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

VERBATIM REPORT

THIRD MEETING OF COMMISSION B

HELD ON FRIDAY, 30 MAY 1947, AT 3 p.m. IN THE PALAIS DES NATIONS, GENEVA

Hon. L.D. WILGRESS (Chairman) (Canada)

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CHAIRMAN: The meeting is called to order.

The first item in our Agenda today is the proposal of the delegation of Belgium to insert a new clause following sub-paragraph (b)of paragraph 2. Could the Belgian delegate explain if any questions of substance are raised in this proposal.

M. THILTGES (Belgium) (Interpretation): The Belgian proposal is inspired by situations which were put forward and justified in London, but after the compromise was reached then it was decided to give up the unfavourable assumption. The Belgian delegate made an objection to the fact that boycott was left together with other practices, and at that time we were already of the opinion that such practices did not deserve to be dispensed of the unfavourable assumption. The same remark also applies to another practice which does not deserve the position of neutrality that was adopted. I refer to the practice dealing with the deletion of technique and the utilization of new methods.

Finally, there was another practice which also did not deserve the benefit of athe abandonment of the unfavourable assumption.

Our Amendment made a reference - I do not know whether this Amendment has been received in time - but it made a reference to a sub-paragraph (g) in which we proposed to take up the existing text of paragraph (f); but having taken cognisance of certain remarks circulated this morning by the Netherlands Delegation on this paragraph, and taking also into account some obscurity in the text as was pointed out in London, we would not insist on inserting paragraph (g) - that is, former paragraph (f) - among those practices for which an unfavourable assumption could be re-established.

Finally, we do not think that it would be possible here and now to establish a kind of international jurisdiction and of condemnation of particular practices, but we do hope that in the course of time it will be possible to draw up a kind of legal code to determine those practices for which it is possible to establish a jurisdiction, in order to determine in advance what is prohibited and what is not.

However, if this should result in a greater extension of the unfavourable assumption than is permissible, then in that case we would not insist.

CHAIRMAN: Does any Delegation wish to speak?

The Delegate of the Netherlands.

Mr. LEENDERTZ (Netherlands): Mr. Chairman, it is with great pleasure that I have heard the wor ds of my colleague of Belgium, and I notice with special pleasure that he agrees to let drop the (g) in his Amendment. Further, I think I can fully agree to the spirit in which the Belgian Amendment has been drawn up. The idea is to make a difference between those practices which would be harmful in advance, and those others which ought to be investigated at the time as to whether or not they would have harmful effects.

While sharing that spirit, I still ask myself whether it would not be better not to introduce again that idea of an assumption of harmfulness which we debated so extensively in London.

I do think that one or two points, such as boycott, are so harmful that it is not necessary to bring in the assumption in the Charter, but just make it clear that they would be harmful. But I do think that if we start to introduce that assumption, which on principle is not admissible, to our opinion, in a case in which a plaintiff and a defendant are in front of one another, I should be very glad indeed if the Belgian Delegate would be able to agree to this point of view, as I think I have already understood from his words that he would be willing to do.

CHAIRMAN: Does the Belgian Delegate wish to reply?

(The Belgian Delegate agrees.)

CHAIRMAN: Any other Delegate wish to speak to the motion?

If not I would like to propose that this should be referred to Sub-Committee 2 for further study. Does that meet with the agreement of the Members of the Commission?

Agreed.

I take it that the same would apply to the observations of the Delegation of the Netherlands circulated this morning in paper W/138, together with Amendments to the wording of sub-paragraph (f) of paragraph 3 of Article 39. Shall that be referred to the Sub-Committee? Is that agreed?

Agreed.

The next question on our Agenda is a proposed addition to paragraph 2 by the Delegate of Brazil. Does the Delegate of Brazil wish to explain his proposal?

M. Monteiro de BARROS (Brazil) (Interpretation): Mr.Chairman, in the course of the first discussions in London certain Delegations took rather a drastic view of restrictive practices and considered them to be barriers against the expansion of world trade. Other Delegations, on the other hand, saw certain advantages in restrictive practices when they were applied in a reasonable way, first of all as regards the stability of national industries, and, to a certain extent, they saw that they would help the expansion of new techniques and the steady development of science in the various countries.

In London, therefore, one came to the conclusion that restrictive practices had a bad side and a good side, and that one could see good and evil in these coalition arrangements. The main difficulty was to find the difference between what was good and what was bad in such coalitions, and the difficulties are known. Therefore, we think that is for a supreme authority to determine if the effects are good or bad, and to further the good effects and impede the bad effects of these arrangements so as to avoid their leading trade on to an evil road.

This is the purpose of our amendment. We think that the previous registration of such coalition arrangements is necessary, because it will in a way facilitate the control of such arrangements. In fact, the major inconvenience of such coalition arrangements derives from their clandestine character, and they are bad because they are not known in most cases. The aim of our amendment is to open the eyes of the Member countries about such arrangements, and to bring into the open their true nature.

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The practical difficulties which are contained in the implementation of such a disposition will be met by experts. What we have to do here is to write in the principle in the Charter and, in fact, once the Charter is implemented it will be for us to improve it when we go on. Now, in our clause here we presume that the coalitions which have not been registered will be presumed to be harmful and have harmful effects, and therefore these ill effects will have to be sanctioned. I could say that there is a presumption of harmful effects and that is a bad part of our clause which is important.

Mr. W. THAGAARD (Norway): Mr. Chairman, the Norwegian delegation is in favour of the registration. However, having studied the matter more carefully we have come to the conclusion that the proposed registration will not work according to the purpose. We must keep in mind that the registration can only cover some more external facts concerning the trusts and the cartels. We can register the different terms and a formal connection between them, the contents of the agreements and so on, but we cannot register all the things that the trusts and cartels are doing, and knowledge about that is specially important if we will try to find the real character. Therefore, to be effective the registration ought to be combined with the clause Supervisional activities of the Trusts and Cartels. We have done it this way in Norway, and it has also been done in other countries. The system has worked well in Norway, but to establish such a system on an international basis is quite another thing. We would need a huge machinery and an enforcement of supervision would place far-reaching obligations on the member countries. I feel that such a proposal has many drawbacks. In either case, I do not think we

should start this in such a way. It is better first to wait and see how the international control will work without such an all-embracing registration and supervision. Rome was not built in a day, and I imagine we will need some time to build an appropriate International Trade Organization. It will have to take time, according to my view.

Mr. F.A. McGREGOR (Canada): As you see, Mr. Chairman, I am the next door neighbour of my esteemed friend from Brazil, but I can assure you I have not been subject to any influence or control, either substantial or effective, on his part - nor has there been any intimidation. I am very much impressed by the earnest desire on the part of those who favour this proposal to provide means which they consider would assist the Organization in eliminating restrictive business practices that are harmful. Canada would support the proposal very enthusiastically if we could believe that, on the whole, it would further that end. On the face of it, the proposal to have all cartels registered appears to be excellent. If it worked, the Organization would have before it every agreement on practices that appeared to be obnoxious - all the material in neat form, ready to be subjected to close scrutiny in order to determine whether they were good or not so good. It is a tempting proposition - one that has intrigued us in Canada as a means of enforcing our own registration on combines and monopolies, but the more closely we have examined the registration idea, the more convinced we have become that, in the long run, our objectives to enforce the law would not be as well achieved by this means as without it. One of the principle reasons that weighed with us

is that registration would be tantamount to a licensing of the registered combinations to carry on its programme. The Organization would file its agreement as an application, in a sense, to do what it was doing. Registration might well be considered then as a government sanction to the group to do what they had agreed to do, but our experience is that many such agreements - and this is particularly true of the ones that the parties think may come under our observation - are prepared so carefully as to tell something less than the whole story, to omit or cover up the essential features which might come under the ban of registration. Any good lawyer can make a good case for a bad agreement. Once the agreement were filed, the parties would probably feel entitled - and perhaps with some justification - that they could carry on with the restrictive programme until they were checked by the governmental organization. I think those who have made this proposal may be under some illusion as to the number of agreements that would be filed. It is impossible to specify that only those that are bad or that could be suspected of being bad, should be registered and thus limit the number. It would be exceedingly difficult also to distinguish between the various types of agreements, contracts of sales, and also the various types of recorded business transactions in international trade. What I would feel is that the volume of documents that would be received and registered would run into the hundreds and thousands, and only a small fraction of one per cent of the total would be of real interest to the Organization. You have to have buildings to accommodate them, and you have to build up a tremendous international civil service to do the routine work of examining documents, ninety-nine per cent or more of which would not be of any interest to the Organization. That would be a pretty serious thing for the ITO to undertake.

Again, the idea is very appealing on the face of it, but we in Canada, from the experience that we have had - not of it but in thinking about it and realising what the effect would be on our domestic situation - would not be inclined to favour the inclusion of this proposal.
Thank you, Mr. Chairman.

THE CHAIRMAN: The delegate of Chile.

M. F. GARCIA-OLDINI (Chile) (Interpretation): Mr. Chairman, we acknowledge the difficulties which would be involved in the application of a control through registration of these international combinations and, as one delegate pointed out just now, one must make a start, and if we do not point out here these difficulties, if we do not take the first step, and even if that step were only to be a small one, if it were to be in some ways rather inefficient, and by our action we did not at first grasp the whole of the problem, it would be nevertheless better than not doing anything. Because if we do not start now, well, maybe we will never do anything in this matter, and I know quite well that these enterprises and these combinations have many faces and when you try to grasp them by one end they will slip from your fingers in another way. Nevertheless, it would be very curious if we were in our Charter to control the States and if we were not to do anything about private enterprise. Therefore I am in favour of the Brazilian amendment in its present form or in the form of another text, because I think this principle must be laid down in our Charter.

There is one thing which maybe could be modified and that is this presumption here that these combinations, when not registered, would be presumed to have harmful effects; we may be able to drop that clause in this paragraph, and it may be sufficient to note down that in the course of our discussion this was mentioned.

For all these reasons I second the Brazilian amendment in its present form or in a modified form, taking into account the remarks I have just made.

CHAIRMAN: Is there any other speaker?

Mr. ROBERT P. TERRILL: (United States): Mr. Chairman, I think that we were one of the delegations at London to whom the delegate from Brazil referred as being somewhat out of sympathy with this proposal for registration. I might just say that personally, as one who has done some research in this field, nothing would please me more than to have access to all of the agreements between business enterprises in the world, or in one place. I am sure I could spend a happy old age putting things together! From that standpoint the idea really intrigues me. However, (a point on which I would agree with the statement that our Canadian colleague has made, perhaps better than I could,) is that first, on grounds of principle, it would seem that the project would serve no useful purpose and would indeed I am afraid be contrary to the mode of operation of the agency that we have set up. Let me remind you that this agency operates on the basis of specific complaints. It is not, as it were, a workshop or laboratory in which things are discovered and brought to light and remedied, as one might say, on their own merits. Therefore the time to get facts is when a complaint has been lodged, and we have provided an elaborate process of enquiry by the Organization. Even that will be costly and time-consuming.

The second reason for not favouring this proposal is a practical one and it is one which will assume, I think, considerable importance. I will explain in more detail in a moment, but let me say first that if the registration of these agreements and their analysis was to be at all complete or even to be respectable it would require a very large staff of expertly trained people: I should say that the staff would have to run perhaps between one and two hundred and, having had some experience in recruiting and organizing staffs of this kind who do analytical work, I think I can speak with a fair amount of knowledge: and the subject matter to be registered would have to be extremely complex. We in the United States gave very serious consideration to this proposal, and went so far as to draft a Statute.

Let me read a little bit from that Statute to you to give you an idea of the scope of the material that has to be registered:

"It shall be the duty of each domestic company and of each foreign company doing business in the United States to register with the Attorney General a copy of any foreign contract (or if unwritten, a copy of the terms thereof), in which it or its affiliate participates and which contains in form or substance any of the following terms, conditions, or provisions:

(a) A restriction, limitation, or prohibition upon the amount, types, or kinds of commodities, services or processes which any party to the contract, or any nonparty, shall be permitted or authorized to produce, manufacture, sell, use, lease, or purchase.

(b) Any agreement as to the prices to be paid or to be charged for any amount, type, or kind of commodity or process bought from or sold to any third party.

(c) Any allocation, division, or apportionment between parties to the contract, or between a party and any non-party, of any territory or markets in which any operations or activities of any business l shall be conducted.

(d) Any agreement to form or to use, for the purpose of conducting joint operations or a joint venture, any corporation, partnership, unincorporated association, company, or legal person or entity.

(e) A license, cross-license, or sublicense in or under any United States or foreign patent or patent application, or any United States or foreign registered trade-mark or trade-mark application; or an agreement to grant in the future any such license, cross-license, or sub-license; or an agreement not to sue for the infringement of any patent or registered trade mark.

(f) Any assignment of (or of any interest in) any United States or foreign patent or patent application, or any United States or foreign registered trade-mark or trade-mark application: Provided, however ....." I

I shall not go on!

MR. R.P. TERRILL (United States) (Contd.): That Bill, if it had become law, would have resulted in tons and tons of literature and subsequently, in order to keep within the law, companies would have had to file from day to day inter-office matter and memoranda between themselves and other companies that might be material to any contract. Then, to make sense of these contracts, since each company frequently has many contracts, you would have to have analysts to draw these separate documents together and to keep them up to date in the light of new subsidiary or collateral instruments that the company might have signed. The result of this was that we abandoned the idea, because it would have been so extremely costly, as well as for reasons of general principle.

Now, that cost feature would be multiplied many times over if we did that on an international scale, and it would involve governments as well as the International Organization in a great deal of expense, and would give rise to many serious problems. I have not read all the provisions in this proposed legislation, one of which, to mention it, relates to secrecy of trade arrangements in cases where the Attorney General so decrees. Many other administrative problems have been mentioned.

The ITO will be called upon to do so many things with such a limited project, that I think it would be very unwise to use half, or maybe three-quarters, of its funds which would be required for a staff of a hundred people or more, for their transportation, their housing and care, for this particular plan.

It might do a great deal of harm, but we have a saying in the United States. It is something like this "rubbing butter on a baby's heel might not do much harm, but it might do some good". Even if you accept that proverb in this case, I doubt if it would be worth the cost that is envolved.

CHAIRMAN: Before we proceed with the translation of the speech of the United States delegate, I would like to ask those members of the Commission who do not understand English, and also Mr. Terrill, if it would be in order to dispense with the translation of the text read by the United States delegate which is very technical and difficult to interpret.

MR. F. GARCIA-OLDINI (Chile) (Interpretation): What will happen in the case of those persons who do not understand English? It would be favourable for us to have even an incomplete translation rather than no translation at all.

CHAIRMAN: In that case the interpreters will do their best.

CHAIRMAN: I wish to congratulate the Interpreter for proving that I was wrong in thinking American legal language was difficult to translate.

THE INTERPRETER: Thank you, Mr. Chairman.

CHAIRMAN: It seems we have had a very full discussion of the Brazilian Amendment - their proposed addition to paragraph 2 - and I am wondering if we cannot now come to a decision as to what course we should pursue with regard to this proposal. We can either obtain the sense of the Commission regarding the Brazilian proposal, or we can refer it to the Sub-Committee 2 for further study. It does not seem to me to be of a character which would permit much chance of the resolution of difficulties in a Sub-Committee; there seems to be either of two courses open: either to register agreements, or not register agreements, and I have found a little difficulty in seeing how the Sub-Committee could further the study of this question any more than we can in this Commission; and therefore I would like to take the sense of the Commission as to whether or not it might not be better to take a vote now on this question, rather than refer it to the Sub-Committee.

Does any Member of the Commission wish to speak on the question of procedure.

The Delegate of the Netherlands.

Mr. LEENDERTZ (Netherlands): I only want to make the point that if we pronounce ourselves now on the principle ' to have or to have not ', the interesting point in this thing is that here is proposed a certain sanction, and I do not think it is right to introduce it in the Charter itself. I have no objection to it, but I would like to discuss that point at some time, if the

principle would be agreed to; but if not, then it would not be necessary.

CHAIRMAN: If the question of principle is adopted, that there should be registration of agreements, the text of the Brazilian Amendment will then have to be referred to the Sub-Committee for further study of the text.

The Delegate of the United Kingdom.

Mr. HOLMES (United Kingdom): Mr. Chairman I only wish to say that perhaps it might be better, in view of the very weighty arguments which have been advanced against the proposal, that the Brazilian Delegate might consider withdrawing the proposal rather than that we should proceed to a vote on it.

CHAIRMAN: The Delegate of Brazil.

M. Monteiro de BARROS (Brazil) (Interpretation): Mr. Chairman, I was not impressed by the arguments which were given here, nor by the list which the Delegate of the United States read to us. I do not speak English, but I read it, and I am quite familiar with the list which he read out and, therefore, it did not come as a surprise to me.

Now, taking this matter from a practical point of view, I want to state that there are two sorts of countries. There are poor countries which only have an undeveloped industry and which bear the effects of these international combinations; and there are countries in which these international combinations are located and it may not be in their interests to suppress such combinations.

I am speaking here in the interests of these poor and undeveloped countries. Therefore, I was not convinced by the arguments which were put out here, and I want to claim the initiative of the proposal I have made, even if that proposal were to be rejected by this Commission, because it seems to me this proposal will be adopted one day and I want it to be known on that day that it was Brazil who carried the initiative for that proposal.

The matter contained in our proposal is of a very serious nature, and I do not think, like you, Mr. Chairman, that there are only two possible solutions to the problem. In fact, we could come to a compromise, and we could refer the Brazilian amendment to, let us say, Article 76 of the Charter and draft it in such a way as to be a recommendation to the I.T.O. for the study of the cartels, and therefore I think it is a matter which ought to be considered by the sub-Committee.

CHAIRMAN: The Delegate of Belgium.

M. THILTGES (Belgium) (Interpretation): I apologise, Mr. Chairman, for prolonging the discussion now, but I have not taken part in it so far. We have considered the Brazilian proposal with sympathy; but we have listened to the various serious arguments brought here by the United States Delegate with sympathy too.

I must say that if the Brazilian proposal should be sent to the sub-Committee, we must take into account that the sub-Committee, in accordance with their mandate, have to deal with restrictive practices in accordance with the text of the Charter: practices "engaged in or made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises...or between private and public commercial enterprises"; whereas the proposal put forward by the Delegation of Brazil contemplates a compulsory registration for international combinations.

The Brazilian proposal does not, therefore, cover the whole field of restrictive practices, and my conclusion is that if the Brazilian proposal should be transmitted to the sub-Committee on restrictive practices, the sub-Committee should consider the possibility of extending the Brazilian proposal to all restrictive practices which fall under the definition--not only limit them to international combinations or coalitions as stated in the Brazilian proposal.

CHAIRMAN: The Delegate of France.

M. LECUYER (France) (Interpretation): Mr. Chairman, I would like to say a few words on this question of procedure. I think that the majority of the members of this Commission - and I share their view - think that the publicity and registration of such a combination are very interesting and should be extremely useful, But from a material point of view there is an impossibility of getting this registration and the necessary publicity done. If the Brazilian delegate, as he has suggested, considers that his proposal can be put in another form, then we could ask the Brazilian delegate to withdraw his present proposal and substitute it by another one which would be studied when we come to the study of Chapter VIII, because I think he mentioned Article 76. It seems to me that few members here, if any, are hostile to the furthering of studies on these international combinations, and this will be something which will have to be done by the Organization, and if I may give the French point of view on the question, I would like to state that we are all in favour of the principle of registration because we have prepared, in our internal legislation, a draft law which will only be submitted to our national assembly once the Charter is registered, which, in fact, provides for the registration of such combinations. Therefore you can see, Gentlemen, that we are certainly not hostile to the substance of this proposal, but we see now that, from a practical and material point of view, this principle has not been properly implemented.

CHAIRMAN: In view of the fact that the delegate of Brazil considers that a compromise might be possible on this question, I take it that it is his desire, and probably the desire of the Commission, that this question should be referred to the Sub-

Committee for further study. I have listened with careful attention to what has just been said by the delegate for France, regarding a proposal that the Brazilian delegate should withdraw his amendment and introduce his amendment under Chapter VIII, Article 76. I would like to point out that Chapter VIII is really concerned with the Organization of the ITO, and that the purpose of Article 76 would be to give effect to what is already provided for in Chapter VI. Therefore, it would be better, if any provision was made, for the further study of this question by the International Trade Organization, that it should be included in Article 41 rather than in Article 76. I mention that in order that the members of the Commission should realise clearly the relation between Article 76 and Chapter VI. I take it that it is agreed that the Brazilian amendment should be referred to the Sub-Committee for further study?

Mr. A.P. van der POST (South Africa): Mr. Chairman, I understand, from the sense of the general trend of the Commission, that the majority of the Commission is opposed to this proposal from the point of view of its impracticability and from the point of view of the principle, and now to refer this to the Sub-Committee would mean that, broadly speaking, we feel that there is something in the proposal and that we could accept it to a certain extent in principle. Personally, not to argue the question of practicability, I would just mention that, in my opinion, the proposal seems to be wrong in principle, and I do not think that by referring it to the Sub-Committee it would serve any purpose if the Commission, as such, should judge it to be wrong in principle. My reason for saying that is wrong in principle, is the provision that,

unless registered, an organization that is treated in this sub-section should be presumed to have harmful effects. Now, is non-registration to be proof of guilt? I think that is much too sweeping a statement. It is a gross presumption. It condemns without according the opportunity of being heard. One might test them by asking the contrary opinion. Is registration to be considered as a proof that the Organization, or the association, or the company, that registers, has nothing wrong in itself? That also is too sweeping. It praises without allowing the opportunity to be heard or examined. If registration is not to be presumed to be a proof of soundness, then examination of the document registered would be necessary if registration is to serve any purpose. I think it has been shown sufficiently clearly here today that it is impracticable to have all those documents examined and then still to go further to accord some degree of publicity, but the proposal seems there, not to be prepared to accept the consequences of publicity; due regard being paid to the legitimate interests of enterprises concerned. Now, what kind of publicity has the Organization to give? It places an onus on its Organizations and on its officials. Documents are to be registered with the association and then the association is to give publicity to those documents? And yet, it has to safeguard the legitimate interests of the enterprises concerned and an impossible onus has been placed on the organization and its officials. In principle, therefore, I am strongly opposed to this. I do not think it can serve any purpose for us to refer it to the Sub-Committee.

CHAIRMAN: Mr. McGregor

Mr. F.A.McGREGOR (Canada): I followed up your suggestion about Article 41 by suggesting to Mr. de Barros that the question could be made the subject of the exhaustive inquiry that would be necessary if there were inserted in Article 41, Paragraph 1(a), a separate sub-paragraph (iii), which would provide for the study by the Organization of the proposal for compulsory registration.

I think if the present discussion were at least postponed now, the Delegate for Brazil might consider bringing in a proposal at tomorrow morning's meeting that would cover it. I am not speaking for the Delegate for Brazil -- I have brought no influence to bear on him at all -- but I suggest that that solution might be acceptable to the rest of us and might perhaps be acceptable also to the Brazilian Delegation.

CHAIRMAN: I would like to comment on the proposal just made by the Canadian Delegate; that if the Brazilian Delegate wishes to withdraw his amendment and introduce another amendment on Article 41, that is a question which might suitably be considered by the sub-committee.

It seems that we are now faced with the question as to whether or not this whole matter should be referred to the sub-committee. My estimate of the feeling of the Commission, that the matter should be referred to the sub-committee, has been questioned by the Delegate of South Africa, who is of the opinion that it should not be referred to the sub-committee. So I think it is necessary, in order that we may obtain the feeling of the Commission on this question of procedure, to take

a vote on whether or not the Brazilian amendment should be referred to the sub-committee.

Will all those in favour of referring it to the sub-committee please raise their hands.

(Six hands were raised)

Against?

(Six hands were raised)

I think we shall have to take a Roll Call, because it is very difficult for the Executive Secretary to count the hands.

CHAIRMAN: Will those in favour of reference to the sub-committee please answer "yes", and those against reference to the sub-committee please answer "no".

AUSTRALIA	No
BELGIUM and LUXEMBOURG	No
BRAZIL	Yes
CANADA	No
CHILE	Yes
CHINA	Yes
CUBA	Yes
CZECHOSLOVAKIA	No
FRANCE	No
SYRIA and LEBANON	(Not present)
INDIA	Yes
NORWAY	No
NETHERLANDS	No
NEW ZEALAND	Yes
SOUTH AFRICA	No
UNITED STATES	No
UNITED KINGDOM	No

CHAIRMAN: The proposal to refer the question to the sub-committee is lost by 6 votes for and 10 against.

I interpret that vote to mean that the Brazilian amendment is not carried.

We shall now pass on to the next order of business. It seems to me that the remaining points under Article 39 which are listed under paragraph 3 on pages 4 and 5 of document W132 are most suitable for reference to sub-committee 2. They are

drafting points insofar as they give rise to questions of substance and these questions could better be dealt with in the sub-committee than in full commission. Therefore, I would propose that the remainder of Article 39 be referred to sub-committee 2. Is that agreeable?

Agreed.

I have pleasure in announcing that the sub-committee which we appointed yesterday to deal with the question of the inclusion or exclusion of services in relation to Article 39 and Article 45 have completed their work. I would therefore like to call upon Dr. Leendertz, the delegate of the Netherlands, and Chairman of the sub-committee, to report the findings of the sub-committee.

DR. P. LEENDERTZ (Netherlands): Mr. Chairman, the sub-committee met today twice and they appointed a drafting committee and the drafting committee has drawn up draft Article 44a, in which Article the conclusions of the sub-committee have been laid down, and I am happy to say that those conclusions were arrived at unanimously - the Article has just been circulated between members here, so I do not think you will require me to read it aloud, although I am quite prepared to do so. Perhaps I may refer to that paper which has been described here, and that Article 44 might come up in its own good time before the Committee.

CHAIRMAN: I would like to thank you Dr. Leedertz for submitting this report. I wish to thank you and all the members of the sub-committee for the very excellent work you have done in the sub-committee and for drafting your unanimous report in such a short period of time. I think your sub-committee can be regarded as an example for all sub-committees.

DR. P. LEENDERTZ (Netherlands): Thank you very much, Mr. Chairman, I would like to thank the Secretariat for their help.

CHAIRMAN: The report of the sub-committee has been circulated in W/144, but as the members of the Commission have just received it, you cannot expect that discussion should take place now. I would therefore propose that this matter be held over until we come to consider Article 44a when we discuss Article 45 tomorrow. I propose that we now pass on to Article 40.

I have made a study of Article 40 and the amendments which have been submitted thereto, together with the reservation to the drafting committee's report and it appears to the Chair that there are three questions of substance raised in Article 40.

The first is the reservation by the delegate of the Netherlands and a somewhat similar reservation by the delegate of Czechoslovakia, mentioned on page 8 of document W/132, regarding the question of the possibility of taking a case to the International Court of Justice.

The other two questions on substance regarding Article 40 are raised in the Australian amendment and in the United Kingdom amendment. I would therefore suggest that we confine our discussion to these three points of substance and that the other matters pertaining to Article 40 be referred to sub-committee 2.

Mr. LECUYER (France): (Interpretation): Mr. Chairman, I do not know if it would be completely correct to consider the Amendment which was proposed in New York by the United Kingdom and French Delegations as strictly an Amendment of form.

I have no objection, of course, to seeing this Amendment sent to the Sub-Committee for study; but in fact if this Amendment was not given more consideration in New York it was because in New York the Members of the Committee considered it to be a substantive Amendment; and therefore, as I have stated, I have no objection to seeing that Amendment sent to the Sub-Committee; but I wanted to raise the point here because maybe the full Committee may think it wise to discuss it here.

CHAIRMAN: Under those circumstances I think an opportunity should be given to the Delegations concerned to put their views to the full Commission, and we will take up this matter after consideration of the other question I have just mentioned.

There being no other comments on the proposed procedure, I take it it is approved.

We will therefore take up first the question of a reservation of the Delegates of the Netherlands and Czechoslovakia regarding taking a case to the International Court of Justice.

Mr. LEENDERTZ (Netherlands): Mr. Chairman, I have been instructed to inform you that we have found that the reservation we made on such lines as we did there does not meet sufficient agreement between the other Members of the Conference in order to maintain it. So we are prepared to withdraw it on the assumption, nevertheless, that within the Organisation there will be an independent and impartial body to go into and decide upon questions. This is a matter which, of course, has come forward in another Chapter, Chapter VIII, and not here.

This does not mean we should not be in sympathy with the proposal of the Czechoslovak Delegation, but perhaps there might be some way that, as a very last instance, an appeal to the International Court might be possible.

CHAIRMAN: The Delegate of Czechoslovakia.

Mr. MINOVSKY (Czechoslovakia) (Interpretation): Mr. Chairman, we will not press our point and ask the Committee to share our opinion on this matter, and we are ready to agree to send this question to the study of the Sub-Committee and accept the conclusions of the Sub-Committee on the matter.

CHAIRMAN: The Czechoslovak Delegate has proposed that this question be referred to the Sub-Committee. Is that agreed?

The Delegate of the United States.

Mr. TERRILL (United States): Mr. Chairman, I have not as yet heard any reasoning on the part of any Delegation which would lead the United States Delegation to any realisation of the need for such a provision in this Article. I call your attention to (I believe it is) Article 86 - Interpretation and settlement of disputes - which already provides - and I paraphrase - "any other ruling of the Conference may, in accordance with such procedures as the Conference shall establish, be submitted by any party to the dispute to the International Court of Justice."

I should think that that would cover the matter sufficiently. If it does not, and if there is a special case for the submission of disputes arising out of the procedure under Chapter VI, I for one would be gratified to hear of them before deciding whether it should be sent to the Sub-Committee for their further consideration.

CHAIRMAN: Does the Delegate of Czechoslovakia wish to comment?

M. Stanislav MINOVSKY (Czechoslovakia) (Interpretation): Mr. Chairman, I think we can be in agreement with what the United States Delegate has just said, and therefore we shall not press our issue.

CHAIRMAN: I wish to thank the Delegates of the Netherlands and Czechoslovakia for having withdrawn their reservations on this question.

The next item on our agenda is the amendment proposed by the Delegation of Australia, which is in effect a re-arrangement and partial re-draft of Article 40. Does the Delegate of Australia wish to comment on this proposal?

Mr. E. McCARTHY (Australia): Mr. Chairman, this proposed re-draft and re-arrangement was submitted at the closing stages of the work of the Drafting Committee in New York. We do not regard it as having any real question of substance, and some points have been met by other proposals, and our view would be that it is rather appropriate that it should go straight to the Drafting Committee, where it could be considered in conjunction with other amendments which have an identical bearing on the points at issue.

CHAIRMAN: The Australian Delegate has suggested that the proposal be referred to the sub-Committee. Is that agreed?

(Agreed)

We now come to the proposal of the Delegation of the United States, who have also made a re-arrangement and re-draft of Article 40. May I call upon the Delegate of the United States to explain the purposes of his proposal?

Mr. Robert P. TERRILL (United States): Mr. Chairman, our proposal is similar in purpose to that of the Australian Delegation. We took the liberty of rather extensively re-arranging Article 40 with a view to clarifying that section of Chapter VI. We felt the present Article, as it is drafted, contains a lot of "gobbledegook", that is, language which is long-winded, obscure and opaque to the understanding of the common man. This being the century of the common man, we thought we would give him a break in this Charter.

I do want to call attention to one slip to which my astute colleague from the United Kingdom has drawn my attention. It is, I am sure, a mere typographical error, in the first paragraph of Article 40, which will be found on page 3 of Document W/122 and on page 7 of Document W/132. In the fourth line there is a word which has been omitted from the New York text, and which we sought to reproduce without change in this particular instance: the word "particular" before the word "practices". I want the record to be corrected on that.

To pass on, Mr. Chairman, to other remarks, of which I shall have a few, we have explained in Document W/122 the purpose of each of the re-arrangements, and I shall not bore the Committee with those explanations since I am sure you have all read these comments with great interest. If I can make only one remark as to this matter, however, what we tried to bring out and to differentiate was this so-called "screening" process, or the process of preliminary investigation. We hope we have done that, and we hope the Commission and the sub-Committee too will look with favour on our efforts.

As to the more substantive points to which I am sure the

Commission will want to give further attention, on page 5 of Document W/122, in connection with paragraph 4 as we now have it re-numbered, of Article 40, we have made a change in the substance, though it is not crucial. That change is as follows, that "any Member, as well as the parties alleged to have been engaged in or to have been affected by, the practice complained of, shall be afforded reasonable opportunity to be heard at such hearings." There are two insertions. One is the word "reasonable". We felt that we had thereby provided a settlement of the problem of the venue, as it is called in law, which is a very important matter on grounds of equity.

The second, and perhaps more important issue, relates to who shall be permitted by the Organisation to file briefs or make appearances at the time of the complaints being formally investigated. We have ventured to add that any parties affected by the practices in question should be allowed an opportunity to appear before the tribunal. That is one change I want to note, Mr. Chairman, that has some substance.

That is one change of substance which I want to know, Mr. Chairman. The other appeared in paragraph 9 of Article 40 in accordance with our re-draft, on page 7 of document W/122. The New York Charter provides that the promulgation of any report or any portion of any report by the Organization may be suppressed and not published. We feel, Mr. Chairman, that this provision is unwise. It is unwise for two reasons which we have noted in our comments. First, that the provision should be undesirable. It would invite the public to suspect the procedures and the motivation of the Organization. It would suspect that there was going on behind the scene, scenes - that the powers were at work with secrets that they could keep from the world that the world should know. Secondly, and it is a matter which seems to us of some importance, it is quite unlikely that the suppression of a portion of the report would be effectual, unless the ITO is prepared to maintain a security police and rather severe sanctions. Unless this happens, the public cannot suspect such ordinary matters as this. All of us here are public servants and we know the very great difficulty, even within our own countries where vital matters of national interest are concerned, of securing real suppression. I think that is what is really wanted, and something which we cannot put into the Charter is discretion. The element of discretion should be exercised at the time of the preparation of the report, but when a report is made it should be freely available to all member governments and to the public.

I have no other comments to make, Mr. Chairman, on matters that seem to me to be of great substance in this re-draft of ours of Article 40.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. S.L.HOLMES (United Kingdom): Mr. Chairman, I assume that it would be in order if I made a few very brief remarks on one or two points in the United States draft to which the United States representative has himself called attention, so that, if what I may say finds acceptance here, the Drafting Committee or the sub-committee to whom the draft as a whole will no doubt be referred may not be without any guidance.

The first point to which I should like to refer is one which arises on Paragraph 4 in the new United States text. This was a point to which Mr. Terrill called our attention. He explained that there had been a new provision inserted whereby not only the Member representing the Government of the country where a practice was being complained of should be heard at the hearings by the Organization, but also the parties who are affected by the practice.

Mr. Chairman, I have listened this afternoon with rapt attention to the United States representative demolishing, as I thought, a proposal on the ground of impracticability and quoting to us, in support of his thesis, some of his own draft legislation, but now I have to take issue with him because I think he has produced here a [illegible] which is almost equally impracticable.

Are we to understand that the Organization would have to give hearings to any user of petrol in the case of a complaint that some oil company had been engaged in nefarious practices? If so, the time of the Commission would be taken up to a very great extent and it might be impossible for it to do any of the other duties - which are by no means light - provided for it in the Charter.

Yet it would be very difficult, under this arrangement, to refuse any individual - he, I think, could claim that with this wording it would be unreasonable not to give him an opportunity to make such a complaint. We should not ourselves see any particular inequity in not providing that sort of opportunity, because it is our own view, and I think that in general it has been accepted, that complaints are made by Members either on their own behalf or on behalf of some affected party and that it is not the intention that a complaint should be brought by a/ private individual or private company directly before the Organisation.

It is rather a different matter, perhaps, to provide that a private enterprise which has had a complaint brought against it should be allowed to answer that complaint: that we should think was not only equitable but also reasonable and convenient.

This is one of those cases, I think, where in the interests of logic, as I have said before, we are rather apt to fall into a trap and I should hope that the new proposal in this respect, which is concealed or brought to light in Paragraph 4 of the new United States version, would not find general favour,

That would be one point. I think perhaps you would feel that it would be more convenient, Mr. Chairman, if I stopped there and reserved until later comments which I have on two other paragraphs of the United States draft, numbers 7 and 8.

CHAIRMAN: The delegate of Canada.

MR . F.A. McGREGOR (Canada): Mr. Chairman, I am delighted to support the United States delegate in his criticism of this particular provision. We should thank him, by the way, for not quoting at length from the United States legislation that he referred to. I suppose the United States representative will accuse me again of seeking to water down one of his extreme proposals. I think he was going too far when he suggested that everyone who is affected by a practice shall have to be given an opportunity to be heard before any decision can be made. That is my submission.

CHAIRMAN: The delegate of France.

M. LECUYER (France) (Interpretation): Mr. Chairman, we do not want to go into an exhaustive study of the United States proposal, but we want to state first that this proposal is extremely interesting, and in fact it is necessary to clarify the text of Article 40, but we would like straight away to give a list of the comments which we reserve our right to go into fuller detail in the course of the discussion.

In fact, there are many difficulties in the new text and they will appear in the course of discussion. The first one is that, the new text being substituted for the former one, the delegates have the right to ask when certain changes have been made, for the reasons for these changes, and whether these changes do not modify the scope of the Article itself.

I would like to sum up now the comments which we propose to give in the course of this discussion. The first comments is on the second part of paragraph 3. If the text were to be modified

in the way which it is proposed by the United States delegate, it would tend to defer the practices which would be referred to the Organization, and then we are afraid that the character of such practices would be considered before the hearing, and that complaint in itself might have a damaging effect on these practices, whether these practices were to be considered harmful or not in fact.

The second point has been dealt with quite rightly by the United Kingdom delegation, and I do not intend to go over this point again. It dealt with paragraph 4 and the words "the parties considered to have been affected by the practice complained of"

The third point referred to paragraph 7, Here, a slight change has been made and the words "such practices" have been substituted for the words "the practices". Now, we are wondering if that substitution of the word "such" for the word "the" has not got a far more reaching effect than appears at first sight, and that in fact other practices than those practices which have not been contemplated in this Article could not be served by that new wording. In fact, therefore, we fear an extension of the scope of this paragraph.

Now, the fourth point refers to publicity of the reports. The United States delegate stated that it was very difficult not to publish reports which have been written and it was difficult to maintain it as confidential once it had been written, but I think it is a practice which is generally admitted, that when reports are written, certain parts of the reports could be published, and that other parts of the report should be kept as confidential. Therefore, I think that we shall have to have a longer discussion on this point, but this, Mr. Chairman, was only the first statement I wanted to make to sum up the point which we propose to consider in more detail in the course of the discussion.

Mr. TERRILL (United States): Mr. Chairman, I have listened to my learned colleague from the United Kingdom with great profit, and I think I could have spared the Commission a lot of time if I had got the floor immediately, because I want to say that I am prepared to accept his criticism of our drafting suggestion in Article 4.

We are not prepared, however, to adopt further consideration of the possibility that no parties on the other side of a dispute shall be heard. If I may be more specific about that it would appear to us that the Commission at least ought to give serious consideration to the question of whether or not the complainants in a given case should be permitted to be heard by the Organisation. The reason for that will become clearer when we get to Article 42 as to the obligations of Members, and I do only want to make that slight reservation here.

In other words, to sum up, it appears to me that the final answer to this point will depend upon what we do in Article 42.

CHAIRMAN: The Delegate of the Netherlands.

Mr. LEENDERTZ (Netherlands): Mr. Chairman, I should only want to make a short remark on this same context, that being that when these Regulations were being drawn in London, it was agreed that the Organisation might acquire information it might want, but any proceedings against a guilty concern should be left to its own Government, or other alternative; but now, if both parties are going to be heard, it may still mean the Organisation is going to get the information, but by and by this will lead to a transfer (sic) between two parties. It was rather ominous that the Delegate of America used the word "Tribunal" in this context. It was the first time I heard it. It was hardly indicative of things, but it gave me an idea; and I should only want to make an

observation now that we should always keep in mind no other aim here than getting some information for the Organisation.

CHAIRMAN: We have already past the time at which we are accustomed to adjourn. I take it that after this very full exposition of views, which I am sure will be taken into full account by the Sub-Committee, we can refer the proposed revision of Article 40 to the Sub-Committee for further study.

Is that course agreed?

Mr. HOLMES (United Kingdom): As I said, I had points on paragraphs 7 and 8 to make, which I thought were not merely points of drafting, but had some substance in them. I am quite prepared, having had the advantage of sitting next to the United States representative, not to say anything about paragraph 7; but I should have liked to say something about paragraph 8. However, I certainly do not wish to keep the Commission, and possibly some further opportunity may occur. My anxiety is that we may be giving the Sub-Committee very little guidance from this body, if we refer the whole thing lock, stock and barrel.

CHAIRMAN: Although the hour is late I feel sure the Commission will be glad to hear what the Delegate of the United Kingdom has to say about paragraph 8, if he will make his remarks now.

The point here was that we think the alteration is too wholesale. It is suggested now in this new paragraph that "the Organization shall request all Members concerned to report fully on the action they have taken to prevent the continuance or recurrence of the practices in question". We do not feel that this is the only way of preventing what we are really out to prevent, which is not practices but the harmful effects of practices. I think, perhaps, we are falling again into the trap of assuming that all the practices which are enumerated in the earlier part of the Article necessarily have harmful effects -- that is my point.

CHAIRMAN: Ar there any further comments? If not, we will adjourn and resume the discussion of Article 40 tomorrow. The Commission will meet tomorrow at 10.30.

The Meeting has adjourned.

The Meeting adjourned at 6.15 p.m.