provisions of this whole Chapter.

Mr. TERRILL (United States): I just want to extend what I said very slightly, because I think there may be a misunderstanding in the mind of my Czechoslovak colleague. What I meant to imply was that under Article 31 State-control enterprises are to be operated in accordance with commercial principles. If that is the case, and an enterprise is operating entirely in accordance with

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commercial principles, it might nevertheless engage in a number of restrictive business practices. -It might, either singly or in combination with other firms situated in other countries...

Therefore, it is perfectly clear that the sort of commercial activities contemplated in Chapter VI are not covered at all under Article 31, and that is the reason why, if State trading enterprises or national enterprises were not included in Chapter VI you would have them running, in effect, Scot free; or at least not subject to any of the provisions of this Charter, except those to which the United Kingdom Delegate has called attention.

I think, therefore, it is warrantable to say that if we do not include State controlled enterprises within this Chapter we will be setting up a double standard now - whether it is one of morality or not I would not want to dispute - but there would at least be two standards in the world.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, if a Government decides to become a Member of the Organization, it will have accepted, among other things, paragraph 1 of Article 39 in this or some substantially similar form. If a Government engages in a public enterprise and allows that public enterprise to indulge in practices which are fundamentally contrary to Article 39, then it seems to me that we are up against a situation in which the good faith of a Government is involved. That would be a fairly serious matter, and we should feel that that would be a matter where complaints under Article 35 would be appropriate. That is, as we see it, a simple statement of the difficulty. A Government should know what its public enterprises are doing. It is true that they are to conduct themselves on commercial lines for certain purposes elsewhere mentioned here, but we should say that under Article 39 a Government is bound to see that its public enterprises conduct themselves on good commercial lines.

CHAIRMAN: The Delegate of China.

Mr. C.H. CHEN (China): Mr. Chairman, we are inclined to think that state trading is not purely for commercial purposes. It may be for physical purposes or for social purposes. For instance, Article 32, paragraph 4, states "In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for revenue purposes". Such physical monopolies exist even now in China. We have a tobacco monopoly, and so forth, and the Government fix the prices. Similar treatment cannot be afforded to nationals of other countries.

Then there are also other undertakings purely for social purposes. We think that in some enterprises under private management, the profit may be enjoyed only by the few capitalists so it is better to have enterprise under State management. In that case, I think there are some special considerations to keep in mind,

so we are still inclined to think that Article 31, 32 and 37 are not quite sufficient to deal with State enterprises.

Concerning these so-called practices, it is definite to state <sup>in</sup> that/paragraph 3 of Article 39 - that is (a), (b), (c) and (d) - there is a point concerning fixing prices where we are inclined to think that in government enterprises in many cases the prices which are fixed sometimes by law, sometimes by administrative order, are not competitive prices. We cannot avoid that. Then, concerning paragraph 3(b), in some case we have territorial market limitations even within the country. For instance, in China we produce sugar in the West and also in Formosa. If the Formosa sugar is allowed to have free expansion then the sugar industry in Western China will be killed entirely. The same is true in the salt industries. So we have territorial limitations of different kinds of salt or sugar industries.

Concerning limited production in paragraph 3(d), it is also <sup>that</sup> quite natural/if we have social or physical monopoly we often limit the quantity produced. In the case of luxury or tobacco, we do not want to have an unlimited production. We have even specified the process to raise tobacco and so on. So only in the case of (c), that is "discriminating against particular enterprises whether by boycott or otherwise", it seems such practices are, of course, against the international morality and to the detriment of the country and the interests of others, and therefore it should be excluded. We quite agree with the opinion expressed by the United Kingdom delegation, that is that the state should know - that is the government which has such public enterprises should know - what the proper practices which will not be inconsistent with the provisions of this Chapter, are.

CHAIRMAN: It appears that there is a considerable lot of difference of opinion regarding the subject of the inclusion of public commercial enterprises. I would therefore like to propose that this subject be referred to the Sub-Committee which I am going to nominate at the end of this session, to deal with the other proposals and the other amendments. Is that agreeable to the Commission?

Mr. F.A.McGREGOR (Canada): Mr. Chairman, before we leave this subject may I just make one comment, to make clear the remarks of the Delegate of China. I gather that he is of the opinion that State control of domestic trade would come under this Article. Even in Canada we have State control of certain products and they will not be affected.

If the Delegate of China will refer to the statement contained in the Canadian draft of Article 39, he will see that such monopoly as we have in mind must affect international trade and must limit access to markets, and it must have certain harmful effects. It must also substantially control trade among a number of countries in one or more products.

Mr. C.H.CHEN (China): Mr. Chairman, the Chinese Delegation also finds some difficulty in interpreting this Article. For instance, in the passage concerning State enterprises, we say that such enterprises may establish a monopoly in certain commodities, which of course affects international trade to a certain extent. You could interpret this as the enforced monopoly of State control. That might be interpreted as a violation of the Charter, but, on the other hand, in another section State monopolies are permitted. I do not know how these two provisions can be reconciled.

CHAIRMAN: We will leave it to the Sub-committee to endeavour to reconcile the differences of views which have been expressed on this particular subject, in order that they may explore the possibility of reaching a solution.

The next item on our Agenda is a reservation by the Delegate of Chile with regard to the changes which were made in Paragraph 2 by the Drafting Committee.

Does the Chilean Delegation wish to make a statement on that question?

Mr. Harold Briggs VALENCIA (Chile): We withdraw our reservation.

CHAIRMAN: Thank you very much.

We now have a proposed revision of Paragraph 2 by the Delegation of the United States. This revision will also be referred to the Sub-committee, but I would like to ask the Delegate of the United States if he wishes to make any remarks on this proposal.

Mr. Robert P. TERRELL (United States): Mr. Chairman, I think that this revision is adequately explained in the comments that are to be found on page 1 of Document E/PC/T/W/122 of 24th May.

All I can say is that it amazes me that so many people could have gone over an Article so many times and not noted this rather glaring lack of logic.

CHAIRMAN: Are there any comments on the United States proposal?

Dr. P. LEENDERTZ (Netherlands): It is going to be brought to the Sub-committee too, Mr. Chairman. If so, we might perhaps leave it to them.

CHAIRMAN: We will therefore refer the proposal of the United States Delegation to the Sub-committee.

We come next to the proposal of the Canadian Delegation with regard to Paragraphs 2 and 3. I take it, Mr. McGregor, that you have already made all the comments necessary in regard to that part of your proposal?

Mr. F.A. McGREGOR (Canada): Yes, I have.

CHAIRMAN: The Canadian proposal with regard to Paragraphs 2 and 3 will therefore be referred to the Sub-Committee.

Mr. S. L. HOLMES (United Kingdom): I would like to say, if I may, that this seems to us to be a case where it is not merely a matter of drafting but rather that an important question of principle has been introduced. I am in your hands entirely as to whether I explain what the point is or whether our representative on or at the Drafting Committee which you propose to appoint should make the point.

CHAIRMAN: I think this is the place in which to make any comments with regard to the substance pertaining to any of the proposals which have been submitted to the Commission.

MR. S.L. HOLMES (United Kingdom): Mr. Chairman, I should like to be as brief as possible but it will, I think, not escaped Members' notice that the Canadian draft is really very much wider than what we had before. It is wider in, I think, two instances.

Before, we were dealing with a particular complaint about a particular practice. Here, we are dealing with practices alleged to be as described in the earlier parts of this article, but are giving the organization power to determine whether these or related practices are as described in any particular instance. We do not quite understand what the significance is of the phrase "in any particular instance". We would have expected to see "in this particular instance", but in any case we do feel that the addition of the words "or related practices" represents a fairly wide new concept.

CHAIRMAN: Mr. McGregor.

MR. F.A. MCGREGOR (Canada): The United States is the father of the phrase "any particular instance". I shall leave it for the United States to speak on that.

I acknowledge parentage of the words "or related practices" and I did attempt to explain that when I commented on that particular paragraph before. I think it is desirable that when the Organization is investigating a particular practice that has been complained of, and when it finds during the course of that investigation other practices that are related practices that must be of the type that we have described in the earlier part of

the Article, the Organization should be empowered to carry on with the inquiry into these other related practices, rather than have to go back to the original complainant and ask him if he would authorize the Organization to go ahead with that. It just seems commonsense, when you are making an inquiry and there is another practice which is forbidden in the Charter, to go ahead and complete the investigation in that too. That is the purpose I had in putting that in.

MR. R.P. TERRILL (United States): Mr. Chairman, I am happy to report that an ambiguity of the English language has been cleared up. The delegate of the United Kingdom called attention to the possible meaning of the phrase "in any particular instance", which the United States reviewed in Document 122. It is one that is connected with the clause "in order that the Organization may determine, in any particular instance, whether such practices have <sup>are</sup> or/about to have any of the effects described".

The purpose of inserting "in any particular instance" was to narrow down the Organization's function beyond equivocation. That is to say, the Organization would not come out with the conclusion, let us say, that suppression of technology is always bad. It would be bad in this particular instance that it had under examination as a result of complaint.

I assume that it has a limiting significance in that context as well as in the context in which Mr. McGregor used it. Mr. McGregor admits to being something of a cannibal, and he has cannibalised my modest suggestion to put into his new edifice which the delegate of France has described so adequately.

However, there might still be some ambiguity, and it has been suggested to me by my learned colleague from the United Kingdom that this could be removed by substituting the word "the" for the word "any" in the phrase in question. It would then read "in order that the Organization may determine, in the particular instance,". I think his suggestion is entirely acceptable to the United States.

Mr. MCGREGOR (Canada): Mr. Chairman, in denying the American phrase I did not want to imply that I disliked the child I thought well of it. I am afraid, though, in yielding to the influence of his next-door neighbour, the Delegate of the United States has made it difficult for my child to live.

CHAIRMAN: No doubt all these alterations will be taken into account by the Drafting Committee.

Mr. THILTGES (Belgium) (Interpretation): I think that after the discussion to find out the 'paternity', I partly agree with the United Kingdom representative; and on the first point I am particularly happy with the explanation supplied by the United States representative. Now as regards the extension of investigations to related practices on which no complaint has been lodged, I must make formal reservations on the part of my Delegation, and my Delegation cannot agree with this new procedure.

CHAIRMAN: There being no further comments, I propose that this Canadian proposal be referred to the Sub-Committee.

Well, the time is getting late and I would just like to deal before we close with the Amendment proposed by the Delegation of Czechoslovakia to delete the words "or to be about to have" in line 7 of the New York text of paragraph 2.

Mr. MINOVSKY (Czechoslovakia) (Interpretation): The Delegation of Czechoslovakia, Mr. Chairman, is of the opinion that any investigation undertaken by the Organisation should bear on facts only. If the words to which we object with regard to practices - "or to be about to have" - are excepted, the result may be that the Organisation will be engaged too often in a sort of

guesswork, and too many useless investigations may take place.

Also there is a danger that if these words are adopted there will be too much room for wide interpretations of para. 3 of Article 39. We think that if it is our desire to have in the future careful investigations conducted by the Organisation with sufficient facts to support them, we must exclude any possibility for investigations to be undertaken on the basis of imaginary complaints, or misunderstandings, or perhaps even, in some cases, of bad faith. If we were to call a fireman every time there is the possibility of a fire starting, we would never have enough firemen.

CHAIRMAN: The Delegate of South Africa.

Mr. VAN DER POST (South Africa): In this connection I would say that Article 2 as drafted in New York in effect forces the ITO to pre-judge the case, and the words "or to be about to have" are not in my opinion satisfactory, and should be removed - the words "to have or to be about to have"; but fortunately both Amendments - that of the United States and of Canada - provide for that improvement, and the Organisation will then be placed in a position to decide what the actual position is, and not to pre-judge it. As it originally reads it would, moreover, have to assume that that is the case and therefore provided and in that respect, of course, I agree with the Delegate for Czechoslovakia. But fortunately, as I see these two proposed Amendments which our Committee will consider, it removes that objection.

CHAIRMAN: These words occur in a number of different places, and I think it will be the function of the Sub-Committee to consider changes in these words whenever they appear.

Therefore, if the Commission agrees, I propose that the Amendment of the Czechoslovak Delegation be referred to the Sub-Committee.

Agreed.

Well, I think we have come to the end of our labours. We have not made as much progress as I had hoped. I wanted to see us come to the end of Article 39, and we have not been able to do so; but I hope we will be able to work more speedily to-morrow afternoon.

The next meeting of this Commission will be held at 3 o'clock to-morrow. In the meantime, I wish to make an announcement with regard to the composition of the Sub-Committee to which we will refer the Amendments proposed by the Delegations of Canada, Belgium, the United States and other questions which we referred to the Sub-Committee this afternoon - that is, other than the question of services.

We will therefore have two Sub-Committees - one will be Sub-Committee No. 1, which we appointed earlier this afternoon, to deal with the question of services. That Sub-Committee should meet to-morrow morning. The second Sub-Committee, which I propose to nominate now, should meet on Monday; as it may be overlapping representation on the two Sub-Committees it would be desirable for Sub-Committee No. 1 to finish its deliberations before Monday.

The following are the Delegations which I propose to constitute Sub-Committee No. 2: Belgium, Brazil, Canada, France, United Kingdom and the United States.

The Meeting rose at 6 p.m.