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

VERBATIM REPORT.

THIRTY-THIRD MEETING OF COMMISSION "B"

HELD ON TUESDAY, AUGUST 19 1947 AT 2.30 P.M.

IN THE

PALAIS DES NATIONS, GENEVA.

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

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CHAIRMAN: The Meeting is called to order .

We will deal with article 77: Composition and Procedure. I call the attention of Members of the Commission to Document W.304 which gives the Czechoslovakian amendment to Article 77. The Czechoslovakian amendment reads as follows:-

"The Members of the Commissions, if not appointed directly by the Conference, shall be chosen by the Executive Board among persons qualified by training or experience to carry out the functions of the Commissions."

In other words, the essential part of the Czechoslovakian amendment is the addition of the words: "if not appointed directly by the Conference."

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, actually our amendment contains two changes which possibly are not visible at first sight. The first one is that we thought it was better to leave the possibility to the Conference itself, at the moment when it was establishing the Commission, of appointing the Members. I do not think that it should be a rule; it should only be a possibility because otherwise the text of the Charter excludes this possibility.

The second amendment is on a minor point which comes forward in paragraph 2 where we added: "which shall not exceed 7." We thought that the number of the Members of the Commission is more a question of rules of procedure and not of the Charter because if one day it will be found that we need more than 7 members - possibly 8 or 9, - it would be necessary to change the whole of the Charter.

CHAIRMAN: The first part of this amendment is related to paragraph 1. We shall deal with it now and leave the second part of the amendment till we come to paragraph 2. Are there any Members of the Commission who support the proposal of the Czechoslovakian delegate?

M. ROYER (France) (Interpretation): I think that it would be of some importance to allow the Conference to designate certain Members of the Commissions although I do not think that this should be the case only for the Permanent Commission, and without accepting the drafting proposal by the Czechoslovakian delegate, I think that we might say something like this: "except if the Conference should take another decision, the composition of the Commission should be decided by the Council."

Mr. ERIK COLBAN (Norway): Mr. Chairman, I second the proposal of the French delegate.

H.E. Z. AUGENTHALER (Czechoslovakia): I agree with the proposal of Mr. Royer.

Mr. L.R. EDMINSTER (United States): On a point of order, I did not get clearly what the proposal was. Could it be repeated.

CHAIRMAN: The French proposal would read: "Except as otherwise decided by the Conference, the Commission shall be composed of persons chosen by the Executive Board and qualified by training or experience to carry out the functions of the Commission." Are there any objections to the French proposal?

Mr. L.R. EDMINSTER (United States): Mr. Chairman, I think it would be unfortunate to accept this amendment even as further amended by the insertion of the words "except as otherwise decided by the Conference". It seems to me that the theory of the relationship of the Commissions to the Executive Board was pretty carefully explored this morning, and that the remarks of Dr. Coombs in particular were very much to the point on that. It seems to me that to adopt this amendment would be inconsistent with that, and the Commissions should indeed be responsible to the Executive Board. Therefore I would view with some concern the adoption of this amendment.

CHAIRMAN: The Delegate of the United Kingdom.

Miss HARDIE (United Kingdom): Mr. Chairman, I simply want to say that we would support the views put forward by the United States Delegate.

CHAIRMAN: There is a division of opinion in the Commission, and I think we will have to decide this question by putting the proposal of the French Delegate, which has been accepted by the Czechoslovak Delegate, to the vote.

DR. E. COLBAN (Norway): Mr. Chairman, I will only under-line that, to my mind, this is not a question of drafting. The Executive Board will be composed of a limited number of Members of the Organization, and although we should have full confidence that they will choose the Commissions in an impartial and wise way, I think it is reasonable that the Conference, representing all Members, should be noted in our text as having the right, should anything unforeseen happen, to step in and say:- "No, we do not want that Commission composed as you intend; we will have it another way".

Therefore, I still very strongly support the French proposal.

CHAIRMAN: The proposal of the Delegate of France is to add to the first paragraph of Article 77 the words, at the beginning, "Except as otherwise decided by the Conference".

DR. H.C. COOMBS (Australia): May I draw the attention of the British Delegate to the possible interpretation of this amendment, of which I fear he may not be aware. Without those words, the Article reads:- "Commissions shall be composed of persons chosen by the Executive Board and qualified by training or

experience.....etc.". If you precede that by a clause which says "Except as otherwise decided by the Conference", it would imply that the Conference may decide that the persons should not be qualified by training or experience;

CHAIRMAN: Monsieur Royer.

M. ROYER (France) (Interpretation): Mr. Chairman, I had said, a moment ago, that I reserved my right to make some drafting changes to this text, and it was because I had foreseen this difficulty. Now, I propose that in the French text an alteration should be made, that is, put a fullstop after the French "Conseil executif" and begin a new sentence saying "The persons thus chosen will have the required knowledge or experience to carry out the functions of the Commissions". I should like to replace the word "formation" in the French text by the word "knowledge", because if we keep the word "formation", it might imply that we will only accept certain persons who have studied in particular universities, which, of course, we do not intend.

MR. R.J. SHACKLE (United Kingdom): I wonder whether this amendment is at all necessary, Mr. Chairman. After all, under Article 71, the Conference is the final deciding body on all matters. We do not need to start spreading out on this Article. We say in one Article that the Conference shall have the final authority, and it refers to all Articles, so I would like to suggest that we do not make this amendment.

CHAIRMAN: Will all those Members of the Commission who are in favour of the French proposal please raise their hands.

Those against?

The amendment is carried by 8 votes to 7.

The paragraph will now read:- "Except as otherwise decided by the Conference, the Commissions shall be composed of persons chosen by the Executive Board. The persons so chosen shall be qualified by training or experience to carry out the functions of the Commissions".

Is that paragraph, as amended, approved?

Carried.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I have another remark to present with regard to paragraph 1. There has been an alteration in the Legal Drafting Committee's Report, of the first text which was adopted by the sub-committee after a lengthy debate. It reads in English "not more than seven" and in the French text "sept", and those words "not more than seven" were put in paragraph 2, which now reads in English: "The number of Members which shall not exceed seven,.....etc.", and in French: "Le nombre des membres de chaque Commission, nombre qui n'excèdera pas sept", which means that the number of Members, which shall not exceed seven, shall be determined in accordance with regulations prescribed by the Conference. I think it would be far better to leave the previous drafting and say:- "The number of Members of each Commission..... shall be determined in accordance with regulations", meaning by that that this number may be under seven.

CHAIRMAN: The Czechoslovak Delegate has proposed that the words in paragraph 2 "shall not exceed seven" shall be deleted, so I would suggest that we should first of all decide on the Czechoslovak proposal, whereupon we can take up the proposal of the Belgian Delegate, depending on how we decide the Czechoslovak proposal.

Do any Members of the Commission support the proposal of the Czechoslovak Delegate?

Mr. Erik OGBAN (Norway): I do, Mr. Chairman.

M. ROYER (France) (Interpretation): I also wish to support the Czechoslovak amendment for the following reasons. I believe that it is useless to enter into too many details in the Charter, and if we did so, later on we might find ourselves with insuperable difficulties, because we would have tried to be too detailed.

Therefore, I do not know why the figure "seven" has been adopted. Perhaps it has a mystic value. Perhaps we had decided to compare the Members of the Commission with the Seven Wonders of the World, the Seven Wise Men or the Seven Dwarfs! In any case, I think it might be better to draft paragraph 2 without mentioning the figure seven, and the Conference will later on decide on the exact number of Members. We might say, however, in the Report that the Commission had thought that it might be advisable to have seven Members or less.

CHAIRMAN: The Delegate of South Africa.

Dr. W.C. NAUDE (South Africa): Mr. Chairman, the Sub-Committee did not settle on the figure seven merely by dreaming it up. The Sub-Committee was . . . well aware of the type of jockeying that takes place when it comes to appointing an international

body of this description. The Sub-Committee was inspired by the same considerations as in the case of the Executive Board - to write in a maximum, and then you are more likely to keep to it for a long time. To come back to a description used this morning: if the Commission is to be the thinking machine of the Organization, it is suggested that thinking can perhaps be better done in a body of seven than in a body that might grow and grow without end.

CHAIRMAN: The Delegate of Belgium.

Baron P. de GAIFFIER (Belgium) (Interpretation):

Mr. Chairman, I would like to insist on the value of that figure seven. I think it is essential that we should keep the membership to the essential minimum, and we have to choose an odd number, be it seven, nine or eleven. In that case, seven seems to be the best figure, because we must not forget that in addition to the seven Members, there will be other Members coming in an advisory capacity, there will be observers from various international agencies, etc. and it is in our interests to keep the Commission as small as possible in membership.

Mr. R.J. SHACKLE (United Kingdom): I would like to support what has been said by Dr. Naude and other previous speakers. I do feel that this limited number is very desirable to, so to speak, safeguard the Organization against itself, because clearly when it comes to making these appointments, every country will think it has the finest economist or the finest expert on law, and the tendency would be to let them all in and we should have Commissions of thirty, forty and fifty. I think it is very essential to keep this limited number. If this limit of seven were found hampering in any particular case,

it could really be got over by the power of the Commission to co-opt persons specially qualified to deal with any particular subject that happened to be before the Commission.

CHAIRMAN: The Delegate of South Africa.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, I hope that the Commission will insist on having a limitation, for two reasons: My own experience is that if you have a Commission of this kind, there are one or two people who do the work and the other people are there to make a nuisance of themselves and make it difficult for them to do their work. The more you have, the more nuisance you have. The second is a purely material reason. These international organizations are all working up towards a budgetary crisis. They are already doing that although they are quite young, and the more cumbersome you make these things the sooner you have these budgetary crises on you.

CHAIRMAN: The Delegate of the Netherlands.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I frankly do not see any difficulty with regard to both points of view expressed here. If we keep in the words "not more than seven" in paragraph 1, as amended previously, ^{and} we then say "Unless otherwise decided by the Conference, the Commissions shall be composed of not more than seven persons", both parties can be satisfied.

CHAIRMAN: Is that proposal acceptable to Czechoslovakia?

Mr. AUGENTHALER (Czechoslovakia): One moment, Mr. Chairman.

CHAIRMAN: In the meantime I will ask the Delegate of the United States to speak.

Mr. EDMINSTER (United States): Mr. Chairman, paragraph 2 would then read "the number of Members shall be determined in accordance with regulations prescribed by the Conference". It seems to me that we should shift that back to paragraph 1, and treat it as the whole situation.

May I add that I think it only requires a change in paragraph 2; but as a matter of fact it is a very undesirable change to make in paragraph 1, because if you provide that the number of Members shall not exceed seven, for reasons which have already been set forth, particularly by the United Kingdom Delegation, I think you could rest assured the Conference would very quickly provide there should be more than seven members.

CHAIRMAN: We shall now take a vote on the proposal of the Czechoslovak Delegate, which is to delete the words "but shall not exceed seven" in paragraph 2. Will all those Members of the Commission who favour the Czechoslovak proposal please raise their hands.

The motion is lost by 6 votes to 4.

I would now ask the Belgian Delegate whether he wishes to proceed with his proposal to revert to the text of the Sub-Committee in view of the drafting difficulties to which it would give rise in connection with paragraph 2.

BARON DE GAIFFIER (Belgium) (Interpretation): My proposal

has been presented before paragraph 1 was amended. Therefore I forego it.

CHAIRMAN: Is paragraph 2 approved?

Paragraph 3.

Any comments? Approved?

The Delegate of France.

Mr. ROYER (France) (Interpretation): The French Delegation wishes an explanation on paragraph 3. In the other provisions of this text it was said that the Chairman was elected for one year. Does the absence of such a provision here mean that the Chairman will be elected for life?

CHAIRMAN: Will the Chairman of the Sub-Committee please answer this question.

Mr. NAUDE (South Africa): I do not think that particular point was considered, but I do think it was in the minds of the Sub-Committee that the Chairman could serve as long as it was thought proper for him to serve. I am informed by the Legal Adviser that there is no particular provision in the Charter to cover it.

CHAIRMAN: Is paragraph 3 approved? Agreed.

Paragraph 4.

Any comments? Approved.

Paragraph 5. Any observations? Adopted.

We now come to Article 78.

In connection with this Article I would remind the Members of the Commission that yesterday in Commission A there was adopted a proposal of the Tariff Negotiations Working Party concerning Article 24. The Tariff Negotiations Working Party

proposed changes in Article 78. These will be found in the Report of the Tariff Negotiations Working Party as given in paper T/136. The first paragraph of Article 78 would then read as follows:

"There shall be a Tariff Committee which shall act on behalf of the Organization in initiating and arranging for the negotiations provided for under paragraph 1 of Article 24 and in the making of recommendations and determinations pursuant to paragraph 2 of Article 24".

The United Kingdom Delegation have submitted an Amendment which is given in Document W/270. The United Kingdom Delegation proposes the deletion of the words "and arranging for".

We shall first of all consider the text recommended by the Tariff Negotiations Working Party, and then the drafting Amendment proposed by the United Kingdom Delegation.

Is the text as proposed by the Tariff Negotiations Working Party approved?

Mr. SPREKENBRINK (Netherlands): Paragraph 1, Mr. Chairman, or the whole?

CHAIRMAN: Paragraph 1.

I find that the Legal Drafting Committee have worked on the text proposed by the Tariff Negotiations Working Party and not on the text proposed by the Sub-committee. This will be found on Page 194 of Document E/PC/T/159.

Is the Commission agreeable to the substitution of the text proposed by the Tariff Negotiations Working Party for the text proposed by the Sub-committee?

(Agreed).

We will now deal with the proposal of the United Kingdom Delegate, which is to delete the words "and arrange for."

The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, the thought which lay behind this amendment of ours was that the word "initiate" would cover all that is required. It is unnecessary to say "and arrange for." If it is thought desirable to keep the words "and arrange for", I suggest we should insert "and where necessary arrange for."

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): We would support the text proposed by the Tariff Negotiations Working Party as amended by the Delegate for the United Kingdom, so that it will read: "There shall be a Tariff Committee which shall, on behalf of the Organization, initiate the negotiations . . . and make recommendations . . ."

CHAIRMAN: Are there any objections to the United Kingdom proposal?

(Agreed).

I would point out to Mr. Leddy that the Legal Drafting Committee have revised the wording so that it now reads as follows:-

"There shall be a Tariff Committee which shall, on behalf of the Organization, initiate the negotiations provided for under Paragraph 1 of Article 24 and make recommendations and determinations pursuant to Paragraph 2 of Article 24."

Mr. LEDDY (United States): It is because of the inaccuracies of the Legal Drafting Committee's text that we would prefer the Tariff Negotiations Working Party's text.

CHAIRMAN: Is that agreed?

BARON DE GAIEFFIER (Belgium) (Interpretation): Should we not alter the words "in the making of" in the English text to "make", Mr. Chairman?

Mr. SHACKLE (United Kingdom): We shall go back to the Tariff Negotiations Working Party's text.

CHAIRMAN: That does not arise if we go back to the text of the Tariff Negotiations Working Party. Is that agreed?

(Agreed)

M. ROYER (France) (Interpretation): It will be necessary then to alter the French Text, because otherwise it would be rather meaningless. The French Delegation will submit a French text later on.

CHAIRMAN: Will M. ROYER give the Secretariat his proposal for the French text.

The paragraph as we have approved it now reads as follows: "There shall be a Tariff Committee which shall, on behalf of the Organization, initiate the negotiations

provided for under Paragraph 1 of Article 24 and make recommendations and determinations pursuant to Paragraph 2 of Article 24."

Are there any comments on Paragraph 2?

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, I think we decided yesterday not to mention Geneva with regard to the signing of the General Agreement.

My second question is whether it is wise to put down here the numbers of the Articles in the General Agreement, because we do not know exactly how the General Agreement will be.

CHAIRMAN: It will be noted that the United Kingdom Delegation have put down an amendment to this paragraph also, to make it read: "The Tariff Committee shall consist of those contracting parties to the General Agreement on Tariffs and Trade which are Members of the Organization."

Mr. SHACKLE (United Kingdom): The thought behind this amendment was that if we say "the Members of the Organization which apply the General Agreement on Tariffs and Trade," that leaves a doubt about the time at which they apply it. The intention surely is that it is only so long as they go on applying the General Agreement on Tariffs and Trade that they should continue as Members of the Tariff Committee. It was in order to make that point quite clear that we suggested our amendment. It would then make it unnecessary to mention these numbered Articles to which Mr. Speekenbrink referred.

CHAIRMAN: Are there any objections to the United Kingdom proposal?

(Agreed).

Paragraph 2 will now read as follows: "The Tariff Committee shall consist of those contracting parties to the General Agreement on Tariffs and Trade which are Members of the

Organization."

The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, I remember that yesterday we decided not to put in a date, after "signed at Geneva on", in order to avoid any confusion.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): I think that might be taken care of by inserting, after "General Agreement on Tariffs and Trade" the following phrase: "referred to in Paragraph 1(c) of Article 24." That identifies the General Agreement on Tariffs and Trade.

Does this proposal of the United States Delegate meet with the approval of the Commission?

(Agreed).

CHAIRMAN: We now come to paragraph 3. In connection with this paragraph I would first of all like to read out the New York text, which read as follows:

"Each member of the Committee shall have one vote."

We then turn to the note of the Ad Hoc Sub-Committee given on page 6 of document T/143, which reads as follows:

"Part C covers both voting in the Conference and in the Tariff Committee. It does not cover voting in any interim tariff body which may be set up prior to the establishment of the Organization. The text recommended for Article 73...." etc.

So we now have to decide what text we should put in place of paragraph 3 and I should like to ask the opinion of some member of the Ad Hoc Sub-Committee on Voting on this question.

Mr. J. M. LEDDY (U.S.A.): We would suggest that the matter might be handled in this way: -

Paragraph 3 would read:

"3. (provisions relating to the voting power of each member of the Committee)"
Then

"4 (provisions relating to majority votes required for decisions of the Committee) "

That would be in the text, in brackets, and there would be a footnote reading as follows:

"The content of these paragraphs will depend upon the decisions of the International Conference on Trade and Employment with respect to the question of voting in the Organization.

Mr. O. PARANAGUA (Brazil): Mr. Chairman, it seems to me we have two quite different things here, but it can be a misunderstanding. The voting of the Permanent Tariff Committee can be decided by the World Conference, but what about the

Interim Tariff Committee? Because that would be inserted in the Convention and we must decide how would be the voting by the seventeen members of the Interim Committee according to the Note we have in document T/143.

CHAIRMAN: The question of voting in the Interim Tariff Committee, whatever it may be called, as a matter for decision by the Tariff Agreement Committee. That will be incorporated in the General Agreement on Tariffs and Trade. It is therefore outside the competence of this Commission.

The United States Delegate has proposed a footnote to this paragraph - or to both paragraphs?

Mr. J. M. LEDDY (U.S.A.): Yes; it refers to the voting power of each member and to the other, the majority votes required for decisions of the Committee. I have in mind that paragraph 3 will become: "3" followed by brackets and in the brackets you will simply put "(provisions relating to the voting power of each member of the Committee)" and then under "4" you will put brackets and within the brackets "(provisions relating to majority votes required for decisions of the Committee)," and the footnote would say: "The content of these paragraphs will depend upon the decisions of the International Conference" etc.

MR. R. J. SHACKLE (United Kingdom) indicated agreement.

H. E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I support the proposal of Mr. Leddy, but I was wondering if we should not add there "providing that it is not inconsistent with the provisions of this Chapter".

CHAIRMAN: The footnote proposed by the United States Delegate to read as follows: -

"The content of these paragraphs will depend upon the decisions of the International Conference on Trade and Employment with respect to the question of voting in the Organization."

M. ROYER (France) (Interpretation): Mr. Chairman, I have no objection to the drafting of these paragraphs being postponed until the World Conference at Havana, but I must say that I do not like very much the United States drafting of this note because in adopting this note we seem to consider that there is necessarily a close connection between the voting at the International Trade Organisation, which is merely one international organisation, and the rule that both be applied in international treaties, namely, the General Agreement. Now it is a rule in international law that all parties to a Treaty or Agreement are on equal footing and therefore, whereas I am prepared to agree to the postponement of this question until the Havana Conference, I share the doubts expressed by the delegate of Brazil, and I think that if we do not decide the question of voting, and if we decided to postpone the question because it is in the competence of the Havana Conference, then in a few days we might not be able to decide the question of voting for the General Agreement. And therefore if we do not decide on this major issue we might be in a position of not being able to sign the Agreement itself. Therefore, as I am prepared to agree to the postponement of the question as we cannot agree to it now, I would like that the note proposed by the delegate of the United States should not be drafted as proposed because, as I stated, it might be interpreted in the wrong way. I think it should merely say - and perhaps the delegate of the United States will agree - that the question of voting will be referred to the Havana Conference.

Mr. J.M. LEDDY (United States): Mr. Chairman, I am afraid I do not get the point of the delegate of France's remarks. Any solution to the problem about postponing the issue to the Havana Conference is acceptable to us. I think that the question of the voting has got nothing to do with the General Agreement on Tariffs and Trade. We

must reach a decision on that here. We cannot postpone that till the World Conference, and our proposal was intended to be entirely neutral as to the question of the Tariff Committee, but anything that the French delegate wishes to propose as a note acceptable to him which would keep it neutral, would be acceptable to us.

CHAIRMAN: Can Mr. Royer propose an alternative text for the note?

M. ROYER (France) (Interpretation): I would merely say in a Note that the drafting of these two paragraphs has been left to the World Conference, and nothing else.

Mr. J.M. LEDDY (United States): This is acceptable to us.

CHAIRMAN: While we are considering the text of the note we can deal with paragraph 5. It reads: "The Committee shall adopt its own rules of procedure, including provision for the election of its officers." Are there any comments?

Dr. SPEEKENBRINK (Netherlands): Mr. Chairman, I wonder whether there is any special reason for adopting here another procedure with regard to article 77 (3) for the Commissions? We say here: "The Committee shall adopt its own rules of procedure, including provision for the election of its officers", and article 77 states: "Each Commission shall elect its Chairman, and shall adopt rules of procedure which shall be subject to approval by the Executive Board." Does this indicate a special position of the Tariff Committee?

Mr. W.C. NLANDE (South Africa): Mr. Chairman, in attempting to answer Mr. Speekenbrink's question I might say that fortunately the sub-Committee did not touch this paragraph at all. There was no amendment on it; it was simply the New York text repeated.

Having said that, I may say, on purely general grounds, that

the Tariff Committee is not at all comparable to the Commission or the Executive Board. It is something entirely different in structure.

CHAIRMAN: Are there any comments on paragraph 5? Approved.

There is a proposal attached to the footnote covering paragraph 4. The content of this paragraph is referred for a decision by the United Nations Conference on Trade and Employment.

Mr. O. PARANAGUA (Brazil): Mr. Chairman, I wish it to be recorded that the reservation of the Brazilian delegation in connection with paragraph 3 implies a discrimination/amongst the contracting parties in the International Convention.

CHAIRMAN: I do not understand the reservation of the Brazilian delegate. There is no text for paragraphs 3 and 4.

Mr. O. PARANAGUA (Brazil): But there might be some misunderstanding. I asked for my reservation to be recorded. The note might imply that we can accept the discrimination of voting power in relation to an international conference.

Mr. J.M. LEDDY (United States): I am just wondering whether the Brazilian delegate has reserved his position with regard to the three alternative drafts on voting? If not, I cannot quite see the logical reservation of this point. This has nothing to do with the International Trade Agreement. It will be discussed separately by another Committee.

Mr. O. PARANAGUA (Brazil): I think my words are quite clear, Mr. Chairman. Paragraph 3 is connected with paragraph 2. That means, the Committee will deal with the General Agreement on Tariffs and Trade and anything connected with this agreement. It is impossible for us to agree to any discrimination in the voting power resulting from this agreement.

What Mr. Leddy spoke about was voting in general, but this is a particular case. It is a tariff convention, and any question arising from this tariff convention must be decided with equality on voting. That is why I am reserving my position.

CHAIRMAN: Does the Brazilian Delegate suggest a text for his reservation?

MR. O. PARANAGUA (Brazil): Exactly what I have just said.

CHAIRMAN: I think the Executive Secretary would have some difficulty in drafting that in relation to this paragraph.

MR. O. PARANAGUA (Brazil): If the Secretary wants, I can give him a drafting of my reservation later.

MR. WYNDHAM WHITE (Executive Secretary): By the end of this meeting.

MR. O. PARANAGUA (Brazil): If, at the same time, other Delegates in connection with the Secretariat enter their amendments? I will do that. I do not accept any limitation of time.

CHAIRMAN: Is the Note proposed to paragraphs 3 and 4 approved?

Agreed.

We now pass to Article 79 - "The Director-General and Staff".

Are there any comments on paragraph 1?

Approved.

Paragraph 2?

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, I would like to propose the deletion of the second sentence of this paragraph.

In dealing with the subject matter of this Conference, we started out with certain broad principles, and we have spent a good deal of time and ingenuity in whittling them down in various directions. That was inevitable under the circumstances. We found, on examination, that the principles, or the broad way in which they were originally formulated, did not fit into a world that had been very much upset by commercial and military war, but when we got on to the slippery slope of departing from principles we did what generally happens - we slipped down, and slipped away from principles, where there was no particular reason why the essential principle, the essential framework of an Organization like this, should not be maintained. I submit that this is the case where we have slipped away from that essential principle.

The sentence proposes that the Director-General should be given power to initiate proposals for the consideration of any organ of the Organization. Now, the Director-General is to be the Head of our administration. That position is a division of the functions between the Director-General and the Organization, which it is essentially important to maintain if the Organization is to work smoothly. The Director-General does not come in there in the same position as a Member. When it comes to initiation of proposals in an Organization of this nature, there is one qualification that you must have for the initiation of the proposals, and that is that the party that initiates it must bear a responsibility for what happens if that proposal goes through. The Director-General, as the servant of the Organization, bears no such responsibility. The policy should be in the hands of Members. The policy should never be in the hands of officials. Officials are there to give us, as Members, the advice, the knowledge and

experience that they have, but all political decisions in the broadest sense, all decisions dealing with policy, must be reserved to the Members of the Organization, and the initiation must start from a responsible Member and not from an official. That principle is violated here, and distribution of functions as between Members and the servants of Members is violated in the second sentence.

There is another reason of a practical order. I do not want to go any more fully into this matter than is necessary to establish my point, but there is another reason of a practical order which makes it unnecessary and undesirable to vest this power in the Director-General. The Director-General should be there in a position of impartiality towards all Members. Now, I can give you an example of what might very easily happen when you have a Director-General who may, on his own, initiate proposals, responsibility for which should be borne by its Members. It may be a matter of a very contentious nature which the Director-General initiates, but once it has been initiated, the Director-General being within his right to initiate it, and comes on to the floor, there is a fight in the Organization about it. Supposing it is an exceedingly contentious issue, the matter having been raised, naturally Members take their stand on this contentious issue, and ultimately one may hope that some sort of solution is arrived at on that matter, but that solution has, inevitably, placed certain people in the position of losing, and immediately you get that sort of situation the confidence of those Members in the Director-General is shaken. You have broken down your permanent Organization. What for? In order to give the Director General this power, the power which it is not at all necessary that he should have.

I cannot find any reason why the authority which should be vested in Members only should be put into an official. That is in conflict with the vertebral system of any sort of Organization, and I think that if we leave this paragraph in we are looking for trouble - we are introducing an Organization which is not sound in principle. For that reason, I suggest that the second sentence of paragraph two should be deleted.

CHAIRMAN: The South African Delegate has proposed the deletion of the second sentence of paragraph 2. Do any Members of the Commission support the South African proposal?

Mr. Erik COLBAN (Norway): Mr. Chairman, I entirely agree with everything said by the South African Delegate. I think that this clause is inserted because of a somewhat similar clause in the Charter of the United Nations; but there is not the slightest reason to transfer that idea to our Charter. I think it ought to be omitted.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): I do not think a long speech is necessary, Mr. Chairman. I think, in fact, that whether we keep this provision here or not, it is obvious that it will be possible for the Director-General to initiate proposals for the consideration of any organ of the Organization. However, I agree that it may be unnecessary to say so there, and therefore, in order to avoid any misunderstanding in interpreting the clause, I would accept the point of view expressed by the Delegates of South Africa and Norway.

CHAIRMAN: The Delegate of Australia.

Mr. A.H. TANGE (Australia): Mr. Chairman, I am not sure that

it would follow, if this wording were deleted, that the Director-General would, in fact, have the power to make proposals to the organs of the Organization, and we believe that it would be a mistake to delete explicit expression of this power of the Director-General.

As we see it, the structure of the Organization has emerged in the form of having a Conference which is responsible for the final discussion of the policies of the Organization, and under that Conference you have an Executive Board, which is responsible for the executive functions,^{and} you have a provision for Commissions.

We have re-drafted those sections dealing with Commissions in a form which leaves them much more elastic, and also leaves it open to the Conference to decide whether or not Commissions are necessary in a particular field. It seems possible to retain that flexibility in the structure so long as you have provision for the Director-General and his Staff performing some of the functions of advising the Executive of the Organization, and the allocation of functions as between the Executive and the Director-General can be left to the Conference itself.

It seems to us that there is very good reason why the Director-General on the basis of the studies of his Staff should be able to make proposals to the Organs in the Organisation. I do not believe that there is a great deal to be said for the principle expressed by Dr. Holloway that the initiator of a proposal must bear responsibility for his proposal, if it goes through. The body which bears responsibility, if it goes through, is the body which puts it through, and that is the Organ to which the Director-General has made a proposal; and after all, that is somewhat in line with the familiar practice in the public services administration of most countries, certainly, with a parliamentary system.

The Director-General is under the supervision of the Executive Committee under paragraph 1 of this Article. Now the only thing which might be in doubt is as to whether or not the Director-General would be likely to make ill-judged proposals to an Organ which would embarrass it in any way. He could not embarrass it a great deal, because they have the power of disposing of any proposals to which they object. If he acted in such a manner that the mere presentation of a proposal embarrassed them, really the choice of the Director-General would have been an unwise one, and they have the power of dealing with the situation then.

It is an issue, we think, between the limited secretarial role for the Director-General and Staff, or a more positive, thinking role on behalf of the Organization; and we believe that if you remove this power of the Director-General, you orientate the thinking and advising work to Commissions, and in effect the Organization will have to carry on that particular form of structure; and we are not satisfied that this is the best one and we believe that there is much to be said for leaving this

power to the Director-General. It is not a new power, it is one which interests other Organizations, such as the International Labour Organization. I have attended meetings of the Governing Body of that Organization, and their proceedings are conducted very substantially on the basis of proposals made to them by the Director-General - questions brought to the notice of the Governing Body, and positive suggestions as to how they should be treated.

For those reasons, Mr. Chairman, we are opposed to the deletion.

CHAIRMAN: The Delegate of Norway.

Mr. COLBAN (Norway): Mr. Chairman, in Article 79, we have already said that the Director-General shall be the Chief Administrative Officer. If we maintain the second sentence of paragraph 2, it means that we will extend his powers outside what is implied in his position as Chief Administrative Officer, and I think that is unwise. The Delegate of France said that whether we keep it or not, the Director-General will certainly make numerous proposals. I entirely agree; but he will do it as Administrative Officer.

When I was in the League Secretariat I made hundreds and hundreds of proposals, but they stood in the name of one or more Members of the League, never in my own name.

I had at one Session 13 different Sub-Committees - 13 during one single Session of the Council - having in each one of those Meetings three Members of the Council. We discussed things, very difficult and very important things, I said what I thought, and I had read the documents much more closely than those Members of the Council. If they did not agree with me, nothing came about. If they agreed, well then, they made the proposal in their own name. I have written notes, and hundreds of Reports to the Council or Assembly of the League of Nations. My name never

figured on any of those papers - it was Mr. Chamberlain, Monsieur Briand, and so on. They read those reports having discussed them with me or with my Staff.

That is the way in which an Executive Secretary should make his proposals, and it is entirely unnecessary to go beyond his position as Chief Administrative Officer in order to give him that authority.

CHAIRMAN: This question was considered at the First Session; this sentence was included in the Report of the Drafting Committee; it was considered by Commission B in the month of June, and no amendment had been submitted up to that time to this particular Session. The Sub-committee, I understand, considered the question very extensively, so I think there is no need now to spend further time debating it.

I would therefore like to put the proposal of the South African Delegate, which would be to delete the second sentence of Paragraph 2, to the Commission.

Will those Members of the Commission who are in favour of the South African proposal please raise their hands.

For: 8

Against: 2

The proposal is carried by eight votes to two.

Are there any further comments on Paragraph 2?

(Agreed).

Are there any comments on Paragraph 3?

The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, I have been wondering whether the measures for checking of accounts are insufficient. In my opinion, there should be an arrangement whereby reports on the budget and accounts are submitted, in the first place, to the Executive Board, which should study them before sending them to the Conference. It is, moreover, in accordance with the principle laid down in Paragraph 1 of this Article that the draft budget and accounts should be submitted to the Conference, with the necessary explanations by the Chairman of the Executive Board. In this way the responsibility would be fairly divided among the Conference, the Committee and the Director-General. I might add here that

by making this proposal I do not preclude in any way the possibility of the Conference setting up a special budget committee.

CHAIRMAN: This question was considered very carefully in the Sub-committee and, as I announced earlier today, it is not possible for us to accept amendments of substance involving lengthy changes of wording which have not been circulated in advance.

I think, however, that the point raised by Mr. Speekenbrink can be explained by the Chairman of the Sub-committee which examined this situation so thoroughly. I will now call upon him.

Dr. W.C.NAUDE (South Africa): Mr. Chairman, the Sub-committee was inspired primarily by this motive: that it was quite essential to lay the responsibility where it belongs, namely, with the chief administrative officer of the Organization, to prepare the budget. In the New York text some provision is made for consultation with the Executive Board by the Director-General. The Director-General is, in any event, under the control of the Executive Board. He would no doubt, if he is a responsible man, have consultations with the Executive Board before presenting his budget to the Conference.

I might just add, as regards a matter such as Mr. Speekenbrink had in his mind - the possible auditing of accounts, that such a matter will no doubt be taken care of in the financial regulations to be approved by the Conference.

CHAIRMAN: Are there any other comments on Paragraph 3? The Delegate of Norway.

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Mr. COLBAN (Norway): Mr. Chairman, I wonder whether it would not be better if, as I suggested, we say: "The Director-General shall present to the Conference, through the intermediary of the Executive Board, an annual report. . .", because the Executive Board is his superior, the organ which will be in constant touch. The Executive Board is very intimately interested in the financial arrangements and they should be given an opportunity, at any rate, of making some remarks on the Executive Secretary's Report.

I thoroughly realise the point of the remarks made by the Chairman of the Sub-committee, but I do not think this slight drafting amendment would go against them.

CHAIRMAN: The Norwegian Delegate proposes to add after the word "Conference" in the second line the words "through the Executive Board". I take it that that would cover the point which has been raised by the Netherlands Delegate; but it would be going back to the New York text and therefore reversing the decision of the Sub-Committee. Therefore I should like to have the views of the Commission on this proposal.

The Delegate of France.

M. ROYER (France) (Interpretation) I wish to support what Mr. Naudé has said previously. In accepting this new proposal, we might be in some confusion in our text; because do the words "through the Executive Board" mean that the Executive Board would act in that case as a sort of letter-box, or would we thus give a right to the Executive Board to study the estimates and present some remarks and observations?

Before the war we had some experience in an international organization which has clearly shown that it is indispensable for good financial control that clear-cut responsibilities shall be established; and in that case I think the Conference which votes for the budget should be responsible for its execution and should eventually appoint a Control Commission to assist in the task, whereas the intervention of the Executive Board, an organ which has new views or new ideas on the subject, might create confusion and possible conflict.

Therefore I think we should leave the text as it is.

CHAIRMAN: I have three speakers on my list, - the Delegates of Cuba, Belgium and the United States. It is now time for us to break off for tea. If those three speakers would forgo their rights to speak we could take a vote on this question, which was very thoroughly examined by the Sub-Committee. But if they wish to speak, we shall have to wait until after tea.

Do the Delegates of Cuba, Belgium and the United States agree?

Baron P. de GAIFFIER: I prefer to have tea.

CHAIRMAN: Does the Delegate of Cuba agree?

Dr. GUSTAVO GUTIERREZ (Cuba): I do not wish to speak.

CHAIRMAN: We will therefore take a vote on the proposal of the Norwegian Delegate: that after the word "Conference" in the second line of paragraph 3 we insert the words "through the Executive Board."

Those in favour please raise their hands.

Those against.

The proposal is rejected by 8 to 5.

Is paragraph 3 approved?

Approved.

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, a small remark: - I think we have forgotten in this Article entirely that the Director-General should not be appointed for a life-term, and there is no provision how he may be changed. So I would suggest, if agreeable to the Commission, that we take the same provisions as there are, for instance, in the Monetary Fund. It says there that the Director-General shall cease to hold his office when the Conference so decides.

CHAIRMAN: If the Delegate of Czechoslovakia will direct his attention to paragraph 1 he will see there, in the third sentence: "The powers, duties, conditions and term of office of the Director-General shall conform to regulations approved by the Conference."

I take it that is sufficient?

H. E. AUGENTHALER (Czechoslovakia): Mr. Chairman, may we request the representative of the International Monetary Fund to tell us how it is done by the Monetary Fund, because it is exactly defined in their Charter.

MR. SAAD (International Monetary Fund): The Director-General is appointed by the Executive Board, not the Conference, and he is responsible to the Board for the managing of the whole business. He is appointed for five years, but his term of office can at any time be terminated by a majority vote. You could give him a contract for ten years, and after ten days you could relieve him of it.

CHAIRMAN: In consideration of this question, we might also consider the Charter of the United Nations. There no term of office is laid down for the Secretary-General; that is left to the Rules and Regulations of the Organization.

Does the Delegate of Czechoslovakia feel satisfied with these explanations?

May we now approve paragraph 3?

Approved.

We will now have a break for tea. We will reassemble at 5.10: we will go on with our work until 7.30: we will resume again at 9 o'clock and continue until we have finished this task.

(The Meeting adjourned, 4.40 p.m.)

CHAIRMAN: The Meeting is called to order.

We shall deal now with article 80, paragraph 1. Are there any comments? Paragraph 1 is agreed.

Paragraph 2. Any comments? Approved.

Paragraph 3. Approved.

Article 81. I would like to draw the attention of the Commission to Document W.282. It is an amendment submitted by the Australian delegation to paragraph 1. The Australian delegation proposes the deletion of the final sentence of paragraph 1 of Article 81 reading as follows:-

"Notwithstanding the provisions of paragraph 1 of article 92 the Conference may amend the provisions of this Charter to conform to any such agreement provided such amendments do not involve new obligations on the part of Members."

There is then a commentary giving the reasons for the Australian proposal.

Mr. A.H. TANGE (Australia): The most important thing about this sentence of paragraph 1 of article 81 is that it permits the Conference to amend the Constitution by a simple majority in certain circumstances where, as a general rule, relating to the amendment of the Constitution, a two-thirds vote of the Members of the Conference is required. I do not think I need elaborate on the reasons. We believe that this is an undesirable requirement to have as a principle a substantial majority in favour of the amendment for the reasons that we have set out in this paper.

Dr. W.C. NANCE (South Africa): Mr. Chairman, in this case it is not, so to speak, defence of the text of the sub-committee merely to report to the Commission that there were several Members of the sub-committee who were a little doubtful about the inclusion of that sentence.

CHAIRMAN: Are there any objections to the proposal of the Australian delegation? The proposal of the Australian delegation is approved.

Paragraph 1 is approved.

Paragraph 2. In this note with regard to paragraph 2 this Article may be reopened by the delegations of Brazil and France in the light of the decisions of another Committee regarding Article 22 - Exchange Arrangements. This is the new numbering. Those delegations reserve the right to add a new paragraph 3 reading as follows:

"Nevertheless, the provisions of paragraphs 1 and 2 of this Article cannot, in point of fact, preclude the right of final decision of the Organisation, especially with regard to Articles 17, 19 and 20."

Do the delegations of France and Brazil still maintain this reservation?

Mr. J.G. TORRES (Brazil): Mr. Chairman, the origin of this amendment proposed by the delegations of France and Brazil resulted from the fact that we think that the I.T.O. should be the master in its own house. It was proposed, among other things, in connection with the Articles relating to the Balance of Payment provisions that the Brazilian, and, I think, the French delegations, agreed to drop this amendment. However, in the view of our delegation it is still necessary to have some provision in the form of a possible paragraph 3 which would read as follows:

"Nevertheless, the provisions of paragraphs 1 and 2 of this Article cannot, in point of fact, nullify the right of final decision by the Organisation under the provisions of this Charter."

CHAIRMAN: The Delegate of France.

M. ROYER (France)(Interpretation): Mr. Chairman, the French Delegation wishes to support the remark made by the Delegate for Brazil. We think such a provision would be useful, either in the text of the Article, or in the footnote.

CHAIRMAN: Are there any objections to the inclusion of the new paragraph 3?

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, we would not wish to see this paragraph as part of the Article. It is our own opinion that the matter is covered by Article 29 - when I say Article 29, I refer, of course, to the number which has been used for the Article up to now.

MR. L.R. EDMINSTER (United States): I desire to support that, Mr. Chairman.

CHAIRMAN: Are there any other comments?
The Delegate for Australia.

MR. A.H. TANGE (Australia): Mr. Chairman, I wonder if you would mind repeating the revised Note as presented by the Delegate for Brazil.

CHAIRMAN: The Delegate of Brazil, seconded by the Delegate for France, proposed the addition of a new paragraph 3, reading as follows:- "Nevertheless, the provisions of paragraphs 1 and 2 of this Article cannot, in point of fact, nullify the right of final decision of the Organization, under the provisions of this Charter". Will those in favour of this proposal please raise their hands.

Those against?

The motion is rejected by 6 votes to 3.

Is paragraph 2 approved?

Approved.

Any comments on Paragraph 3?

MR. R.J. SHACKLE (United Kingdom): The Legal Drafting Committee have put a Note on the next page with regard to paragraph 3, Mr. Chairman.

CHAIRMAN: The Legal Drafting Committee suggests, in the Note at the bottom of page 26, that the expressions "within its competence" and "within the competence" in paragraphs 3 and 4 respectively are not clear and should be replaced by "within the scope of this Charter".

Is the Commission in accord with the suggestion of the Legal Drafting Committee?

Approved.

That will be inserted in both paragraphs 3 and 4.

Is paragraph 3 approved?

Approved.

Paragraph 4. I call the attention of the Commission to another Note by the Legal Drafting Committee, which appears on page 27 of document E/PC/T/159.

The Legal Drafting Committee suggest that if it is intended that the approval of the Conference relates to the negotiation of the agreement or to the agreement as concluded, the wording should be changed to read "the Director-General may negotiate an appropriate agreement to be approved by the Conference".

Perhaps the Chairman of the sub-committee could give us his views on this suggestion.

DR. W.C. NAUDÉ (South Africa): I would merely say that, to me personally, the Legal Drafting Committee's comments seem to be entirely relevant.

CHAIRMAN: Is the suggestion of the Legal Drafting Committee approved?

Agreed.

Are there any further comments on paragraph 4?

MR. R.J. SHACKLE (United Kingdom): Is that agreed subject to that change, because I would have thought that it would probably be better to leave the matter in the way in which it is in the present text? After all, the Conference may perfectly well want to give instructions to the Director-General on agreements which he may wish to negotiate, and not merely register its approval when the agreement has been made. I would have thought that, from that point of view, there is a good deal to be said for leaving the existing wording.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): I approve the suggestion just made by the United Kingdom delegate - all the more so, since the French text is slightly different from the English text, and I would prefer to keep to the original text.

Mr. L.R. EDMINSTER (United States): I agree with the comment made by the United Kingdom.

CHAIRMAN: Is the Commission agreed to keep the text proposed by the Sub-Committee?

(Agreed)

Any other comments on paragraph 4? Paragraph 4 is approved.

Article 82, paragraph 1. Any comments?

(Approved)

Paragraph 2? Approved.

Paragraph 3? Approved.

Article 83. Any comments?

Article 83 is approved.

Article 84, paragraph 1. Any comments?

(Approved)

Paragraph 2. Any comments?

(Approved)

Paragraph 3. No comments? The paragraph is approved.

Article 85. Any comments? Article 85 is approved.

Article 86 - Consultation between Members. Is the introductory paragraph approved?

Dr. J.E. HOLLOWAY (South Africa): I do not know at what point in this paragraph, which is in a number of little bits, I should raise the question. Perhaps you would allow me to

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raise the matter on the paragraph as a whole.

I would like to say, Mr. Chairman, that of all the vague and woolly punitive provisions that one could make, this seems to me to hold the prize place. It appears to me that what it says is this: In this wide world of sin there are certain sins which we have not yet discovered and which after long examination we cannot define; but there being such sins, we will provide some sort of punishment for them if we find out what they are and if we find anybody committing them. When it comes to that, we shall describe them as sins only when the Organization considers that they are not venial offences, but serious crimes; but we do not know under what circumstances the Organization might consider them to be serious. Nonetheless, seeing that there are such sins, and in spite of the fact that we do not know what they are, and in spite of the fact that we do not know under what circumstances we are going to apply any punishment to them, we shall still provide a sort of vague and general "sword of Damocles", if such a thing is possible, to hang over the head of all the people who may possibly commit this sin.

Then we come to what is the only definite thing in the whole Article: that is, the type of punishment which can be visited upon these offenders. It seems to me, Mr. Chairman, that this is something like Pirandello's play, "Six Characters in Search of an Author", only it is rather the other way round. Here it is one punishment in search of six sins!

That is the sort of Article which we are asked here to write into an international agreement. I do not want to go into the details of the drafting of that Article, Mr. Chairman - I do not want to waste any time on it. I only want to draw attention to what the Sub-Committee says about this matter itself,

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in document T/139, paragraph 5:

"The Committee draws the attention of the Preparatory Committee to the limited time which has been devoted to the study of the means of providing for interpretation of the Charter and for the settlement of differences among Members and between Members and the Organisation. The subject was not fully discussed at the First Session of the Preparatory Committee and was not considered at all by the Drafting Committee. At the Second Session the timetable laid down did not permit the Committee sufficient time to make as thorough a study of all the problems involved as the importance of the subject deserves. For these reasons the Committee recommends that this subject should receive early and full re-examination by the World Trade Conference and the drafts contained in this Report have been prepared on the assumption that this course will be followed."

Now, Mr. Chairman, if that draft goes into the Report, I am prepared to leave it at that, and then I will have no more to say about this particularly elegant bit of draughtsmanship.

CHAIRMAN: I take it the Commission would have no objection to acting on the suggestion of the South African Delegate to insert the substance of the fifth paragraph of the Report of the Sub-Committee which appears on page 3 of Doc.T/139 as a footnote to Article 36.

Mr. SHACKLE (United Kingdom): I may be wrong, but I understand that paragraph 5 of the Sub-Committee's Report refers not to this particular part of Article 86 but the whole of the Section. After all this 86 is not a new provision at all, but is the same thing as Article 35, which has stood in the Draft Charter from the beginning. I do not agree that that paragraph 5 is referring to this particular part of the Article.

CHAIRMAN: The best course then would be to have this footnote referred to the whole of the new Chapter VIII. Is that agreed?

BARON DE GAIEFFIER (Belgium): Mr. Chairman, I think it is only the Section --.

CHAIRMAN: It is a new Chapter VIII.

Mr. NAUDE (South Africa): Mr. Chairman, I just want to have it put in the Record that Article 86 and the small portion of Article 87 were actually drafted in another Committee - in the Sub-Committee, I think, of Commission A.

CHAIRMAN: If that proposal is agreed, I will read out the footnote which might be inserted. I do not think it is necessary, but the wording of the present paragraph 5 of the Sub-Committee's report will also cover the point raised by the Chairman of the Sub-Committee. I therefore suggest the note should read something as follows:-

"The Preparatory Committee draws attention to the limited time which has been devoted to the study of the means of providing for interpretation of the Charter and for the settlement of differences among Members and between Members and the Organization."

And then we go on to say,

"Therefore the Preparatory Committee recommends that this subject should receive early and full re-examination by the World Conference, and the Drafts contained in this Report have been prepared on the assumption that this course will be followed".

Is that agreed? Approved.

Is the first part of Article 86 approved? Approved.

Sub-paragraph (a)? (b)? Approved.

Is (c) approved.

The Delegate of Australia.

Mr. TANGE (Australia): There was a suggestion made by the Legal Drafting Committee in paragraph 1 of Article 87 which involves a change which we do not think is particularly wise.

In the centre of the paragraph you will see that the word "concerned" has been changed to "interested".

It seemed to us that "concerned" is the better word. "Interested" has a subjective flavour and conveys the idea that these recommendations would be made to anybody who considered they were interested in the subject, even if not vitally concerned. There is an additional argument, I think, in favour of using the word "concerned", and that is, that in Article 86, in the last paragraph following the series of sub-paragraphs, it will be seen that the Member may make written representations

or proposals to the other Member or Members which it considers to be concerned; and it seemed to us that there is some advantage in having the same word in article 87.

CHAIRMAN: Any objections to the Australian proposal to the use of the word "concerned".

Is paragraph 1 adopted?

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like only to point out that we have consequently deleted the word "other" where it says "United Nations and any other inter-governmental organization", on the fourth line from the bottom of the page.

CHAIRMAN: To be consistent we should also delete the word "other" here, as suggested by Mr. Augenthaler. I presume that would be agreeable to the Commission.

The Delegate of South Africa.

Mr. NAUDE (South Africa): May I ask whether the French word "intéressés" is the same as "concerned" in English?

CHAIRMAN: The Delegate of France.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): I was myself somewhat concerned by this modification, because in Article 86 the English word "concerned" has been translated as "à son avis, sent en cause," and I wondered whether we should do the same in Article 87, or whether this is a proper translation.

CHAIRMAN: We will make the French text in conformity with the English text.

M. ROYER (France) (Interpretation): I shall have to think the matter over. I think that provisionally we may accept the present wording. I believe that, as the result of the deletion of the word "autre", proposed by the Delegate of Czechoslovakia, it might be necessary to say "and." This remark, of course, applies only to the French text.

CHAIRMAN: Are there any other comments on Paragraph 1? Paragraph 1 is therefore agreed.

Are there any remarks on Paragraph 2?

Mr. SHACKLE (United Kingdom): Mr. Chairman, as is noted in Paragraph 6 of the Sub-committee's Report, there is a United Kingdom reservation on this paragraph. I wish to maintain that reservation. The reason for it is that we have the feeling that this procedure for arbitration may unduly complicate the whole scheme for the settlement of disputes in this Article. A dispute may be referred to the Executive Board, from which there may be an appeal to the Conference, from which again there may be an appeal to the World Court.

It is quite possible, that, if you have a number of separate references to arbitration, the awards will proceed on a different principle. Instead of building up a Case Law, as clearly should

be done, you may get a mass of conflicting decisions. For those reasons, we are doubtful about this paragraph. We are not proposing to move its deletion, but we wish to maintain our reservation.

CHAIRMAN: Due note will be taken of the reservation of the United Kingdom Delegation.

Is Paragraph 2 approved?

(Agreed)

Is Paragraph 3 approved?

(Agreed)

Are there any comments on Paragraph 4?

(Agreed)

Article 88, Paragraph 1: I would call the attention of Members of the Commission to Document W/307 - amendment suggested by the Delegation of Australia, proposing the deletion of the words "Executive Board or the" in Paragraph 1 of Article 88.

The Delegate of Australia.

Dr. COOMBS (Australia): I do not think I have anything to add to the comment which we have made in the document as circulated. We believe that a request for an advisory opinion is an important act of policy and that consequently we think a decision to seek such an advisory opinion should be based upon a decision of the Conference.

CHAIRMAN: The Delegate of Norway.

Mr. COLBAN (Norway): Mr. Chairman, I wonder whether the omission of the words "Executive Board or the" may not render the procedure extremely slow. The Conference will only meet

once a year normally and it may be rather urgent to get an advisory opinion of the Court. When we say "the Executive Board or the Conference", I think that when the Conference is in session it will deal with the matter, but it should not be excluded that the Executive Board should take the initiative in such a case.

CHAIRMAN: The Delegate of the United States.

Mr. EDMINSTER (United States): Mr. Chairman, I merely wish to say that I share the apprehensions expressed by the Delegate of Norway.

Mr. SPEEKENBRINK (Netherlands): I, too, Mr. Chairman.

CHAIRMAN: The Delegate of South Africa.

Mr. NAUDE (South Africa): Mr. Chairman, this is again to report that there was a little concern among some Members in the Sub-committee on that very point. At the same time, the argument which Mr. Colban has introduced was fully borne in mind. It was thought that by the rules laid down by the Conference the situations in which the Executive Board would be able to go direct to the International Court would be so clearly defined that the possibility of misuse would be reduced to a minimum.

CHAIRMAN: The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): I can only say that I share the apprehensions of Mr. Colban

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): I wish to associate myself with the arguments which have been advanced by the delegates who spoke before me. I think the procedure for arbitration before the Court will in itself be long enough, and that we do not want to wait for nearly a year in some cases to ask for advice of the V Court. However, I believe that as a matter of precedence we should say "The Conference or the Executive Board..."

CHAIRMAN: Do any other Delegates support the proposal of the Australian Delegation?

I take it therefore that it is the sense of the Commission not to accept the Australian proposal.

Do we agree with the suggestion of the French Delegation - that "The Conference" shall come before "the Executive Board"? That is, that the text shall read: "The Conference or the Executive Board...?"

MR. R. J. SHACKLE (United Kingdom): Mr. Chairman, I am rather doubtful about that suggestion. It is certainly true that in order of seniority and importance, etc., the Conference comes first, but it does not come first in order of time; in the majority of cases questions go to the Executive Board first and the Conference afterwards. But, as it seems to me that there is no subsequent effect in making this transposition, I would suggest that probably on the whole it is not worth making.

CHAIRMAN: Does the Delegate of France insist on his suggestion?

M. ROYER (France) (Interpretation): I will not insist, but I would ask for a clarification. Do I understand rightly that when there is a request to the International Court of

Justice for an advisory opinion the Executive Board will first decide and then the Conference? I had understood that if the Conference were in Session the Conference would decide. If not, it would be the Executive Board. But I did not envisage the possibility of a double procedure, one before the Executive Board and one before the Conference.

CHAIRMAN: It seems to be clear that the sense of the paragraph is either the Board or the Conference.

M. ROYER (France) (Interpretation): In that case it might be more logical to mention the Conference first.

CHAIRMAN: Do any other Delegations support the proposal of the French Delegation to put "The Conference" before "the Executive Board"?

Mr. Erik COLBAN (Norway): I think it is right, Mr. Chairman.

CHAIRMAN: I think we shall have to take a vote. Will those in favour of the French Delegation's suggestion please raise their hands? Those against?

"The Conference" wins.

Any other comments on paragraph 1?

Paragraph 2: in connection with paragraph 2 I call the attention of the members of the Commission to document E/PC/T/W/257 submitted by the Delegation of Belgium-Luxembourg on the subject of Settlement of Disputes. I also call attention to document E/PC/T/W/299 submitted by the Delegation of the United States and proposing a new draft of paragraph 2 of Article 88.

I would propose that we first take up for discussion the proposed re-draft of the United States Delegation, and I would ask members of the Commission to confine themselves to the proposal of the United States Delegation until we have disposed of that proposal.

Would the Delegate of the United States like to speak to this proposal?

Mr. L. R. EDMINSTER (U.S.A.): Mr. Chairman, the proposal submitted by the United States is designed to reconcile divergence in the Sub-Committee which found expression in the submission of alternative drafts. Although the exact extent of the difference between the two texts submitted by the Sub-Committee might be hard to define in exact terms, it would appear that a large part of the difficulty arose out of the use of the phrase "legal validity" in the first of these alternatives. This point was stressed in working paper M.271/47 submitted by the Belgian Delegation.

With a view to working these questions out, the United States Delegation prepared the paper now before the Commission, and in order to save the time of the Commission and not to complicate matters by merely introducing a third alternative, discussed it with as many members of the Commission as the shortness of time allowed.

It appears from these informal talks that the text now proposed is acceptable to both the members of the Sub-Committee who preferred alternative (b) as well as to most of the members who preferred alternative (a). It is also acceptable to most of the Delegations who were not represented on the Sub-Committee but took an active part in its work.

It is my hope, therefore, that the text proposed will be acceptable to this Commission.

CHAIRMAN: The Delegate of Australia.

DR. H. C. COOMBS (Australia): Mr. Chairman, we find ourselves somewhat puzzled by the United States text since we understand from what the United States Delegate has said that he considers this a reconciliation of the two points of view previously embodied in the two alternatives, but to us it appears

in its present form to coincide very closely to the second alternative.

As we understood it, the essential difference between the two views previously expressed was the nature of the review which should be undertaken by the International Court at the request of the Organization for the advisory opinion. As it was previously set out in the first alternative, the scope of that review was limited to the legal validity of a decision of the Organization. It is true that it may be difficult to say precisely what is involved in a review of the legal validity, but our understanding of that was that it would involve merely a review on the part of the Court of the power or the competence of the Conference to come to a particular decision; and in that understanding we favoured that alternative, because it is our view that the Conference should retain control over the settlement of disputes arising between Members as to their obligations under the Charter, so far as the economic content of those disputes are concerned - and we would not wish to have referred to the Court anything but the purely legal aspects of the question.

We see no reason to assume that a Court will be any better equipped to settle disputes of this kind than the Organisation itself, and, indeed, from my point of view it would be much worse equipped.

On the other hand, we support strongly the view that the purely legal question should be referred to the Court for advisory opinion, and that the Conference should be guided by it, but we believe that the nature of the references to the Court therefore should be confined to the legal aspects of the Charter.

Of course, it might be argued that the Court, being a legal Court, would confine itself to legal aspects, but I have had some experience of lawyers and they very frequently regard legal aspects of the question as covering the whole question, and we might find ourselves therefore in a position where we are submitting what are essentially problems of an economic character from a body which purports, at any rate, to be equipped to handle such problems, and is set up for the purpose of handling them, to another body which is set up for an entirely different purpose, and which has no claims to adequacy in this field. Furthermore, Mr. Chairman, we are doubtful whether we have any right to refer anything other than the legal questions to the Court. If we look at the powers of the Court itself as set up in the Charter of the United Nations, Article 65 which relates to advisory opinions, we see that it states quite specifically that "the Court may give an advisory opinion on any legal question at the request of whatever body may be authorised by, or in accordance with the Charter of the United Nations, to make such a request". So the Court is by its own Charter limited to giving advisory opinion to legal questions, and, furthermore, it is limited to giving such opinion to the bodies which are approved by the United Nations. ^{If we look} /at the relevant part of the Charter, in Article 96 we find this paragraph: "Other organs of the United Nations and established agencies of which the I.T.O. would be an

example, which may, at any rate, be so authorised by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activity." We would therefore have to seek the authority of the General Assembly to seek such advisory opinions, and ~~under the~~ ^{they} Charter/would be permitted to seek such ~~opinions~~ ^{provisions of the} on legal questions. It seems desirable to us therefore that we should make it quite clear, in our own Charter, where we provide the procedure for seeking such advisory opinions, that it is proposed to limit them to the aspects of the problem which the Court has competence to deal with, and to make it quite clear that we are not seeking to refer to the Court aspects of the problems in which they have no competence. We would therefore prefer, Mr. Chairman, not to accept the United States variation, but to adhere to the alternative, or, alternatively, to so amend the United States redraft to make it clear that the review to be carried out by the International Court through the advisory opinion is limited to the legal validity of any action taken by the Conference.

CHAIRMAN: The Delegate of Belgium.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I wish to pay tribute to the spirit of co-operation and understanding^{shown} by the Delegate of the United States, and I wish to assure my colleagues on the Commission that the Belgium-Luxembourg Delegations fully share the views expressed by the Delegate of the United States in document E/PC/T/W/299 at present before the Commission. We agree entirely to replace Alternatives A and B by the new text proposed in that document by the Delegate of the United States.

I shall refrain from answering the Australian Delegate, since we have the proposal made by Dr. Holloway of South Africa, who stated that the best place for the complete discussion of this Chapter IV would be at Havana at the World Conference.

I would like to say two things, one about the words "legal validity". This expression does not appear to us satisfactory for practical reasons because, whether we are in a sub-committee or whether we are in a Commission, if we discuss the exact meaning of this term, each Delegation will have a different interpretation. Therefore, Alternative A creates a second complication - the difficulty in knowing whether the question pertains to the legal validity or not.

The second point that I wish to make is about the Statute of the International Court of Justice, raised by the Delegate for Australia. I think the second sentence of the United States proposal fully answers the question raised by the Delegate for Australia, since it says:- "an advisory opinion pursuant to the Statute of the International Court of Justice". I think it is not for us to try to discuss the question of the competence of the

Statute of the International Court of Justice.

CHAIRMAN: The Delegate of the United Kingdom.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would like to say, that, on the substance of this question, we quite agree with what Dr. Coombs has said. At the same time we do feel that there is a great deal to be said for the compromise text which the United States Delegation has proposed.

We feel it would be deplorable in this case if we were unable to give a lead at the Havana Conference, and it does seem to us that, in fact, the United States proposal is satisfactory. In the first place, it refers to "advisory opinion pursuant to the Statute of the International Court of Justice". Well, it is to be pointed out that ^{Article 65 of} in the Statute of the International Court of Justice/^{it}says:- "The Court may give an advisory opinion on any legal question.....etc.". Now, that means that, in fact, the Court will give advice, as it is said, on any legal question, and if there be any question as to whether any particular point is legal or not, the Court will say "We should not have the task of deciding". I believe that it is implied that the Court will not go into economic questions.

Then, as regards the question of facts, Article 88, paragraph 3, ^{statement of} provides that ~~the/facts~~ should be furnished by the Organization in consultation with the Members, subject to the proviso that the Organization shall supply to the Court such further information as the Court may require.

There is just one remaining point on which we have felt a certain amount of doubt with regard to the United States text, that is, the last words:- "The request for review of such resolution or decision shall be made by the Organization, in appropriate form,

upon the instance of any substantially interested Member". We have always been rather afraid that this procedure might be used as an engine of obstruction, so to speak, but on the whole we feel that that is sufficiently safeguarded now, particularly in view of paragraph 4 of the Article which says: "Pending the delivery of the opinion of the International Court of Justice, the resolution or decision of the Conference shall have full force and effect", subject to a proviso which follows, on which we have made a reservation, but we think that that sentence should provide a pretty good safeguard against the use of this machinery. Therefore, taking it on the whole, we think that the United States proposal is acceptable.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I wish to associate myself with the remark made by the Belgian Delegation. I am very grateful to the Delegate of the United States for the effort made to achieve a compromise in the new text.

The French Delegation have a definite objection to Alternative A. If, therefore, the Commission accepts the United States text, the French Delegation will be prepared to withdraw Alternative B. However, if Alternative A were maintained, the French Delegation would have to ask that Alternative B be also maintained; but we are prepared to accept the United States proposal as a basis for discussion..

I do not want to discuss the question now, but I have to let you know in the name of the French Delegation that we always considered that the question of the interpretation of treaties did not come under Article 65 of the Statute of the Court, but rather under Article 36.

This point is extremely important in the view of the French Delegation. As regards the advisory opinion, we consider that the United States text should be interpreted in the light not only of Article 15 of the Statute of the Court, but also in the light of other Articles in Chapter IV and also of Article 68.

The question submitted to the Court may be of a legal nature, but should be examined at the same time as some facts, and these facts are clearly defined in Alternative B and are only concerned with violation of the undertakings in the Charter.

We agree with the remarks made by the representative of Belgium that the notion of legal validity is extremely obscure, and would give rise to very important differences of opinion when the question of interpretation should arise, since no Delegate

could agree on²/similar interpretation of these words. Therefore, I repeat that if Alternative A is withdrawn, we would be prepared to accept the United States proposal as a basis for discussion, reserving our right to have the question fully studied by our legal advisers and debated at the World Conference.

CHAIRMAN: Are there any other Delegations who are opposed to the proposal of the United States Delegation besides the Australian Delegation?

Mr. H. DORN (Cuba): The Cuban Delegation shares the views expressed by the French Delegate, and joins the French Delegation in its willingness to adopt the amendment of the United States as a basis for discussion.

CHAIRMAN: The Delegate of the Netherlands.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I entirely oppose Alternative A. I prefer Alternative B to a certain extent, but I am prepared to accept the American proposal as a good compromise. I would just explain our attitude. Since the beginning of the London Conference, we have always insisted on having every facility for going to the International Court of Justice, because, in spite of our good intentions, certain political arguments might crop up. We have had recent experience of that. That is the reason why I again stress that the way to the International Court of Justice must be as wide as possible.

CHAIRMAN: The Delegate of Brazil.

Mr. J.G. TORRES (Brazil): In the Sub-Committee, we preferred Alternative A, but we should be very happy to adhere to the text proposed by the United States Delegation, if that should be the basis for a reconciliation of the two points of view.

CHAIRMAN: I interpret the sense of the Commission as being in favour of the adoption of the text proposed by the United States Delegation in place of the existing paragraph 2, and therefore I take it that it will not be necessary for us to proceed to a vote on this question. I trust that the Commission will be able to accept the proposal of the United States Delegation.

Dr. COOMBS (Australia): Mr. Chairman, I have received some comfort from the interpretation placed on the US text by some of the speakers; but I am afraid that for the time being I shall have to reserve the position of Australia on this text, as apparently our Legal Advisers differ.

CHAIRMAN: Is the proposal of the US Delegation approved? Approved subject to the reservation of the Australian Delegation.

We can now pass on to paragraph 3. Any comments?

Adopted.

Paragraph 4. Any comments? Adopted.

Paragraph 5. Any comments? Adopted.

Article 89. Paragraph 1?

Dr. HOLLOWAY (South Africa): Mr. Chairman, I just want to draw the Commission's attention to the fact that in Commission 4 the question of certain notes which were accepted by Commission 4 in order to enable it to get over certain drafting questions gave rise to a certain amount of discussion; but as that affected the question of interpretation of the Charter - which matter is dealt with under this Article - and as the question was complicated by the fact that there are various notes of entirely different standing, Commission 4 referred this matter to the Heads of Delegations.

My only reason for mentioning it here is that the decision of the Heads of Delegations may possibly involve a further paragraph in Article 89.

CHAIRMAN: Any other comments on paragraph 1?

The Delegate of Australia.

Dr. COOMBS (Australia): I just want to raise one question

Mr. Chairman. I seem to remember during the discussion in the various Committees the question being raised as to whether it was quite clear that a general rule embodied in the Charter was qualified, so to speak, by any exceptions or specific rule which followed it in the Charter; and in view of the frequency with which that question arose, I have a recollection that it was suggested that in the part of the Charter which dealt with interpretation, there would be included an article or a paragraph which would state that such general rules were to be taken as qualified by anything which followed them in the Charter.

I am not sure whether the Legal Drafting Committee has decided that is not necessary, but I raise the question.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I did consult our Legal Adviser, who has now left Geneva, on this question, and I gathered there is no general recognition of a rule embodying that; but a rule which follows must necessarily qualify the first, and I do not think we can write in any statement in the Charter. On the other hand, the Legal Drafting Committee have been very careful in considering whether one provision qualifies another, and have where necessary inserted single cross-references in order to abstain from putting in double cross-references, and I believe, in fact, the question has been taken care of in that way.

Dr. COOMBS (Australia): Mr. Chairman, all I can say is that, speaking as a Member of the Sub-Committees, various Delegations were persuaded to accept the omission of words to the effect that notwithstanding anything to the effect in Article so and so, before certain provisions, on the clear understanding that such general rules were qualified by the late provisions of the Article. If that is understood then

I have no objections, but if the position is as the UK indicates, then it would appear to me that some provision is necessary.

However, I do not want to waste the time of the Committee on it. It seems to me purely a legal question, a question of construction, and I would ask the Legal Drafting Committee to be asked to consider this question.

CHAIRMAN: I will ask the Legal Adviser to comment on that.

Mr. RENOUFF (Legal Adviser): The Legal Drafting Committee would consider this particular point, but it was very careful, as Mr. Shackle pointed out, to take care of the particular question involved. However, this question did come up from time to time throughout the Conference, and I did give an opinion at an early stage that there was a general rule that whereas a general provision was followed in the Charter by specific exceptions from that provision, that provision would be qualified by those specific exceptions.

I also discussed that particular rule with one of the US Legal Advisers, who has now left Geneva, and I also thought I had the United Kingdom Legal Adviser's agreement on that particular point. I did talk to him about it.

However, I hardly think it necessary to put in a specific provision in the Charter, if my understanding is correct.

Perhaps we can go into it again at Havana, when the Charter is again considered.

CHAIRMAN: Are there any other comments?

Does Mr. Coombs wish to say anything?

Dr. COOMBS (Australia): No, Mr. Chairman.

CHAIRMAN: Is Paragraph 1 approved?

M. ROYER (France) (Interpretation): This remark only affects the French text.

CHAIRMAN: Is Paragraph 1 approved?

(Agreed)

Is Paragraph 2 approved?

(Agreed)

Are there any comments on Paragraph 3?

The Delegate of Cuba

Mr. H. DORN (Cuba): Mr. Chairman, I am authorised by my Delegation to say that I would be in a position to withdraw the reservation mentioned on Page 40 of Document T/159 if the underlined addition to Paragraph 3 remains as it now stands.

CHAIRMAN: I thank the Delegate of Cuba.

Are there any other comments on Paragraph 3?

I would call attention to the Note with an asterisk, at the foot of Page 40: "The two Members who favoured Alternative B in Article 88 did not accept this paragraph."

The Delegate of Belgium.

BARON DE GAIFFIER (Belgium) (Interpretation): I wish to explain briefly the reason why we made this reservation. If, in the section dealing with the settlement of disputes, the principle of compulsion has been adopted, then any procedure other than those mentioned in the Charter should not be acceptable. We are prepared, of course, to abide by the Charter, but we think we should not exclude amicable arrangements between Members which would enable them to reach a

solution to any dispute which may arise. We say in our country that a bad arrangement between parties is better than a good lawsuit. As, however, we accepted the South African suggestion that this Chapter could be reviewed at Havana, we see no reason for keeping the reservation made there.

I was somewhat surprised, however, to read the underlined words in this paragraph 3, which are not, in our opinion, in conformity with the discussion which took place in the Sub-committee. I do not see the meaning of these words, which seem to indicate that when there are complaints or difficulties it will be impossible to apply unilateral sanctions of any kind, except when they are brought to the Organization.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): With my colleague for Belgium, the French Delegation will not insist on the reservation we made, but, as a matter of curiosity, I would like to know who is the author of the second sentence of Paragraph 3.

Mr. A. RENOUFF (Legal Adviser): Mr. Chairman, this underlined portion was originally a proposal made by the Delegation of Cuba in the Sub-committee on Chapter IV, after the termination of the Sub-committee on Chapter VIII. The Sub-committee on Chapter IV requested certain Members of the Sub-committee on ~~CHAPTER~~ VIII to consult with it when drafting these words. After that, it went to the Legal Drafting Committee.

CHAIRMAN: Are there any other comments?

The Delegate of the Netherlands.

Mr. SPEERENBRINK (Netherlands): Mr. Chairman, I would like to say that I also have certain serious doubts about the advisability of Paragraph 3. However, I will make a formal

reservation here and leave the matter over.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): There is a difference between the French text and the English text at the point where it says in English: "without prejudice to any other international agreement." I would like to know which text is authoritative.

Mr. SHACKLE (United Kingdom): I believe this text was drawn up in English in the first place.

M. ROYER (France): (not interpreted).

Dr. COOMBS (Australia): Mr. Chairman, I should like to ask where, and in what respect, this text was altered by the Legal Drafting Committee. I must confess it has an unfamiliar air.

CHAIRMAN: I think the underlining here represents additions to the text as approved by the Sub-committee on Chapter VIII, but it originated, I believe, in the Sub-committee on Chapter IV.

Dr. COOMBS (Australia): Yes, Mr. Chairman, but to my recollection those are not the words agreed in the Sub-committee on Chapter IV. I am only speaking from memory, but they do appear to me to have been changed. There may not be any change of substance, but I find it a little difficult to understand.

CHAIRMAN: Would the Delegate of Cuba like to explain?

Mr. H. DORN (Cuba): Yes; only to say that they are formal changes which in our opinion do not touch the basic elements and that were agreed upon between some of the members of this Working Party in order to make it possible to agree upon the whole body. I do not think there is any question of substance involved, and I understood that the Delegate of the United States also agreed on this point -- that it is only a question of new wording and not a question of substance.

Dr. H. C. COOMBS (Australia): It is all right, Mr. Chairman. I have found it. It is only a change of form.

CHAIRMAN: The Delegate of China.

Mr. D. Y. DAO (China): I understand that in Article 34, Emergency Action, a Member may take action prior to consultation with the Organization in certain circumstances. If this is one of the procedures envisaged in the Charter, as said in the preceding sentence, we are agreeable to the idea that a Member should not declare war against another Member without consultation with the Organization!

CHAIRMAN: The Delegate of Belgium.

Baron de GAIFFIER (Belgium) (Interpretation): I think it would be necessary, Mr. Chairman, to readjust the French text with the English text. We find in the English text the word "nor" connecting the two parts of the sentence, whereas in the French text there is a full stop. Therefore the two parts of the sentence are disconnected, which might lead to the interpretation that there could be unilateral sanctions after a final decision had been made, which is exactly contrary to our purpose.

CHAIRMAN: Will the French and Belgian Delegations make their suggestions to the Secretariat?

Is paragraph 3 approved?

Approved.

Paragraph 4: Any comments?

Approved.

Article 91: sub-paragraph (a)

M. ROYER (France) (Interpretation): (Mr. Royer made an observation which relates only to the French text.)

CHAIRMAN: Sub-paragraph (b).

Dr. HOLLOWAY (South Africa): Mr. Chairman, on a point of order, is Article 91 before Commission "B"?

CHAIRMAN: Article 91 was approved by Commission "A". We have now been requested by Commission "A" to insert in sub-paragraph (b) (ii) the words "directly or indirectly" after the words "is carried on". That is the purpose of this Article being before us now. Paragraph (b) (ii) would then read:

relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
Is that agreed?

Dr. H. C. COOMBS (Australia): I would just like to make our position clear, Mr. Chairman. This was inserted to meet a point raised by the Australian Delegation in connection with Article 37. While it is my personal view that the problem we posed is substantially met by the inclusion of those

words, I am not in a position at this stage to withdraw the reservation which we made on Article 37 until the question has been considered by my Government.

CHAIRMAN: I take it that the Commission has no objection to the insertion of the words "directly or indirectly" as requested by Commission "A".

Article 91 was approved by Commission "A" and we now pass on to Article 92.

Paragraph 1: if there are no comments, that is approved.

Paragraph 2: any comments? Approved.

Paragraph 3: any comments? Approved.

Article 93: any comments? Approved.

Article 94: paragraph 1: any comments? Approved.

Paragraph 2: Approved.

Paragraph 3: Approved.

CHAIRMAN: Article 95,
Paragraph 1 Approved. Paragraph 2. Approved
Paragraph 3.

M. ROYER (France) (Interpretation): I do not see the use of paragraph 3 because in Article 102 of the Charter of the United Nations it is stated that it is the duty of the United Nations that every Treaty should be registered in accordance, ... and so on. Therefore I do not see why we should authorise the United Nations to do something which is provided for already.

Mr. RENOUFF (Legal adviser): Mr. Chairman, under Article 102 it is stated that every International Agreement must be registered with the Secretariat, but it is not registered by the United Nations. It is registered by a party to the Agreement, and out of the regulations approved by the General Assembly last year, the United Nations for the first time was given power to register on behalf of the parties to an Agreement. The purpose of this is to obviate a necessity for any Member of the party to this Agreement to avoid having to come to the United Nations and register. It is merely a matter of convenience.

CHAIRMAN: Paragraph 3. Approved.

Article 96. I would like to draw the attention of the Commission to the footnote which states: "This Article consists simply of the former paragraphs 4,5 and 6 of Article 95. Any amendment to the text of those paragraphs is indicated by double underlining."

Are there any comments on paragraph 1?

Dr. H. C. COOMBS (Australia): I would raise a question of whether the phrase "territories for which it has international responsibility" is sufficiently precise. It should perhaps be something like "territories within its jurisdiction." But I have no suggestion to offer.

Dr. A.B. SPEEKENBRINK (Netherlands): I prefer the present text, Mr. Chairman.

CHAIRMAN: Is the text of paragraph 1 approved? Agreed.
Paragraph 2.

M. ROYER (France) (Interpretation): Mr. Chairman, I wonder whether there is a mistake in the second reference to/paragraph 2 of Article 95, "Any separate customs territory referred to in the proviso." There is a proviso but it does not concern a separate customs territory. It must be paragraph 1 of Article 96.

CHAIRMAN: I think you are right.

M. ROYER (France) (Interpretation): I think the French text must be in conformity with this remark.

CHAIRMAN: Is paragraph 2 approved with the changes that have been made? Agreed.
Paragraph 3.

M. ROYER (France) (Interpretation): I will make a last attempt, probably in vain, in order to try and suppress the word "reasonable" in paragraph 3.

H.E. Z. AUGENTHALER (Czechoslovakia): I support the French proposal, Mr. Chairman.

CHAIRMAN: The Legal Drafting discussed this question at length and they think they could not take out the word "reasonable" in French, and therefore they could not take it out in English. Is it the proposal of the French delegate to take out the word in English?

M. ROYER (France) (Interpretation): The French term would be "toutes mesures utiles".

CHAIRMAN: Are there any objections to the deletion of the word "reasonable"?

BARON P. de GAIFFIER (Belgium) (Interpretation): "Toutes les mesures utiles" seems to be saying rather much. I am afraid if we delete the word "reasonable" measures might mean police measures, and even military measures.

M. ROYER (France) (Interpretation): Mr. Chairman, I said at the beginning of my speech that my attempt would probably be in vain, and I think I was not mistaken.

CHAIRMAN: I thank the French delegate.

Is the paragraph approved? Agreed.

Article 97. Are there any comments? Approved.

CHAIRMAN: As we have come to the end of our work, it will not be necessary to meet after dinner.

H.E. DR. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, since we have been so worried about the word "reasonable", should there not be added a new Article, the last Article in the Chapter, saying that all the International Trade Organization should be reasonable!

DR. W.C. NAUDE (South Africa): Mr. Chairman, I do not apologise for holding up the discussion for a few minutes.

There is a very serious deletion from the Report of the Sub-Committee on Chapters I, II and VIII. We agreed one morning, at a quarter past one, to put in our Report a record of our appreciation of the work of the Secretary, Mr. Renouff. He, on his own authority, struck it out of our Report, so I am taking the opportunity of paying a tribute to him now, as I feel that the industry and insight shown by him should be recorded in the records of the International Trade Organization.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I want to join Dr. Naude in his reference to our Secretary and I would like, having been myself a Member of the Sub-Committee, to thank him for the way in which he directed our discussion.

CHAIRMAN: Commission B, having come to the end of its work, the meeting is closed.

The meeting rose at 7.25 p.m.