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

VERBATIM REPORT.

TWELFTH MEETING OF THE TARIFF AGREEMENT COMMITTEE HELD ON SATURDAY, 6 SEPTEMBER 1947 AT 10.30 A.M. IN THE PALAIS DES NATIONS, GENEVA.

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

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CHAIRMAN: The Meeting is called to order.

At the close of our meeting yesterday we had reached Article XXIII, Joint Action by the Contracting Parties, and we had agreed to defer consideration of this Article until there was an opportunity for the United States Delegation to circulate their proposed draft text of paragraphs 4, 5 and 6 of this Article. The United States proposals have been circulated in paper E/PC/T/W/322 which reached delegations this morning. We will deal with those proposals when we come to the relevant paragraphs.

As there are a great number of amendments on this Article, I think the only practical way in which to proceed is to take up the Article paragraph by paragraph and therefore I propose to commence with paragraph 1.

Mr. Brown.

Mr. Winthrop BROWN (United States): Mr. Chairman, I would like to make one general suggestion about this Article which I hope might facilitate the discussion.

Yesterday the Delegation of Czechoslovakia and some other Delegations expressed a little difficulty in the fact that this Article, and the references to the "Committee" all the way through the document, gave an implication of a rather more formal organisation being set up by this Agreement than was intended. I think we are all agreed that what we have in mind here is simply to provide a mechanism whereby the contracting parties may act jointly in matters which are of joint concern and since there are 17 or 18 of us we have to have some kind of rules of procedure to ensure that that joint action is taken in an orderly fashion. On the other hand we see the inferences that might be read into this formal word "Committee" as it appears throughout the document and I wonder if it would not more accurately reflect our intention if, instead of calling ourselves, when we meet to act jointly, a

"Committee", we simply call ourselves what we are, namely "the Contracting Parties" and, in order to make clear the difference between the Contracting Parties acting jointly and the other references to contracting parties during the course of the document, we simply capitalise the two words wherever they refer to joint action. I think that that would take away this connotation of formal organization and would be a sufficient distinction so that the document would be clear.

If that suggestion did meet with the approval of the Committee we could change paragraph 1, for example, to read something like this:

> "The contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement ....." and so forth.

In other words leave out "as a Committee" and the formal action of appointing representatives, and then we might add a sentence somewhat to this effect:

> "For convenience of reference, the contracting parties meeting for such purpose have been referred to elsewhere in this instrument as 'the Contracting Parties'" (with capital letters).

That would require some consequential changes in the paper W/322 which we proposed, but I rather feel that that would be a somewhat more accurate description of our purpose and would meet the drafting needs of distinguishing between joint action and separate action.

CHAIRMAN: Are there any comments on the proposal just made by the United States Delegate?

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to support this suggestion of the United States.

CHAIRMAN: The suggestion of the United States Delegation has been supported by the Delegate of Czechoslovakia. Are there any other comments or any objections to this suggestion?

Mr. R.J. SHACKLE (United Kingdom): There may be some question of drafting, Mr. Chairman, I think. I presume the United States representative will suggest a text in due course.

CHAIRMAN: I think it will result in a number of drafting problems, but I think the main principles of the United States proposal are clear. It is that there should be no mention of the Committee in any place in the Agreement, and where "Committee" occurs, the words "Contracting Parties" should appear. That does give rise to a lot of drafting problems, but we can deal with those in due course, if the United States Delegation will submit its proposal in writing. At the moment we are just considering the principle of the proposal. Are there any other comments?

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, there will be a certain number of questions of drafting, as Mr. Shackle pointed out; but there is the question of voting here, because if we put simply "the Contracting Parties", it will mean that a unanimous decision has been taken by the Contracting Parties in the matter which they were discussing. I think that to keep the

United States Delegation's formula, one ought to put "The Contracting Parties acting under the terms of Article XXIII", just to show the difference between the question of voting and the other questions.

Mr. Winthrop BROWN (United States): Mr. Chairman, I think that point could be covered in the drafting.

CHAIRMAN: I take it from the silence of the other Members of the Committee that the Committee approves of the United States suggestion and it simply remains to work out the details of drafting.

Subject to the drafting changes to be proposed by the United States Delegation, are there any comments on paragraph 1 of this Article?

Paragraph 2? Paragraph 3?

That brings us to paragraph 4, which is the first of the paragraphs covered by the United States document W/322. Are there any comments on this paragraph?

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, as regards this proposal that each Contracting Party shall have one vote in the Committee, we are prepared to agree to that for this purpose for the time being, without prejudice to our attitude on the question of voting at the Havana Conference. But we should wish it to be clearly understood that we should want this question as to whether there is to be weighted voting or whether there is not in the Conference to be settled before we go beyond the provisional application of the General Agreement.

Mr. Winthrop BROWN (United States): Mr. Chairman, I think our position would be the same.

M. Hassan JABBAR (Syria)(Interpretation): Mr. Chairman, we have not document W/322 before us.

CHAIRMAN: Are there any other comments?

Paragraph 5. We had, when the original text was presented, an amendment of the United Kingdom Delegation suggesting the insertion of the words "Except where otherwise provided for in this Agreement, the decision of the Committee shall be taken by a simple majority of the votes cast". I take it that that amendment has been taken care of?

Mr. R.J. SHACKLE (United Kingdom): Yes, I think the present wording follows logically from paragraph 4, does it not? I think that if we said "a simple majority of the votes cast" it would mean the same thing as "Contracting Parties present and voting".

CHAIRMAN: Are there any other comments?

Paragraph 6.

Mr. Winthrop BROWN (United States): The Committee will note that certain words which appear in the Charter have been placed in square brackets, simply to bring them to the attention of the Committee. We do not really feel that they belong here, but we thought we would have them in the text.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that it would be interesting to maintain the provisions which are in brackets here, because the functions of the Committee now are wider than the functions which were allotted to the Tariff Committee in the Charter, and, in fact, in the Charter the powers that were given to the Tariff Committee are powers

which, in the Organization, would be allotted to other organs of the Organization. Therefore, it seems to me that these provisions should be inserted.

CHAIRMAN: Are there any other comments on the words in square brackets?

Mr. B.N. ADARKAR (India): Mr. Chairman, the Indian Delegation also would support the retention of the words in square brackets, because those words have the advantage of leaving open the questions on which there has been no decision in the course of this Conference. I have particularly in mind the question of regional preferences.

CHAIRMAN: Are there any other views with regard to the retention of these words in square brackets?

The United States Delegation has raised the question as to whether or not the words in square brackets should be included in the Agreement. Two Delegations have spoken in favour. I take it that the Committee has no objection to the retention of these words?

Are there any other comments on paragraph 6?

Paragraph 7. You will find on page 5 of document E/PC/T/W/312 a number of comments with regard to paragraph 7. The Czechoslovak, Norwegian, United Kingdom and Australian Delegations have certain suggestions to offer with regard to the wording of this paragraph.

I would like to know if these Delegations wish to press these suggestions?

DR. H.C. COOMBS (Australia): Yes, Mr. Chairman,

CHAIRMAN: The Delegate of Norway.

MR. J. MELANDER (Norway): Mr. Chairman, we feel that it is difficult to discuss paragraph 7 of Article XXIII until we have finished Article XXVII. I therefore propose that we leave paragraph 7 until we have settled Article XXVII.

CHAIRMAN: I take it the Committee will have no objection to the suggestion of the Norwegian Delegate to come back to this paragraph after we have dealt with Article XXVII.

That is agreed.

No doubt Members of the Committee will have noticed an error in the text given on page 55 of document E/PC/T/W/189. The reference there in the fourth line to Article XVII should, of course, read "Article XXVII".

Paragraph 8. On page 6 of document E/PC/T/W/312 the Australian Delegation suggest the addition of the following paragraph: "The Committee may take such action as it deems necessary for the performance of its functions and may enter into such arrangements with the Secretary-General of the United Nations as may be necessary for this purpose".

In view of the suggestion just made by the United States Delegation with regard to this paragraph, no doubt the Australian Delegation will wish this to be held over until we come to the revised text of the Article as suggested by the United States Delegate.

DR. H.C. COOMBS (Australia): To what does the suggestion refer, Mr. Chairman?

CHAIRMAN: Mr. Brown's suggestion for the re-drafting of this Article is that whenever the word "Committee" appears, the words "Contracting Parties" should be substituted.

DR. H.C. COOMBS (Australia): I do not see that it is really necessary to defer consideration of this point. If it is decided to refer to the Contracting Parties acting jointly as Contracting Parties (with a capital "C" and "P") then presumably we could substitute that phrase for the word "Committee". However, I do not mind if you wish to defer it.

MR. W. BROWN (United States): Mr. Chairman, I really think it would be helpful to us if, before proceeding, we could know the views of the different Delegations on the substance of the Australian suggestion.

CHAIRMAN: The Delegate for Cuba.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I understand that there was a proposal in relation to the deletion of this paragraph. The Cuban Delegation does not see the need for this paragraph. This Agreement is going to be signed together with a Protocol in which the Contracting Parties will do their best to follow, as much as

possible, the provisions of the I.T.O. Charter. This is a provisional document and these actions are going to take place only until the approval of the Charter of the International Trade Organization. It means that these special provisions will be in force for a certain period of time only, and in that short period of time there is no doubt that, quite apart from the United States' suggested substitution of "Contracting Parties" for "Committee", the Contracting Parties will have that right without any need to write it down. Therefore, I do not see the need for this paragraph which brings in too many implications in our opinion.

CHAIRMAN: Before dealing with the Australian proposal for an additional paragraph, we will deal with paragraph 8 as it stands now.

The Cuban Delegation have proposed the deletion of this paragraph. Are there any comments on this proposal?

The Delegate of the United States.

MR. W. BROWN (United States): Mr. Chairman, we do not feel very strongly about this point, but it does seem to us that it would be useful to recognise the fact that, if disputes arise even in this interim period, the Contracting Parties shall be authorised to decide how to handle them, and it gives too great an implication as the paragraph now stands.

CHAIRMAN: The Delegate for Cuba.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, we have in this Agreement Articles XX and XXI dealing with Consultation and Nullification or Impairment which state some sort of principle for

the settlement of disputes. Then we have the procedures of the Charter. Therefore, I do not see the necessity of establishing a new procedure when we do not know exactly what it will be. That is why I consider this text unnecessary.

CHAIRMAN: The Delegate for Czechoslovakia.

DR. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to thank my Cuban colleague for defending our proposal so well, because that is exactly what we had in mind when we proposed the deletion of this Article.

The only thing I would like to add is that we suppose that the Tariff Agreement is, as Dr. Gutierres said, only a provisional document. Therefore, in this case we do not need any special rules. Otherwise, it will be seen later that, for certain reasons, it should remain as an independent document for a longer time, but in this case probably many countries would have to review the whole position. That is why I would ask, if possible, that this paragraph be deleted.

CHAIRMAN: The Delegate of the United States.

MR. W. BROWN (United States): In view of the arguments advanced by the Delegations of Cuba and Czechoslovakia, we would be quite happy to withdraw our objections to this paragraph, Mr. Chairman.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, we adhere to the deletion of paragraph 8, but I think it would be wise to state that if a dispute arose before the entry into force of the Charter the Contracting Parties would follow the principles elaborated in the

Charter for the settlment of disputes, as it is stated in the Protocol of Signature.

CHAIRMAN: The Delegate of Belgium.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, we second the point of view which was just mentioned by the French Delegate.

CHAIRMAN: Could we have the proposal of the Delegate of France in more precise terms?

M. ROYER (France) (Interpretation): Mr. Chairman, I think it could be stated in the Records that we could add that an interpretative Note should be added to the Protocol stating the obligations for the Members to follow the principles laid down in the Charter regarding the settlement of disputes, namely, the procedures relating to Appeal and Arbitration.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, does that refer to the present Draft of the Charter or the Draft as it might look after the Havana Conference?

Mr. Winthrop BROWN (United States): Mr. Chairman, I am afraid I could not agree to the suggestion of the Delegate of France. If that suggestion is pressed I would revert to Paragraph 8 as it stands at present. It seems to me that if we are going to pick out particular parts of the Charter and give them emphasis in the Protocol we shall get into needless difficulties and pretty soon we will have the whole Charter, and its precise terms, as part of this Agreement.

I agree with the Delegates of Czechoslovakia and Cuba that it is probably going to be an interim provision and the best thing to do is to leave it as simple as possible; in fact, so simple that the point is not even raised. But I do feel it would be most undesirable to establish, either by specific reference or in general terms, an elaborate provision for appeal and all that kind of mechanism.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, the Cuban Delegation is of the opinion that, with the deletion of the paragraph, it would be a sort of compromise which would give satisfaction to all Delegations, because I understand the position of the United States Delegate as he expressed it just now. I think that you will remember the wording of the Protocol of Signature will have the explanation of the whole thing. We think that without the paragraph we will then have Articles XX and XXI, which have already been agreed upon, and the Protocol of Signature would read like this:

"The Governments of . . . HAVING this day . . . signed the General Agreement on Tariffs and Trade agree that the objectives laid down in the Preamble to the Agreement can best be attained if the proposed United Nations Conference on Trade and Employment adopts a Charter for an International Trade Organization, thereby leading to the creation of such an Organization.

"HAVING, in their capacity as Members of the Preparatory Committee for the Conference, recommended the text of a draft Charter to the Conference through the Economic and Social Council of the United Nations.

"UNDERTAKE, pending the entry into force of a Charter, to observe to the fullest extent of their authority the principles of the Draft Charter, and, should the Charter not have entered into force on November 1, 1948, to meet again to consider in what manner the General Agreement should be supplemented."

So I think that with the deletion of the paragraph and with the Protocol the whole matter is covered.

CHAIRMAN: Would the French and Belgian Delegates be prepared to withdraw their suggestion, in order that we may reach a conclusion satisfactory to all Members of the Committee?

M. ROYER (France) (Interpretation): Mr. Chairman, I am ready to withdraw the proposal I have just made if the Committee agrees on the interpretation which has been given by Dr. Gutierrez. In that case I should feel satisfied.

CHAIRMAN: I wish to thank the French and Belgian Delegates. I am sure we have reached a solution which will satisfy all Members of the Committee.

It has therefore been agreed that Paragraph 8 should be deleted.

We will now take up the Australian proposal for an additional

paragraph, which is given on Page 6 of Document W/312.

The Delegate of Australia.

Dr. COOMBS (Australia): Mr. Chairman, we regard this suggestion purely as a machinery provision not yet embodying any principle of any sort, but it did seem to us, in looking at this thing, that if the contracting parties are to take joint action they will need some sort of facilities for acting in that way, and that the simplest procedure would probably be for them to use the facilities of the United Nations Organization itself. For that purpose it might be necessary - although we are not certain - to make some provision in this Article empowering them to enter into such arrangements.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think the contracting parties will always have the right to enter into agreements through the United Nations if they find it desirable, and I think we ought to follow the legal maxim, which says in Latin: " de minimis non curat praetor," and that we ought not to write in here such a provision.

CHAIRMAN: The Delegate of Cuba.

Dr. GUTIERREZ (Cuba): Mr. Chairman, the Cuban Delegation supports the view of the French Delegation.

CHAIRMAN: Are there any other comments?

Does any Delegation support the Australian proposal?

Dr. COOMBS (Australia): We attach no importance to this suggestion, Mr. Chairman. If any Delegates feel doubts about it, we are perfectly happy for it to be withdrawn.

CHAIRMAN: I thank the Australian Delegate for withdrawing the suggestion.

We now come to Article XXIV. Members of the Committee will recall that yesterday we acceded unanimously to the request of the Delegate of the United Kingdom that the representatives of Burma and Southern Rhodesia should be invited to participate in our discussions on Articles XXIV and XXVIII. We are therefore pleased to welcome to our deliberations today the representatives of Burma and Southern Rhodesia.

I wish to apologise to the representative of Southern Rhodesia, that we have not been able to find him a seat in the right alphabetical order, but I take it he will not mind being higher in the order than he would have been.

Paragraph 1: are there any comments?

(Agreed).

Paragraph 2: are there any comments?

The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to raise here the same difficulty we raised before; that is, about "each government accepting this Agreement", and so on, because we think the Agreement can be accepted not by Governments but by parties. I do not know if those States are parties, or how it is.

We do not want to interfere in the internal matters of each country, but I would like only to observe that in our minds any international agreement can be signed only by those, or on behalf of those, who have full treaty-making powers.

As to Czechoslovakia, the Government has no international

treaty-making power. This international treaty-making power is vested in the President of the Republic and the President of the Republic gives full powers. So if we are to sign the Agreement on behalf of the Government the Government cannot appoint representatives or Delegates and the signature may not be valid.

When we put before our Parliament, for approval, the Bretton Woods Agreement, which was also signed on behalf of governments, we had the greatest difficulty and it was almost rejected by our Parliament. We had to explain that it was signed during the time of war and in exceptional circumstances, when our Government was in exile, and so on, but I had several times to go before a Parliamentary Committee and cross my heart that we would never do it again.

I want to make no difficulties for anybody. That is why we thought we might start this Agreement by saying, simply: "The Commonwealth of Australia", and so on, and , instead of saying "The Governments of", to say parties or signatories. We do not mind if Burma and Southern Rhodesia are signatories also, because they must have certain rules - I suppose those gentlemen will be able t tell us - as to who gives full powers for entering into international obligations for them.

CHAIRMAN: Are there any other comments?

Mr. SHACKLE (United Kingdom): Mr. Chairman, I must say this seems to set us a most intricate legal problem. The position, so far as the United Kingdom is concerned, is that we would have the utmost difficulty if the words "the Government of the United Kingdom" are omitted from the Preamble, particularly in the case of our overseas territories. If those words are not there, we should not be in a position to cover them.

If we start this Agreement on the assumption that States as such are parties to the Agreement, it may raise considerable difficulties, and I am bound to say that the precedents for these international governmental agreements are so numerous nowadays that I find the utmost difficulty in seeing where the difficulty will arise.

I have heard what Dr. Augenthaler has said about the difficulties which the Government of Czechoslovakia has had. But I could mention several Agreements - the Bretton Woods Agreement, the International Allied Reparations Agency, the International Civil Aviation Convention, etc. - to all of which I believe the Government of Czechoslovakia as such is party.

I confess I am gravelled at the moment for a solution. It seems to me we need a body of legal experts, which unfortunately is not available.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, this question has also preoccupied the French Delegation and it seems to us also a very difficult one.

Since the war it has been the habit to sign international treaties in the name of Governments, but I think that the legal validity of such a procedure is very doubtful. The Governments are of course empowered to sign treaties, that is obvious; but a Government cannot accept a treaty, because accepting means ratifying, and only the Head of the State is empowered to ratify a treaty, when he is acting through his Parliament. This is the case for France and also for Great Britain, and I think that such a paragraph as this one here stating that the Government accepts would not be quite constitutional even from the point of view of the United Kingdom.

I tried to refer myself to the text of the Charter and to look at Article 99, but it seems that Article 99 bristles also with contradictions. We see in Article 99, in the first paragraph, "Each Government accepting this Charter....." and if we turn to paragraph 2 we see "Each Member may, at any time, accept this Charter in accordance with paragraph 1 of Article 98....." Therefore we find no help in the text of the Charter itself.

I wonder if we could not find a way out by adopting the text which was adopted for the New York Draft, that is, to state simply that "The Government of each country which accepts .....etc" Therefore this would cover the case of both the countries which want to see their Governments accepting this Agreement and also the case of countries where it is the State or the Head of the State which has to accept this Agreement.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, we are going around a very simple problem of international law, and as we, as economists, have had to go into the field of international law, not only now but in previous sessions, this is the result. It is very hard for an economist to find a way out, but it is very easy for a juridical expert, because it is a question of historic procedure in the development of signature of documents.

First, the Treaties used to be signed by Heads of States, the King of such-and-such a place, or the President of such-and-such a place. Afterwards came the High Contracting Parties, which is a more juridical term which covers everyone. But during the war, agreements for conducting the war were signed between Governments, and the war-time idea is still weighing too much in the minds of all peoples.

If we could say here "The contracting parties or respective Governments accepting this Agreement ....." it would cover both cases, because, after all, here are only contracting parties, and it is for their respective constitutional laws to decide who is the power to ratify, and so on. So the only way to state this in a proper form to cover all cases is to say: "The contracting parties or respective Governments", and that would cover the case of Czechoslovakia and the case of the United Kingdom.

CHAIRMAN: The Delegate of South Africa.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, I think Dr. Gutierrez has covered the point which I wanted to make. If we try to define the contracting parties in this document it is bound to lead to some difficulty. All we want to do is to say that the person who is the right person for this purpose should

sign, and then let each country determine who is the right person. If the words just suggested deal with it, I think that settles the matter.

Alternatively I was going to suggest: "shall deposit an acceptance according to its constitutional procedure". That was just an alternative suggestion.

But do not let us get into the question of defining what is the right signing party.

CHAIRMAN: Mr. Shackle.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am bound to say that I find considerable difficulty in understanding why there should be so much difficulty over this point, because certainly in the case of the United Kingdom we have made arrangements in the name of the Government ever since 1933. All our trading agreements, which I believe total something like 15 or 16, were made in the name of the United Kingdom Government and the Governments of the other countries concerned, and that was the case in our Trade Agreement with the United States in 1938 in which the colonies were covered and had their own tariff schedule; and I believe that the United States Trade Agreements were made in the same way. Those were not war-time agreements. They date from many years before the war. So I can hardly understand the suggestion that this is a sort of war-time constitutional innovation.

The only solution which occurs to me at the moment - and I can only refer it to my legal authorities at home - would be that we could start the Preamble in this sort of way:

"The contracting parties, namely the Commonwealth of Australia, Belgium ....." and so on

and then it might conceivably be picked up in the later Article

which concerns the status of the contracting parties - Article XXX:- "The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions ..." etc.

It may be that between those two texts there might be a solution to this problem, but I am afraid I am not competent to say, and I can only consult the legal experts in London.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, if we have to come to this question we will do it, but we do not think it necessary for any delegation to consult with the legal experts at home, because actually it is a very simple fact. When we say at the beginning "The Commonwealth of Australia, Belgium, Netherlands ..." etc. there is no need to call them the High Contracting Parties, because they <u>are</u> the contracting parties whether we call them so or not. You can find in the collection of the Treaties of the League of Nations here in the Library probably a thousand or two thousand with that preamble. So I oppose to make any change of that sort, which will show quite an appreciable departure from the techniques and precedents of international law.

And as to the part of the Governments, and that Governments had made treaties before, we always must bear in mind this: that in some cases of commercial or tariff treaties when Governments have signed them it is because they have received the delegation of power from their Parliaments and those were the cases before the war, when governments were signing treaties of commerce or tariff matters; otherwise it is not customary, because the tendency has been to say "the contracting parties"; we do not need to enter into consideration of which are contracting parties - States, Governments, or territories. Every one of them will be

contracting parties according to their constitutional laws, and we cannot come with our constitutional laws and impose them on the rest of the world. In the provisions for the signing of international treaties we have to try to arrive at a certain formula which covers the situation of all the countries involved, and that formula has been developed throughout the year by the words "contracting parties"; that covers the whole thing. If we wish to consult legal experts around the world, I think it is useless, because we have everything for consultation in the Library.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am afraid I stand exactly where I stood. The advice we have from London is we must say "Government of the United Kingdom" because if we simply say "the United Kingdom" that does not enable us to pick up the colonial territories or dependent territories. I do not think it would be a solution to write in the colonies or dependent territories into the Preamble because they fall into two categories, those which are autonomous and those which are not, and if we were to do that it would involve bringing in the whole of Article XXIV into the Preamble and it would cause appalling complication. I can only say it is my definite advice that to introduce the Heads of States form into this Agreement, which is after all a Trade Agreement, would cause extreme complication. I am perfectly willing to submit to our authorities in London anything that commends itself to the attention of this Committee. I could submit the procés verbal for them to see the arguments implied; but beyond that I cannot go. I am afraid the suggestion I made just now - "the contracting party, namely ...." does not comment itself to this Committee but I would like to hear a little more about that. I think that might be the right solution.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): I do not know anything about international law, but it does seem to me to be fairly clear that the Contracting Parties are different from country to country and therefore it would be preferable to avoid, if we can, any reference to what the nature of the Contracting Party is - whether it is the Government, the Head of State, or anything else.

I have had a look at this particular Article with which we are concerned - Article XXIV - and it would appear to me to be perfectly satisfactory to substitute the words "Contracting Party" wherever "Government" appears at present. Then if it is the Government which is the Contracting Party, the country concerned would read "Government" for "Contracting Party"; if it is the Head of State who is the Contracting Party, they would read "Head of State". If that is done, it does not seem to me that, in respect of this particular Article, any difficulty arises at all.

So far as the Preamble is concerned, it would appear to me that, if it is necessary to specify the nature of the Contracting Party and since the Contracting Party will differ from country to country, the only possible solution is for each country to decide whether it wishes to say "the Government of the Commonwealth of Australia", "the President of the United States of America", or whatever the Contracting Party is. Personally, so far as I can see, it will probably be sufficient to say "The Commonwealth of Australia",operating through whatever is the appropriate constitutional agency of the Commonwealth of Australia. We would not wish, I do not think,to specify; but if it were necessary, we could say that we wish to say "The Government of the Commonwealth of Australia", and if somebody else wanted merely

to say "The Republic of Chile", or "the President of the United States", we would have no objection to the first paragraph of the Preamble being a little longer, and having got over that part of the problem, I cannot see any part of this text where we could not put "Contracting Party" for "Government".

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): I suggest, Mr. Chairman, that we suspend discussion of this question for the present and send it to the Legal Department of the Secretariat. In the meantime, the Australian and British Delegates can consult with their experts in Canberra and London, and I am sure those Legal Experts will find a solution.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I have the utmost respect for the Legal Experts of the Secretariat; but I am afraid that the complications of constitutional law in the United Kingdom and the Colonial territories are almost incredible, and I fear that as regards those I should have to go to our own experts at home.

As regards Dr. Coombs' suggestion, it consists, I understand, of saying "Contracting Parties" wherever the present text says "Governments". That, of course, occurs in a large number of Articles throughout the Agreement. On a very hasty run through, I see one place where we cannot say that, and that is in Article XXXI, which speaks of "Governments not parties to this Agreement". One will clearly have to use some other word like "Countries" there, but I dare say there may be a solution and I am prepared to submit Dr. Coombs' suggestion to London. That is the best I can do.

CHAIRMAN: I think the proposal of the Delegate of Cuba that

we defer consideration of this problem until the Delegations concerned have had a further opportunity of consulting their Legal Experts is a very sensible one. This question arose when we were considering the Preamble. We had a discussion at that time and we could not come to any solution, so I would suggest that we leave the question until we come back to the Preamble. In the meantime, we can leave the word "Government" in here provisionally and return to it later when we have come to some agreement about how the Preamble should read.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr.Chairman, it may be suggested to the Legal Department to also have some provisions in the final Protocol to the effect that wherever we speak about Great Britain, it means "British Government", and some explanatory note. I have no objection to that. To some Delegates it may seem that it is a matter of minor importance, but it is of very great importance. For instance, if the Civil Aviation Agreement were not correct from the legal point of view, the importance would not be great because it is the States who are engaged. But here the rights of private people are involved, and if we sign the Agreement in a form which is not the legal form, anybody who wished to oppose some reduction of customs duties could attack the whole Agreement in the highest Court.

CHAIRMAN: It seems clear that this question can only be resolved in relation to the Preamble, and therefore I think the best thing is to hold it over again until we come back to the Preamble, at the same time not making any changes in the draft text where the word "Governments" appears: just accepting that word provisionally. I am sure the United Kingdom Delegation and other Delegations affected will take into account the

suggestions made during the course of this meeting when they are consulting their Legal Experts.

When I introduced Article XXIV, I overlooked referring to Document W/316 of September 2nd, in which the United States Delegation proposed certain changes to Article XXIV. The first amendment of the United States Delegation was a new wording of paragraph 1. Therefore, it is necessary for us to revert to paragraph 1 and consider the text proposed by the United States Delegation in Document W/316.

Mr. Winthrop BROWN (United States): Mr. Chairman, the intention of the amendment of the new paragraph 1 suggested in Document W/316 was to carry out the scheme of signature and provisional application which was agreed in general in the earlier sessions of the Committee. The proposal is simply to make it clear that the Agreement shall be open for signature until June 30th next by any Government which is signatory to the Final Act, and which is not able to sign at the end of this Conference. The amendment in the present paragraph 4 is purely consequential.

Dr. H.C . COOMBS (Australia): Mr. Chairman, the general intention of this new paragraph is in accordance with our views. There are one or two doubts which I have about it which the United States Delegate may be able to clear up. I cannot understand the significance of the first sentence "The present Agreement shall bear this day's date". It does not seem to me that it is necessary for it to bear a date in that sense at all. It is recorded at the end of the document - I have forgotten the precise wording now, but the suggestion is in relation to Article XXXII, that it should include words to this

effect: "Done in a single copy, in the English and French languages, both authentic, at Geneva," on such-and-such a day. If that is all that is meant by the first sentence of this new paragraph, obviously we would not have any objection to it; but we would not regard that as being the date of the Agreement in any sense: it is merely the date on which this text is done in single copy. Therefore, I would like clarification from the United States Delegate as to whether the words in the first sentence have any significance beyond that. If they have not, then I do not consider the sentence necessary. If they have, I would like to know what it is.

Secondly, I wonder whether it is proper - the Legal advisers may be able to help me on this point - to refer to this document as an Agreement when we are saying that it shall be open for signature. I am not sure at what stage it becomes an Agreement, but it is at this stage, I presume, really only a project for an Agreement or something of that sort. I am not worried about that, provided that it is not legally incorrect to refer to something which is not yet an Agreement as an Agreement.

The other point that I wanted to raise is in connection with the last clause of this first paragraph which reads "which shall not have signed this Agreement on this day". I see no reason why we should make any distinction between countries according to whether they sign on the first day, the second day or any other day in the period during which the document is open for signature. Our idea was that this document, having been done in single copy, etc., was open for signature up to 30th June 1948, and whether you sign on the first day or on a later day is purely a question for your own convenience and decision, and is not a question of relevance to the content of the Agreement at all. Therefore, we we would wish this reference to "which shall not have signed this Agreement on this day" deleted from this paragraph.

CHAIRMAN: The Delegate of the United States.

MR. W. BROWN (United States): Mr. Chairman, I can assure the Delegate for Australia that there is no sinister motive behind the first sentence. I believe that it was suggested simply to make sure that we would have a convenience of reference to this document by being able to sign it as the Agreement at such and such a date. If the provision to which he refers at the very end of the present Agreement meets that point, we attach no particular importance to the opening sentence. It was suggested because, in fact, there might be signatures at different dates and therefore it was thought that it might be useful to make clear the date of reference.

As far as calling it an Agreement is concerned, we think that it would be difficult to find a better word. After all, we are going to take substantial action, albeit provisionally, under this document and therefore we have reached agreement at least to that extent. It never occurred to me that that word would raise any difficulties.

So far as the last clause is concerned, the clause relating to Governments which shall not have signed this Agreement at Geneva, again I suppose that was put in for abundance of caution in drafting, and I am inclined to agree with the Delegate for Australia that it is entirely superfluous.

CHAIRMAN: The Delegate for Norway.

MR. J. MELANDER (Norway): Mr. Chairman, there is one point in this paragraph to which I would draw attention. It is the reference to the date - June 30th, 1948. I take it that that has been inserted on the assumption that we shall finish the Havana Conference

on the 15th January or the 1st February, and of course we all hope that we shall finish round about that date, but - I might perhaps be frightening the Cubans now - there is also the possibility that the Havana Conference may continue for another couple of months, and in that case I think one ought to provide for a little more time. Perhaps one could say, instead of June 30th, 1948, "four months after the end of the Havana Conference", for example.

CHAIRMAN: The Delegate for New Zealand.

MR. J. P.D. JOHNSEN (New Zealand): Mr. Chairman, I would support the proposal made by the Delegate of Norway, I think also that this date, 30th June, 1948, has some bearing on the proposal made for the amendment of Article XXVII, that is, the question of the substitution of Part II of the Agreement for Part II of the Charter. I was wondering whether this particular question could not be allowed to stand over until we have considered that particular amendment.

CHAIRMAN: The Delegate of Australia.

DR. H.C. COOMBS (Australia): Looking for clarification, Mr. Chairman, I am not entirely clearl what is the relationship between the signature of the Agreement to which this paragraph refers and the signature of the Protocol of Provisional Application. Do I understand that the Protocol of Provisional Application would be signed by those countries which wish to apply the Agreement provisionally, and certain countries undertake to make up their minds about that by the middle of November?

On the other hand, do I understand correctly that if a country signed that Protocol of Provisional Application it would subsequently,

prior to June 30th, 1948, sign another Agreement if the country so desires, and if that is correct, is it necessary to specify in this paragraph that the Protocol of Provisional Application will be open for signature after a specific date, that is, 15th November, or whatever date we agreed upon?

CHAIRMAN: The Delegate of South Africa.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, it seems to me that we believe in the principle of making a simple thing complicated before we can do anything about it.

Now, I had understood all along that first of all in Geneva we would authenticate the document only - that is the only really important thing. That will leave the way still open for the other things that have got to be done. Then, there are certain countries that can sign provisionally, undertaking among themselves certain obligations to do certain things. The first is to say things, the second is to do things. Then it would still leave open, for the certain countries whose constitutional procedure required it, certain things.

This seems to be getting so complicated now that I am not quite sure whether, sooner or later, you might find that you just cannot sign before you have got an agreement, and you cannot have an agreement before you sign.

I think we must get back to simplicity. We have something which says: this is the authentic text; secondly, we have something which says: this is the text among countries provisionally; thirdly, there is the signature which can be done at some later stage by everybody. Now, we have got those three things set out simply and this discussion is not necessary.

I would point out also that the date shown here as 30th June, 1948 has got to be related to another date in the draft Protocol in document E/PC/T/189, the last paragraph of which says that countries, undertaking the principles of the Draft Charter, should the Charter not have entered into force on November 1st, 1948, will meet again. Now, if 84.9% only have signed by June 30th, it does not come into force, and we have still got four months and you cannot sign in that period.

It seems to me that whatever date is put into this Protocol of Signature ought also to be put into this Article for the last date of signature.

CHAIRMAN: The Delegate of Norway.

MR. J. MELANDER (Norway): Mr. Chairman, I do not think the problem is as complicated as suggested by the Delegate of South Africa.....

DR. J.E. HOLLOWAY (South Africa): On the contrary, I suggested that it is not complicated.

MR. J. MELANDER (Norway): .....I think the thing is very simple. We have the Final Act which will be signed when the Geneva Conference is over - whatever date that might be; then we have the Protocol for Provisional Application which will be signed by the key countries according to the date agreed in regard to them, and in the document proposed by the United States Delegation, document E/PC/T/W/316, this Protocol of Provisional Application shall be open for signature until June 30th, 1948. That, I think, is quite acceptable and there would seem to be no need to

alter that date because, although it might be, perhaps, only a month or two after the Havana Conference, it would in any case be sufficient time, I think, for Governments to decide whether or not to apply provisionally. But what I think one ought to keep in mind is the possibility of not excluding parties which have signed the Final Act from becoming parties to the Agreement when it enters into force definitely. That is why I suggested that the first paragraph in Article XXXV, as suggested in the United States proposal, ought to have a date related to the end of the Havana Conference, so that the date June 30th, 1948 ought to be amended to, say, four months after the end of the Havana Conference.

That, of course, does not at all exclude the possibility that we shall have to alter the other dates in this document. I do not want to go into details now. I should just like to mention that the date suggested in the Protocol of Signature in Document T/189, namely, November 1, 1948, might perhaps be too short a period. That, I take it, is related to the assumption which we had at the beginning, that we should be able to finish at an earlier date than we now anticipate.

Anyway, I think we can take up the alteration of these other dates when we come to them. I think it is sufficient now to try to settle the date for the definite entry into force of the Agreement and during what period the Protocol should be open for signature.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, answering the question of the Delegate of Australia: the reason for making a provision for signature of the Agreement was because, of course, certain countries, under their constitutional procedures, have to sign the Agreement before they can present it to their Parliaments. Certain others do not have to do that.

As far as the date of June 30 is concerned, we felt that would allow ample time for countries to make up their minds, after the Havana Conference, whether they wanted to bring the document into force provisionally, and it was thought desirable not to leave that matter open for too long a period.

As far as the point made by the Delegate of Norway is concerned; of course there is a general provision in the Agreement for adherence to it by other countries, and those reasons would be applicable in the case of any country which did not sign for provisional application before June 30, so that nobody would be precluded from coming into the Agreement.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, the clause relating to adherence, that is, Article XXXL, does make it clear that Governments not parties to the Agreement may adhere on terms to be agreed between such Governments and the contracting parties. That means that if one of the parties to the Final Act did not enter definitely before June 30, they would have to enter on the same conditions as any outsider and, theoretically at any rate, that might mean that country would have to negotiate all over again. I think that would be rather impracticable and it would be better if one could leave the Protocol open for final signature until such a date when all the parties to the Final Act should have had a reasonable time to make up their minds.

I do not say that the date suggested is likely to be unsatisfactory; in fact, I think it is likely to be all right, but, on the other hand, we do not know what this famous future conference will lead to and how long we shall sit there. That is the reason why I think that it would be better to leave it until a little later, especially when it is a question of the definite entry into force.

CHAIRMAN: Are there any other comments?

It is now nearly one o'clock and I do not think we can deal with all the various suggestions which have been made for amending Paragraph 1, so I would suggest we break off here.

Before we adjourn, I would like to make an announcement on behalf of the Chairman of the Sub-committee dealing with Paragraph 3 of Article II. The Chairman would like the Sub-committee to meet at 3.15 p.m. instead of 2.30 p.m. as announced. Will all those Delegations who are represented on the Sub-committee kindly notify their representatives of the change of time of the meeting of the Sub-committee this afternoon.

Mr. SHACKLE (United Kingdom): Will it be in this room, Mr. Chairman?

CHAIRMAN: The Sub-committee will meet in this room, as given on the Programme of Meetings issued this morning.

There being no further business, the meeting is adjourned until 2.30 p.m. on Monday.

The meeting rose at 1. 5 p.m.