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

VERBATIM REPORT.

SEVENTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE  
HELD ON FRIDAY, 12 SEPTEMBER 1947 AT 2.30 P.M. IN THE  
PALAIS DES NATIONS, GENEVA.

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

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CHAIRMAN: The meeting is called to order.

As I announced at our meeting yesterday afternoon, the first part which we will take up this afternoon is Provisional Application, and after we have considered that we will then deal with the Final Act; after that we will take up the Protocol accompanying the Agreement and the various Annexes; we will then endeavour to deal with Reports of Sub-Committees or other proposals for the revision of the texts of certain Articles.

This is the work which we have to get through during the next two days if we are to permit the Secretariat to prepare a clean text of the Agreement for our consideration and the third reading next week. I would ask for the co-operation of all Members of the Committee in expediting the work so that we may get through the second reading stage at our meeting tomorrow morning.

In connection with Provisional Application, we have already agreed in principle that Article XXXII of the Draft Agreement should be supplanted by a Protocol of Provisional Application. The United States Delegation have submitted a text of a Protocol of Provisional Application, which is given on pages 3 and 4 of document E/PC/T/W/316. I think that the best plan would be for us to consider the United States draft of the Protocol of Provisional Application. We will deal with this Protocol of Provisional Application paragraph by paragraph.

Are there any comments on the first paragraph of the United States Draft?

The Delegate of the Netherlands.

DR. G.A. LAMSVELT (Netherlands): Mr. Chairman, it might be of interest to the Secretariat that, instead of the word "Netherlands", my Delegation would like to substitute the words "Kingdom of the Netherlands" in any place where the word "Netherlands" appears.

CHAIRMAN: That change will be made in the Protocol of Provisional Application. Does the Netherlands Delegation also desire that change to be made in the Preamble?

DR. G.A. LAMSVELT (Netherlands): Yes, Mr. Chairman.

CHAIRMAN: The first two lines of the Preamble would read: "The Governments of the Commonwealth of Australia, Belgium, the Kingdom of the Netherlands and Luxembourg....".

Are there any other comments on the first paragraph of the United States draft Protocol?

MR. B. ADARKAR (India): Mr. Chairman, it appears from the last sentence of the first paragraph that any other signatory Government shall make effective such provisional application on or after January 1st, 1948. I take it that, should the circumstances of the country require it, there will be no objection to any Government giving provisional effect to its tariff concessions immediately after the simultaneous publication of the Tariff Schedules?

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, there is just a point about the list of territories. We have a Sub-Committee still sitting on the question of Burma, Ceylon and Southern Rhodesia, and this rather depends on the findings of that Committee, and the question may arise of including some or all of those territories in

the list of territories at the beginning of this Protocol.

CHAIRMAN: In reply to the question raised by the Delegate of India, I should think that it would be the view of the Committee that there would be nothing to prevent any country applying its own tariff concessions before applying the provisions of the General Agreement.

Are there any other comments on the first paragraph?

MR. L.E. COUILLARD (Canada): Is that date of November 15th still correct, Mr. Chairman, or should it be November 10th?

CHAIRMAN: That is a matter for decision.. We had, on our list prepared by the Secretariat, a tentative time-table which seems to have agreed to the date of November 10th. The United States have proposed the date of November 15th in their document, and therefore it is up to the Committee to decide which of the two dates is preferable.

CHAIRMAN: Any views on the date which should be shown as to date of the signature of the Protocol?

Mr. R. J. SHACKLE (United Kingdom): I am in favour of making the date a little early to leave time for the Secretariat to inform all the various countries of what signatures have come in so that they would have the opportunity of seeing how these were roughly fulfilled and knowing what the position was going to be before actual enforcement takes place. I think that was the idea, was it not, to give some time to the Secretariat to spread the information around. It would perhaps be as well to leave a few days for that purpose.

CHAIRMAN: When the subject of the tentative time-table was being discussed in this Committee, it was agreed that there should be a certain period of time between the closing of the Protocol for signature and the date of simultaneous public announcement. Some members of the Committee suggested there should be a week's interval between these two stages and therefore it was agreed that the simultaneous publication should take place before the Havana Conference of November 17th. It was therefore felt that we should put the date of November 10th for the closing signature, being a week before the simultaneous public announcement. The question which we should now decide is what date we should take for the closing of the Protocol for signature.

Any other comments in regard to the dates?

Mr. J. P.D. HOHNSEN (New Zealand): I think the idea was to leave sufficient time between the tentative date of signature of the Final Act and the date for signature of the Protocol. I think it was, if I remember correctly, that there should be

a fair lapse of time so as to give an opportunity to study the Agreement and give full consideration to it.

CHAIRMAN: Is the Committee agreed that the date should be November 15th as proposed by the United States Delegation?

Mr. E. McCARTHY (Australia): Subject to amendment, Mr. Chairman, that we have a clear idea as to when the negotiations of the Trade Agreement will have finished. Our view is, that we cannot agree to other countries publishing statements on the tariffs which would include amendments to our tariffs unless we publish at the same time. Our problem would be to conclude the Trade Agreement and pass, or introduce, the necessary schedules into Parliament before any publication is made by anybody; and whilst November 15th at present would be satisfactory it is just a matter as to whether we will have time after the negotiations have finished to take the necessary action before November 15th

Mr. J. M. LEDDY (United States): Mr. Chairman, as I understand the position, the Australian Delegation would like to publish the Agreement about the same time as they declare it before their Parliament. But they might sign the Protocol of Provisional Application a day, or several days, before that, though the publication is not made at the moment when they wish to lay it before their Parliament. If that is correct, we could possibly leave November 15th as it stands which would give them ample time to effect the necessary clearance which will allow signature and perhaps publication two or three days later. I should not think it would take much time and every Government, I should think, by the end of the Geneva Meeting, and the date of publication will have its arrangements made and be able to act on very short notice indeed.

Mr. SHACKLE (United Kingdom): If we adhere to the idea that there should be publication before the Havana Conference, the last possible dates should be: Saturday, 15th November for signature, Tuesday 18th November for publication because the Havana Conference opens on the 21st November.

Mr. McCARTHY (Australia): My problem is, Mr. Chairman, whether we will have time to put the schedules into Parliament before they are published by other countries. On present indication there should be no difficulty, but if the Trade Agreement negotiations drag on and we have not got the material to act on we would be in difficulties. Other countries, by order of Council, or some other method, that did not take any length of time, might perhaps finish early in November their trade negotiations and publish them the next day, and we should then be in difficulties. We have got a certain procedure to go through. It might not take very long - it happens Parliament will be sitting - but we see the difficulty of publishing the tariff schedules when the conclusion of the Trade Agreement negotiations is as indefinite as it is at the moment.

If, of course, everybody is satisfied that they will have their negotiations cleared up by the middle of October, we would have nothing further to say. We could handle it in three weeks or a month but we would not be able to handle it in one week or ten days.

CHAIRMAN: I may stage that all we have been doing here and all our discussions on the tentative time-table have been based on the assumption that the tariff negotiations will be completed, if not by the end of this month, at least shortly after the beginning of next month, so I think we could accept

this date of November 15th that is put in here, under that understanding. Of course, if the tariff negotiations are prolonged, there will have to be a general review of the whole timetable and of these developments.

Mr. E. McCARTHY (Australia): We can accept that point of view

CHAIRMAN: Any other comments with regard to Paragraph 1 of the United States draft of the Protocol?

(Agreed)

Paragraph 2. Any comments?

Mr. LEDDY (United States): We have a criticism as to the second clause. We think that freedom to withdraw the provisional application should be freedom to withdraw the application of the whole arrangement and not part of it. I think that is essential, otherwise by this clause some countries would be free to withdraw some parts of the tariff schedule without any similar action by other countries. I think it must be freedom to withdraw from the whole of the arrangement.

CHAIRMAN: The United States Delegation propose the deletion of the words "in whole or in part" in the second paragraph.

M. ROYER (France) (Interpretation): I second this proposal.

CHAIRMAN: Any objections to this proposal?

(Agreed)

Any other comments on the second paragraph?

(Agreed)

Paragraph 3. Any comments?

(Agreed)

Paragraph 4. Any comments.

(Agreed)

We now come to the formula at the end and I take it that in accordance with the decision yesterday we will delete the words "and have affixed their seals hereto."

Mr. SHACKLE (United Kingdom): I have just one question. I am wondering if the expression "their full powers" could be replaced by "duly authorised on their behalf". Full power is, I understand, a very formal thing and it may be that something less formal might be adequate but I do not know.

CHAIRMAN: That is the same form we had suggested yesterday for the General Agreement itself. I should think it would be the same powers which would apply both to the signature of the General Agreement and the signature of the Protocol.

M. ROYER (France): (Interpretation): Mr. Chairman, I beg to second your opinion. I think that we ought to maintain here the principle of full powers. In fact here this is not only a Protocol for a simple signature; this Protocol goes far beyond that and it is a Protocol by which its signatories will commit their governments. Therefore it seems to us that these powers must be given in due form and that it must be absolutely certain that the signatories of the Protocol have the powers to commit their governments. I think that therefore we should adopt the most solemn form of procedure here in conformity with constitutional procedure.

Mr. R.J. SHACKLE (United Kingdom): It says "in a single copy" now.

CHAIRMAN: First of all let us deal with this first paragraph. Are there any other comments on this paragraph? Then this paragraph will remain as it is in this text with the deletion of the words "and have fixed their seals hereto" in conformity with the decision we took yesterday on the formula of the General Agreement and the words "Done in a single copy" would be changed to "Done in duplicate".

Mr. J.M. LEDDY (United States): I do not really think it is done in duplicate. It is just done in the English and French languages. If it were done in duplicate you <sup>would</sup> have to have two copies both in English and French. So I think it is really in a single copy in French and English.

CHAIRMAN: Is that agreed?

Agreed.

Should the same change be made in the formula for the General Agreement?

Mr. J.M. LEDDY (United States): I should think so.

M. ROYER (France): (Interpretation): Mr. Chairman, I think that it might be well to make that reservation here because when we have an Act which is passed before a Notary or a solemn Act it is good to show how many authentic copies there exist of such an Act and therefore we should say "Done in the English and French languages, the English and French texts being authentic".

CHAIRMAN: Shall we leave this question to be studied by the Legal Drafting Committee?

Are there any other comments?

Dr. A.J. BEYLEVELD (South Africa): Mr. Chairman, is "at Geneva" in order? Not everybody might be signing at Geneva.

Mr. J.M. LEDDY (United States): Mr. Chairman, I do not think that means that everybody signs at Geneva. I would quote a precedent, namely the Convention for the Abolition of Prohibition and Restrictions of 1927. That said "at Geneva" but it was not signed at Geneva. Some of the parties signed at Geneva and some later. It merely means that the text was established at Geneva.

CHAIRMAN: Are there any other comments?

I take it that we leave the text now of the Protocol of Provisional Application and we can pass on to consider the Final Act. We have had submitted to us the text of the Final Act given in document W/315 of the 1st September together with Corrigendum 1. Then I would also call the attention of members of the Committee to document W/319 of 4th September. This deals with the question of

Reservations to the Charter. The Tariff Negotiations Working Party considered the request of several delegates for assurances that signature or application of the General Agreement would not prejudice their freedom to maintain reservations to the Charter. The Tariff Negotiations Working Party suggested that these assurances could be provided by adding certain provisions at the end of the first paragraph of the Final Act. A draft paragraph to that effect is given in document W/319.

Are there any comments on this question of the Final Act?

Dr. GUTIERREZ (Cuba): Mr. Chairman, when you decide to take up the question of reservations I wish to say a few words.

CHAIRMAN: I think we might first of all proceed to consider the first paragraph of the Final Act as given in document W/315 and then take up the report of the Tariff Negotiations Working Party regarding reservations.

In this first paragraph the word "Netherlands" will be changed to "The Kingdom of the Netherlands" in accordance with the request of the Netherlands Delegate.

Dr. G.A. LAMSVELT (Netherlands): Mr. Chairman, as it is put here there might be a confusion, because the text reads "Netherlands and Luxembourg". Since the late King William III died, Luxembourg is no more a part of the Kingdom of the Netherlands.

CHAIRMAN: That is why I asked the Netherlands Delegate whether he wished that same change to be made in the Preamble, because it appears in the Preamble.

M. ROYER (France): (Interpretation): Mr. Chairman, I think that the only superfluous word is "and" in the Preamble and in the Final Act. The text is even queerer because it seems that one

speaks of "the Governments of the Commonwealth of Australia, Belgium, Netherlands and Luxembourg", and then afterwards goes on to speak of the United States of Brazil.

CHAIRMAN: We have an expression of the wish of the Netherlands Delegate that the Netherlands should be described as "the Kingdom of the Netherlands" and it is up to the Legal Drafting Committee to wrestle with the problem of putting these countries in their proper order in a way that will avoid confusion.

Are there any other comments on the first paragraph of the Final Act?

Then I take it that the first paragraph is approved.

We will therefore pass on to the second paragraph given in document W/315. Are there any comments?

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, according to our interpretation we have here, as the main document to be signed in the first chronological order, the Final Act; together with the Final Act comes the General Agreement on Tariffs and Trade and its accompanying Protocols. Those Governments which do not wish to sign the Agreement at Geneva, in our opinion - and I want to know if it is also the opinion of the Committee - would only sign the Final Act and not sign, up till the time it is open for signature, the General Agreement.

Now the question that I wish to put to the Committee is, firstly, if that interpretation is correct; and secondly, if it is only the nations signing the General Agreement which have to sign the Protocols; so that if a nation chooses to sign only the Final Act we only have to have one signature - the signature to that document.

CHAIRMAN: My understanding of the position is this: that the Final Act will simply authenticate the text of the General Agreement with the accompanying Protocols and existing Schedules; that the Final Act will be signed by all of the Delegations who will be in Geneva; but that it will be necessary for each Delegation to sign the General Agreement and the Protocols that go with the General Agreement, except the Protocols of Provisional Application, either at Geneva or at some other place up to 30 June. The Protocol of Provisional Application will be also signed either at Geneva or elsewhere by the key countries up to 15 November and by other countries at any time subsequent to that.

Dr. Gustavo GUTIERREZ (Cuba): I want to be sure, in order to give the proper information to my Delegation. My Delegation has not yet received the instructions of our government as to whether it should sign the Treaty here or not and it is our understanding that if we choose not to sign the Treaty here at this moment, but probably at some other date, then we only have to put the signature on the Final Act and not on any other document; because at the end of document W/319 where an amendment has been presented for the wording of the closing phrases of the Final Act it says:

"In witness whereof the respective Representatives have signed the present Act and have thereby authenticated the text of the General Agreement on Tariffs and Trade with accompanying Protocols annexed hereto".

So it seems clear that there is only one signature, that of the Final Act. Then the nations that decide to sign the General Agreement here at Geneva will also have to sign that General Agreement and the accompanying Protocols. I wanted to know if that interpretation is correct.

CHAIRMAN: The Delegate of the United States.

Mr. J.M. LEDDY (United States): Mr. Chairman, a distinction should be drawn between the signature of the Trade Agreement proper and the signature of the Protocol of Provisional Application. By signing the Protocol of Provisional Application, the Government concerned is undertaking a firm commitment to give provisional application thirty days after signature. By signing the Trade Agreement, countries are not undertaking a commitment to put the Agreement into effect. That takes place only after they have accepted it and sent in an instrument of acceptance. Therefore, it would be open to any country here at Geneva to sign the Trade Agreement without a binding commitment to bring the Trade Agreement into force. Apart from that, I think the explanation of Dr. Gutierrez is quite correct.

CHAIRMAN: I thought I had drawn a distinction in my statement between the Protocols which accompany the General Agreement and the Protocol of Provisional Application, which is a document of another character, and therefore, of course, its signature would take place independently of the signature of the General Agreement and its accompanying Protocols.

The Delegate of Belgium.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, are there three different documents to which we have to affix a signature - that is, the General Agreement, the Protocols accompanying the General Agreement and then the Protocol of Provisional Application? Will we have to give three signatures?

CHAIRMAN: The Delegate of the United States.

Mr. J.M. LEDDY (United States): I think there are four and possibly five, depending upon what we decide to do about the Interpretative Notes. There is the General Agreement; the Protocol of Signature which deals with the Charter as a whole; the Protocol of Provisional Application; the Protocol relating to Interpretative Notes, and the Final Act. Then there is the Protocol relating to the Occupied Territories, which would make six.

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

Mr. Chairman, if a Government signs the Protocol of Provisional Application, does this mean that he will also have to sign, at the same time, the Protocol of Signature -that is, the undertaking to observe the provisions of the Charter; the Protocol relating to Interpretative Notes; the Protocol relating to the General Agreement, and the Protocol relating to Occupied Territories such as Germany, Japan and Korea?

CHAIRMAN: My answer would be yes.

Mr. J.M. LEDDY (United States): May I suggest that with regard to the Protocol of Signature, since that deals with the Charter as a whole I wonder whether we should not contemplate that that should be signed here at Geneva?

CHAIRMAN: That is a question which can be discussed either now or at a later date.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I think that we have a clear situation now in relation to the signatures. The main document, technically speaking, that we have to sign is the Final Act, because all the others are in some form related to the Final Act. Then the main document after the Final Act would

be the Agreement. Those signing the Agreement should sign all the Protocols, except, naturally, the nations who do not intend to undertake provisional application. That would be, in my opinion, the best distinction in relation to the signatures. Those nations who are <sup>not</sup> signing the General Agreement at Geneva could not sign the Protocol on Interpretative Notes, because the Interpretative Notes are related not to the ~~Charter~~ but to the Agreement. Therefore, there are two "key" signatures: the signature of the Final Act and the signature of the Agreement. Those signing the Agreement will have to sign the Protocols; those not signing the Agreement would simply sign the Final Act.

CHAIRMAN: I think Dr. Gutierrez has practically summed up the situation, except that we should, I think, bear in mind very clearly the distinction between the accompanying Protocols—the Protocols which would be signed at the same time as the Agreement—and the Protocol of Provisional Application, which can be signed at the same time or can be signed before or after. It has an independent status in relation to the others.

Mr. J.M. LEDDY (United States): Mr. Chairman, I wonder whether it would not be a good idea to ask the Secretariat to prepare a brief paper on this subject, so that we could get it down in black and white in regard to what the status is; and what it means when each country signs the instrument, and what other instruments they have to sign, if any, if they sign one.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that we could make this more specific by calling the Protocol of Provisional Application the "Optional Protocol". In that way,

one would see clearly that the Governments would be allowed to sign it or not to sign it, at their free will. (Further remarks concerned the French text only).

CHAIRMAN: I think the suggestion made by Mr. Leddy is a good one, and if the Committee agrees, we will ask the Secretariat to prepare a paper setting forth the various documents in relation to the time and obligation of signature.

The Secretary advises me that he thinks this document can be circulated tomorrow morning.

Are there any other comments with regard to the second paragraph of the Final Act given in Document W/315?

Mr. J.P.D. JOHNSEN (New Zealand): I think the date would require to be changed.

CHAIRMAN: Yes, I think that date would require to be changed, because, as Mr. Shackle pointed out, if the provisional application Protocol closes for signature on 15th November, the earliest date for simultaneous publication would be 18th, so I would suggest that we change that date to the 18th provisionally.

Is that agreed? Are there any other comments on the second paragraph? Then we take the formula given on page 2, and I think that is in order.

Mr. R.J. SHACKLE (United Kingdom): Is not that altered by Document W/319, Mr. Chairman?

CHAIRMAN: Yes, I think so. That has been altered by Document W/319. Then I think we might take up Document W/319 and consider this paragraph. It is suggested that it be inserted at the end of the first paragraph given on Document W/315.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, a small verbal point: in the fifth line, I think it would be better to say "uphold" rather than "maintain", because what we are saying is that it will be open to Delegates to argue in support of the reservations they have previously made, not merely to keep the reservations on. I think the word "uphold" better carries that implication.

CHAIRMAN: Mr. Shackle proposes that the word "uphold" should be substituted for the word "maintain". The Delegate of Chile.

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I do not wish to speak on this point. Therefore, if you prefer, I will wait a little.

CHAIRMAN: Are there any objections to the proposal made by Mr. Shackle?

Agreed.

Are there any other comments on this paragraph?

MR. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, this text will be part of the Final Act, and the Final Act is the instrument to authenticate the results of our work here. It will, in the words of the French Delegate, be a solemn report or a solemn record of what we have done here. We want this record to be as truthful as possible, and therefore we must mention the reservations which have been made by certain Delegations in the course of the discussions on the Charter. It is said here that the delegations are free to uphold at the Havana Conference the reservations which they have made, but it has been said that reservations could not be made at the time of the signature of the Agreement. These reservations could only be made if they were unanimously approved by the contracting parties. It is not mentioned here that reservations can be made at the time of the Final Act, and the only thing which is stated is that States will have the freedom to uphold these reservations at Havana.

The text of the Agreement takes up certain provisions of the Charter, and it seems to me necessary to state that the Delegations will be able to maintain the reservations which they have made to these provisions.

Therefore, as this is not specified in the text, I would propose that the text of this paragraph should read in the following way: "It is understood that the signature of this Final Act does not imply the withdrawal of reservations relating to the provisions of the Draft Charter which are included in the Agreement, nor does it in any way prejudice their freedom to uphold at the United Nations Conference.....etc.". Thus, the two ideas would be included, first, that these reservations which were made to the provisions of the

Charter would be maintained as far as the provisions of the Charter are included in the Agreement, and secondly, that the right to uphold such reservations at the Havana Conference is maintained.

CHAIRMAN: The Delegate for Czechoslovakia.

H.E.. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I think that we should make some drafting changes in this paragraph. As it stands here, it would mean that at the Havana Conference the countries present would be free only to uphold the recommendations which they made here, but that they would not be allowed to raise any other questions. Well, it may happen that the Governments at home would give to their representatives in Havana some different instructions, they may find some inconsistencies in the Draft Charter and so on, and, if I am not mistaken, we were told that, with regard to the Draft Charter, any country has freedom of action at Havana. I do not say that it is desirable, but I am rather afraid that we can renounce at this moment any amendments and so on which our Governments might wish to present at Havana.

Therefore, I would suggest that we put something of this kind in: ".....does not in any way prejudice their freedom of action at the United Nations Conference on Trade and Employment to uphold reservations which they may have made.....".

CHAIRMAN: The Delegate of Cuba.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, it seems that we have two different questions before the Committee. The one is that raised by our Chilean colleague in relation to the reservations to the Agreement, and the other is the amendment presented by our

Czechoslovakian colleague.

The Cuban Delegation has no hesitation in seconding the proposal made by the Czechoslovakian Delegate with regard to the amendment of the text, and considers that that text is acceptable from the point of view of the reservations which have been made to the provisions of the Draft Charter, but is in complete accord with the Chilean Delegation that there is no mention of reservations with regard to the Agreement.

According to this text, the Agreement has no reservations at all, and we do not agree with that. We never have agreed. During this discussion we have twice raised this question and we were told that the matter would be taken up when we came to the discussion on Article XXVII. When we came to the discussion of Article XXVII and asked about the reservations, we were told that the matter would be taken up when we reached the Final Act, and now that the Final Act has come up the reservations have disappeared. Well, we have to bring them back.

This question of the reservations and this new theory in relation to them, as so many other things which we have heard here of new international law, which could probably be called the new economic international law, could teach us something new and we are ready to learn, but according to international law as it is stated in the text books at the university and, more than that, as it has been framed by famous statisticians, does not agree with that.

Now, I am not going to take up the mention of authorities of international law because, fortunately enough, in one of the most reliable books of today - Hackworth's Digest of International Law - there is a quotation from three outstanding documents of the

Secretaries of State of the United States. Therefore I am not going to use my own words, I am going to use the words of Secretary Colby to Ambassador Wallace in 1920. It says: "That reservations should be made and recorded at the time of signature in order that all parties to the Treaty may previous to and in considering ratification understand to what extent each signatory is bound by the terms of the Treaty. This has been the practice followed in signing preceding conventions where the United States of America and numerous other countries stated their reservations at the time of signature (Hague Conferences, 1899-1907, Radio Telegraphic Convention in London, on July 5th, 1912, General Act of the International Conference of Algeciras, on April 7th, 1906)". Secretary Colby adds in his instructions to the American Delegation: ".....for these reasons you will urge that a protocol of signature be kept open with the Convention; that therein be recorded all reservations or declarations made by Signatory Governments; that a certified copy of this protocol be sent to each Government with its official copy of the Convention and that in the signature of the Convention the plenipotentiaries of reserving Governments may place after their names the words 'subject to reservations declared in the protocol of (Date)'".

Therefore, what we ask is that we simply do what this famous Secretary for State of the United States instructed to their Delegation. We, of course, know that there is a difference between the ratification at the time of signature, that is to say, the reservations of the Delegates and what is the effect of the reservations at the time of signature, but that also is clearly expressed in another document of United States diplomacy, and I name this one

because I consider that it is more clear in relation to this fact: "If reservations are not made at the time of signing a multilateral treaty, ratification with reservations in order to be binding must be brought to the knowledge of the other contracting powers and receive their approval unless otherwise specified in the Treaty, since they constitute a modification of the Agreement. Whether a multilateral treaty may be regarded as in force as between a country making a reservation and countries accepting such reservation, but in force as regards countries not accepting the reservation, depends upon whether the Treaty as signed is susceptible of application to the smaller group of signatories".

Then, just to end this very clear juridical procedure of ratification, we have a letter of July 24th, 1919, which Mr. Charles Evans Hughes wrote with respect to the Treaty of Versailles: "The Nation making reservations as a part of the instrument of ratification is not bound further than it agreed to be bound. And if, a reservation has a part of the ratification makes the material addition to or a substantial change in the proposed Treaty other parties will not be bound unless they assent. It should be added that where a Treaty is made on the part of a number of nations they may acquiesce in a partial ratification on the part of one or more".

So, we consider this matter very clear. No matter what is the decision of this Committee, I will make a most energetic protest if we depart from this method. Every nation has a right to regular reservations, and the result of that reservation is the second phase, that is to say, if we consider that we should sign with reservations we will do it. Then at the time of ratification, our Governments

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or our constitutional organs in our countries may decide or may insist on the ratification. If these countries, and we consider that there may be many countries, insist on the ratification, then, of course, this question has to be taken up by other nations. If the other nations agree to the ratification, then the recommendation stands; if the other nations do not agree, then the country making the reservation has a choice - either to withdraw the reservation, or to withdraw from the group. That is the practice in international law and we will not depart from it.

So, I think we must go further than our Chilean colleague and ask this Committee to accept this practice, which has proved a good practice. It will not prejudice at all the effect of the Treaty, it will not jeopardize its possibilities.

With respect to the co-operation of the rest of the nations to the fullest extent in the application of the Treaty, I think that could be done as Secretary Colby stated - have a protocol of reservations, those reservations being treated according to the sovereign desire of the nations that are making this Convention, and the nations that remain in the group as a whole will decide whether they accept or do not accept those reservations. If it is stated here that no reservation can be made to the Protocol, I would not accept it.

Mr. J. MELANDER (Norway): Mr. Chairman, I will only deal with the point which is covered by the draft we have before us in Document E/PC/T/W/319. I think perhaps one could find an easier way of covering the freedom of action not only in regard to the reservations in the Charter here but in regard to any other point which might come up, if we added to the fourth line in the formula "in any way prejudice their final attitude towards the Draft Charter" and then end with the remaining two lines ". . . for and International Trade Organization recommended by the Preparatory Committee", and then cut out the two and a half lines between.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): Mr. Chairman, we have heard a very learned dissertation on international practice in this field by the Delegate of Cuba, who has drawn upon authorities whom I do not wish to question but the quarrel I have with his statement is that I think it is beside the point. We are dealing with the signature of the Final Act authenticating the text of the Protocol. It does not commit anybody to do anything and therefore there is no point in any reservations being made to signature of the Final Act. Some of the countries were concerned lest their signature of the Trade Agreement without reservation on their part would prejudice their freedom to uphold reservations on some provisions in the Charter, which is quite a different and separate instrument, and that is the reason why the Tariff Negotiations Working Party proposed this additional paragraph to make crystal clear that signature or acceptance of the Provisional Application of the Trade Agreement without reservation would not prejudice the freedom of any country to maintain their reservation in respect to the Charter.

We have two things - reservations to the Charter and reservations to the Trade Agreement. With regard to reservations to the Charter, I think we can discuss that in connection with the Final Act because signature of the Final Act does not commit anybody.

With regard to the reservations to the Charter, I think we would get along faster if we considered them probably after we have considered the question of supersession because the two are very closely linked. As I understand it, the Australian Delegation is busy preparing a draft on supersession which may be ready early next week and I suggest we should take up reservations to the Trade Agreement after we have agreed upon that draft.

CHAIRMAN: The Delegate of India.

Mr. B. N. MANKER (India): Mr. Chairman, we would like to support the amendment which is suggested by the Delegate of Norway it has the advantage of avoiding reference to reservations. It has also, of course, the disadvantage of creating some uncertainty about the final attitude of Delegations which have not made reservations because, as it is stated, it gives freedom to all the above-mentioned Governments to determine their final attitude towards the Draft Charter in the World Conference.

Even so, since it is a Draft Charter that we recommend to the World Conference it would be best to emphasise that character of the document. We would therefore support the amendment suggested by the Norwegian Delegate.

As regards the point whether it would be permissible to make reservations to the General Agreement as distinct from the Final Act, what I am going to say is very much on the line of what was just stated by the Delegate of the United States. It is certainly with considerable interest and enlightenment that we listened to the observations made by the Delegate of Cuba. I must confess that the Indian Delegation was under the impression which, after listening to the Delegate of Cuba, we feel was wrong, that only reservations which are unanimously acceptable to the signatories of the General Agreement may be attached to the General Agreement. From the authorities quoted by the Delegate of Cuba, it appears here that any Delegation wishing to make reservations could make them even at the time of signature and that other signatory countries, the signatory making the reservation, will have to decide its attitude towards the reservation at the time of ratification.

Even so, we think that before we accept the conclusion suggested by the Delegate of Cuba we will have to obtain clarification on certain points. It seems to us that from a practical point of view the conclusions suggested by him might not be desirable. It would have been necessary for delegations which have reservations to make, to make those reservations at the time of signing the General Agreement in the manner suggested by the Delegate of Cuba, if that were the last treaty they were going to sign on this subject. In this particular instances, that is not so. It is accepted that Part II of the General Agreement from the point of view of these reservations is going to be superseded by the provisions of the Draft Charter.

It has also been provided that any country which feels hesitant about accepting the provisions in Part II can delete its signature to that Agreement. In the circumstances, any country has, by virtue of the new paragraph which is proposed to be inserted in the Final Act, the right to maintain its reservations at the World Conference and to convince the countries which are meeting at the World Conference to get them to accept these amendments in the Draft Charter. Then all that the country would wish is that the amended provision should be substituted for the corresponding provision in Part II of the General Agreement.

On the other hand, if it fails to convince the other Delegates of other countries which are meeting at the World Conference, then it will have failed, I think, for all time. It will then have to decide whether it will accept the decision of the World Conference or whether it will keep out of the whole show altogether.

Therefore, from a practical point of view, there is nothing to be gained by attaching the Protocol of reservations to the General Agreement because any Delegation having reservations to make can either take up the matter at the World Conference and convince the World Conference or, if it fails at the World Conference, it can decide what to do.

In these circumstances, while, on the factual position, we thank the Delegate of Cuba for the clarification which he has given, we are not quite sure as to the practical effect of the procedure which he has suggested. From that point of view, the most important factor on which our decision should depend is with what ease and elasticity we would secure the substitution of Part II by the corresponding provisions of the Charter adopted at the World Conference. If that procedure is not acceptable to us, or if we have any fears or apprehensions about that procedure, then of course this question will become very important.

Therefore I am inclined to agree with what the Delegate of the United States has just stated, that the question is linked up very vitally with paragraph 1 of Article XXVII on Amendments.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, even if I do not agree with the distinction which was made by the Indian Delegate between the juridical and legal point of view and the practical point of view in solving this problem, because I think that here this is a juridical question, nevertheless I must raise this question now from the practical point of view. I think that the text here, and the comments which have just been made by the United States, Norwegian and Indian Delegates, only increase the confusion with which we are struggling now. It is not the Charter which is under discussion here, and therefore it is not the upholding of reservations to the Charter, and I do not see why we should speak here of the right to maintain or uphold reservations at the Havana Conference, reservations which were made regarding the Charter, because this is a right which exists anyhow and a right which could not be denied to any Member; every Member will have the right to do that, whether we state it here or not.

One may have gathered the impression that by signing this Agreement this right was more or less abandoned, and it may be that from one point of view the draft to which I at one time seemed to have agreed may have given that impression.

Nevertheless I think the question here is the question of reservations to be made to Part II of the Agreement, reservations which have been made to the corresponding Articles of the Charter. During the discussion we said more than once that the same reservations had to be made to the same Articles of the Charter and that we should not adopt an attitude which would put us in conflict with ourselves and which would be completely illogical. We could not say one day "No", to a text, and then the next day agree to it and think that the text is all right. We have to follow the same line which will safeguard our vital interests and if reservations have been made to certain texts and Articles of the Charter, then we have to make the same reservations for Articles of the Agreement.

Mr. Chairman, you stated that no reservations should be made to the Agreement. I am sorry to say that I oppose this view. I say that reservations should be made to the Agreement, and, after the demonstration which was made in the most brilliant manner by the Cuban Delegate it is certain that reservations should be made both at the time of signature of the Agreement and at the time of the ratification of the Agreement.

But, Mr. Chairman, I must say I am tired of fighting, as I have fought for the last five months, against positions which have been taken up and from which people do not seem willing to budge. For that reason I was ready to accept discussion of the text contained in this paper, and that text I was ready to accept, but in that text one should mention the question of reservations. The text which we have now before us does not mention this question of

reservations to the Agreement. It only mentions the right of parties to uphold reservations which they have made to the Charter. But as I have stated this is not the problem. The problem is reservations to the Agreement, reservations which have to be made as regards the Agreement if Articles of the Charter are reproduced in the Agreement. Any draft which does not consider this fact would not be befitting; and therefore I must insist to have such a text inserted in our Agreement: that is that text must state that the reservations which have been made regarding certain Articles of the Charter are maintained regarding the Articles of the Agreement when those Articles of the Agreement reproduce the articles of the Charter.

The text could read (and of course this would only be a tentative draft and could be modified):

"It is understood that the signature of the Agreement does not imply the withdrawal of any of the reservations which have been made regarding the Charter and which are inserted in the General Agreement".

But the text which we have now before us does not refer at all to this question.

Therefore Mr. Chairman, unless we insert this principle, which I think is essential, because if we do not we would be quite beside the point, I could not agree to any text which would not take this principle into account.

M. ROYER (France) (Interpretation): Mr. Chairman, I hesitate to intervene because I fear that the Chilean Delegate will accuse me of adding to the confusion of this discussion. It seems to me, nevertheless, that the distinction between these two questions has been clarified by the various statements which have been made. I think that the problem could have been simplified and part of this discussion might have been avoided if, as I had proposed, the words "without reservations" had been inserted.

It is obvious that the right to uphold reservations and to present new reservations at the World Conference is preserved, and from a psychological point of view, perhaps, this should be stated, because to some Delegations there appears to be a contradiction - at least on the surface - between the fact of not having made reservations at the time of signature of the Agreement, and the right to present reservations at the World Conference.

Therefore, I think that the Committee must give satisfaction to those Delegations who would ask for a provision covering that case, and I think the solution of this question is found in the amendment which was presented by the Czechoslovak Delegation.

On the second point, I quite agree with the Delegate of Cuba that it is the sovereign right of the contracting parties to make reservations at the time of signature or at the time of ratification of any Agreement, and whether or not we say anything here about that right, does not alter it. The Governments have the right to make reservations at the time of signature, and the Parliaments have the right to make reservations at the time of ratification of an Agreement; but the other contracting parties have the same sovereign right to accept, or not to accept,

the adherence of the other contracting party which has made reservations, and this is also a sovereign right.

The question is complicated as regards the General Agreement by the following two factors: first, that there will not only be one time of signature, but the times of signature will be staggered in respect of the various Governments; and the second factor is that we have up-to-date no definitive text of the Charter, and the text of the Charter which will be adopted at Havana may be modified - I hope it will not be, but nevertheless it may be modified by the World Conference at Havana.

Therefore, it seems to me that we have various practical problems to solve. There are two ways in which we could solve these problems. Firstly, if reservations are to be made at the time of signature, the States intending to make reservations to the Agreement could deposit these reservations now with the various Delegations, and they could be taken up for discussion by those various Delegations now. I do not think that this would be a happy solution, because there would be certain to be more reservations made now than there would be likely to be in a few months time.

Secondly, we could permit - I use the word "permit" because this is a right of every contracting party - the contracting parties to sign the Agreement and to make, at the same time, reservations, but, of course, the text of these reservations would have to be communicated in advance to the other contracting parties. Therefore, the other contracting parties would have to accept in writing, or would have to accept or refuse at a meeting of the contracting parties. Such meeting could take place, for instance, at the Havana

Conference: this has been provided for, it seems, in the text of the Agreement, and following the consultation, the adherence or the non-adherence of the contracting party making reservations would be decided.

In the case of reservations made at the time of ratification, the procedure to be followed would be the same. The text of these reservations would be forwarded to the other contracting parties, and a decision would be made by the other contracting parties and the contracting party making the reservations, with due knowledge of the situation.

The solution of this second problem would, however, be tackled better once we had studied the revised text of Article XXVII, dealing with the substitution of the provisions of the Charter for the provisions of the Agreement, and here I agree with what was said by the United States and Indian Delegates.

Therefore, I think, regarding the first question, we could insert a note here stating that if parties wish to sign the Agreement without making reservations, the right to make reservations on the corresponding text of the Charter at the Havana Conference would not be withdrawn from those Delegations.

CHAIRMAN: The Delegate of the Lebanon.

Mr. J. MIKAOVI (Lebanon) (Interpretation): Mr. Chairman, my Syrian colleague and myself adhere completely to the opinion stated by the Delegate of Cuba, and therefore we support his point of view.

CHAIRMAN: Are there any other speakers?

Dr. Gustavo GUTIERREX (Cuba): Mr. Chairman, reservations

are the result of diplomatic practice. Reservations are a form of flexibility in order to reconcile different points of view and to allow time in which to remove the obstacles to agreement. If we take a stand against reservations, instead of a flexible rule governing the relations of foreign states, we will be establishing a form of "take it or leave it", and that would have a very bad effect on international relations. That is why we have to try to find a way out of this difficulty.

I listened with interest to what the United States Delegate said, but I think that the Final Act is a document that relates exclusively to the General Agreement on Tariffs and Trade and all the Protocols that the Committee have considered it necessary to establish in order to make it work.

We realize that the idea of having a General Agreement on Tariffs and Trade before having a Charter of the International Trade Organization entails a very difficult task, but we do not solve problems simply by pushing them to one side. If we do not tackle this matter here in the Final Act with a simple declaration, then we would increase our difficulties, because nobody in the world - neither this Committee, nor the Big Five, nor all the Great Powers of the world, could prevent a nation from making reservations. In fact, there could even be a clause here that reservations are not admitted, and when this document had, for any reason, to go to a Parliament, or even the United States Congress, it is very possible that they might make new reservations which were not made by the Delegate, and nobody has challenged that right of Congress or Parliament to make those reservations. Therefore, I think that it is bad policy to hide one's head in the sand, instead of trying to solve the problem. I am told there is a wild animal in Australia that does that.

We do not believe that, because everything Australian we know is very keen and very intelligent - therefore, I do not think that that wild animal comes from Australia.

The suggestion of our Norwegian colleague to eliminate the clause reminds us of the story of the General who was reviewing a regiment at a certain barracks, and as he passed by, he noticed that some of the men were much taller than the others. The General's idea of obtaining uniformity was to immediately order the heads or legs of those men to be cut off! I do not think that that is the way we should tackle this problem!

We have here a juridicial problem which is out of our control. We cannot solve that problem simply by saying that it does not exist. It is as if we were to say, now, that there is no sun, while the sun is shining outside. To say that we should wait until the Havana Conference to see if we can convince that Conference, leaves the question in mid air. It is not that we are afraid that we might not convince the World Conference, but experience has shown that everything that is left to the future continues to hang fire in the future, because although there will be a Conference at Havana, there might not be a draft Charter of the International Trade Organization. In that case, the whole problem would remain in the General Agreement - that is the document that is going to be put into effect almost immediately.

Our French colleague, with that peculiar characteristic of the French mentality of finding solutions to a problem where nobody else can (it is one of the most remarkable peculiarities of his wonderful country), -has agreed with us on certain grounds and has also agreed to the practical ideas of the others, and the result is something which, it seems to me, could not work.

By way of a compromise, I suggest that we modify this text

in the following manner. (I am trying to find a way out myself, and, of course, this text would be subject to all sorts of qualifications. I may fail to express it in English, but I have no other language at my disposal in which to express my ideas, and I know that my phraseology will not be elegant). I suggest the text might read like this:

"...does not in any way prejudice their freedom to uphold the reservations which they may have made to the provisions of the draft Charter for an International Trade Organization, which have been in whole or in part inserted in the General Agreement, until a proper decision has been taken by the constitutional organ of the respective countries and the rest of the contracting parties".

In our opinion (we leave it to our British colleague to suggest the final wording if the idea should be accepted) if we establish something of this kind, it will mean simply that we are not going to make any new reservations, but the reservations to the text inserted from the Charter in the General Agreement are there, with the same reservations that were attached to the draft Charter; not permanently, but until the constitutional organs of the respective countries (that is to say, the Government or the Parliament as it may be) decide about the maintenance or withdrawal of the reservations of the contracting parties.

That would mean subject to the decision of the other Members of the Organization that have signed the General Agreement. If these Members accept the reservation as it is, the practice there presents no problem. If they do not accept that reservation, the nation making the reservation would only have two alternatives, either to withdraw the reservation or withdraw from the result of the Agreement.

I dare, Mr. Chairman, to submit this compromise text to see if it is possible to find a way out. If not - and I do not know what is the opinion of the rest of the Committee - of course we do not intend to hold up this meeting more than is necessary.

CHAIRMAN: There appears to be general agreement on the proposal that we should leave the question of whether or not the reservations will be attached to the Agreement until we have had a final look at the text which the Australian Delegation has just proposed to paragraph 1 of Article XXVII.

In the meantime, there have been a number of proposals made by various delegations with regard to the text of this paragraph which is now before us. The Delegations of Chile, Czechoslovakia, Norway and Cuba have made proposals for amending the text. I have examined these proposals and it would seem that the most drastic proposal, that is, the one furthest removed from the original text, is that proposed by the Norwegian Delegation. It is to delete most of the words which appear in the <sup>fifth,</sup> sixth and seventh lines, so that the paragraph will read somewhat as follows, after the words "accompanying Protocols": "does not in any way prejudice their final attitude towards the Draft Charter of the International Trade

Organization recommended by the Preparatory Committee.

Are there any objections to the proposal of the Norwegian Delegation?

The Delegate of Cuba.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I oppose the proposal because it means that it is intended to eliminate the declaration of the Committee on the question of reservations to the General Agreement, and, taken as that, I cannot accept it.

CHAIRMAN: The Delegate of India.

MR. B.N. ADARKAR (India): Mr. Chairman, I would like to add a few words to what I have already stated on the Norwegian amendment.

As I understood it, I thought that the Norwegian Delegate suggested that the provision should read: "does not in any way prejudice their final attitude towards the provisions in the Draft Charter", not merely "towards the Draft Charter".

Further, I would like to point out that although this amendment involves the suppression of the word "reservations" it has two advantages, one, it would enable all countries to present reservations at the World Conference, even if they have not made any reservations here, that is to say, if the reservations made by some countries here are carried, those other countries which have not made reservations will be free to present new reservations to other parts of the Charter in order to restore the balance of the Charter.

Secondly, it also permits countries which have made reservations here to present new reservations, and this draft paragraph merely

speaks of the reservations which they may have made to the provisions of the Draft Charter. The wider wording suggested by the Norwegian Delegation would permit such Delegations to present new reservations, even if they find it necessary to do so after a further examination and study of the Charter.

The third advantage that I see in the Norwegian amendment is that it deletes the reference to the word "Conference", thereby covering a point which was made just now by the Delegate for Cuba. He would like to have these reservations taken into account by other contracting parties even if there is no World Conference. If there is no World Conference then this paragraph will not operate at all because it states here that the signature of the Final Act of the General Agreement or its Protocols does not prejudice the right of the signatories to maintain their reservations at the World Conference until a decision has been taken by the proper constitutional authorities, and so on, adding to that the amendment suggested by the Delegate for Cuba, but if there is no World Conference it does not follow from that <sup>that</sup> a country which has made reservations will automatically withdraw their reservations.

Therefore, it seems to me advantageous to delete reference to both factors, namely, the particular reservations which have been made here, because there may be other reservations, and also to the World Conference, because there will be no reservations.

Let us recognise the fact that the Charter that we are presenting to the World Conference is a Draft Charter, and therefore all countries, not merely the countries which have made reservations here, but all countries have a right to reconsider their attitude

towards the provisions of the Draft Charter.

Thank you, Mr. Chairman.

CHAIRMAN: The Delegate of Norway.

MR. J. MELANDER (Norway): Mr. Chairman, first of all, I think it is an improvement to let my amendment include the words "the provisions of", as suggested by the Delegate of India.

Secondly, in answer to the Delegate for Cuba, I would just say that this text, as far as I understand it, is not intended to cover that position. It is only intended to cover the point which is referred to in the opening sentence of this paper, that several Delegates have asked for assurances that signature or application of the General Agreement will not prejudice their freedom to maintain reservations to the Charter - and also to the Havana Conference. That is how I interpret it. The point raised by the Delegate for Cuba, I think, would have to be covered by an additional sentence dealing with that particular point.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, In support of the remarks which the Cuban Delegate has made, I will try once more to find a solution which may satisfy everyone here. The Chilean Delegate, who unfortunately was obliged to leave the meeting, has agreed on the text which I am now about to propose. The text which I am going to propose may have the double advantage of giving satisfaction to those who would like to adopt the Norwegian proposal and also of giving satisfaction to the Chilean Delegate and the other Delegates who share his view. The text would be: "It is understood that the signature of the Final Act, or the signature or application by any of the above-mentioned Governments, of the General Agreement or its accompanying Protocol, does not in any way imply the withdrawal of reservations formulated in regard to the provisions of the Draft Charter which have been inserted in the General Agreement."

It seems to me this formula would have the advantage of covering the cases made by the Cuban and Chilean Delegates and also of avoiding any discussion about the various points, the time, the possibility and the conditions of formulating reservations.

CHAIRMAN: Would that proposal of the French Delegation meet with the approval of the Delegations who have submitted various proposals.

Mr. J. M. LEDDY (United States): I think that this would prejudice the decision with regard to the reservations of the Trade Agreement and its Protocol. I wonder whether it would not be better, in regard to reservations, simply to set the whole thing aside, as I thought we had agreed to do, until we have a settlement of the question of supersession.

CHAIRMAN: I take it that there were two points. One point was the question made by the Cuban Delegate of the right of delegations to submit reservations or to attach reservations to their signatures to the General Agreement. The other point was that reference should be made in the Final Act to the question of reservations as covered by this paragraph.

I understood that the first question we agreed to defer until after we had had another attempt to approve the text for Paragraph 1 of Article 27. I think we had to deal in some way with the various proposals which had been made at this meeting for changes in the text of this paragraph, and that is why I have taken up the Norwegian proposal first because it seemed to be the one that was furthest removed from the original text.

Dr. GUTIERREZ (Cuba): The Norwegian Delegate has stated that his proposal is not intended to give decision to the problem of reservations; but it is considered that this matter is within the scope of Article 27 which should remain continuously open without prejudice to returning to the Final Act if it is necessary. I do not see any inconvenience if we can take this proposal for discussion.

CHAIRMAN: The Delegate for the United States.

Mr. LEDDY (United States): The only point, Mr. Chairman, was that the proposal made by the French Delegate seems to imply that there would <sup>be</sup> reservations in the Trade Agreement, and that is a question that we have not yet gone into and I would prefer not to prejudice our own view. There are legal questions, but there is the main question of substance as to whether we are to reach agreement on the Trade Agreement without reservations, and we should like to have a full opportunity to go into that and to settle it after discussion. For that reason we should prefer a language which would not prejudice the position one way or another.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I feel that the proposal of Mr. Melander is actually identical with mine because what we had in mind was that we were acting here in regard to the Draft Charter as experts and not binding our Governments. We have several times stated that, I do not know if some Governments have already approved the Draft Charter; in any case, this is not so in regard to the Czechoslovakian Government. Any Government is free, I think, to decide to go or not to go to Havana; any Government is free to decide to give its instructions to its delegates in Havana, supposing there is some change of government in some country. I understood that it is quite clear among ourselves and I would refer to the remarks of Mr. Spekenbrink who stated that he made no reservations at all because it was understood that anybody was free at Havana to come forward with a proposal. Of course there will be as few amendments and proposals as possible but this possibility cannot be the case here. So I would support the amendment of Mr. Melander because I feel it is the same as my own.

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CHAIRMAN: As I understand the proposal just made by the Delegate of the United States, it is that we adjourn the discussion of this paragraph to be inserted in the Final Act, together with all the proposals which have been made to amend that paragraph, until after we have taken up consideration of the first paragraph of Article XXVII.

(To Mr. Luddy): Is that correct?

If it is decided to adjourn the discussion, it will have priority over the discussion of any other proposals. I would therefore like to know if any Delegate objects to deferring further consideration of this proposal until we have discussed Article XXVII.

There being no objections, I take it the proposal of the United States Delegation is approved.

Before leaving the Final Act, I think we might deal with the formula which appears at the bottom of Document E/PC/T/W/319. Are there any comments on this formula?

I take it then that the text of the formula is approved.

M. ROYER (France): (Interpretation): Of course, I reserve the right to alter the French text, because there is a definite mistake in it.

CHAIRMAN: That will be a matter for the Legal Drafting Committee.

I think we can now take up the Protocol of Signature, which appears on Page 60 of Document E/PC/T/189. If there are any comments on the first paragraph, it will be a matter of drafting. We will therefore go on to the second paragraph.

The Delegate of China.

Dr. C.H. CHEN (China): Mr. Chairman, we would like to add the words "the Republic of" before "China" in the third line of the first paragraph.

CHAIRMAN: Due note will be taken of the desire of the Chinese Delegation always to be called The Republic of China.

(To Dr. Chen): I take it that will apply everywhere.

Are there any other comments?

The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, the title of this Protocol - Protocol of Signature - does not say anything to me. All of them are Protocols of Signature. I think we ought to call this the Protocol of Observance of the Draft Charter. Perhaps the Legal Drafting Committee can discuss it, but we must certainly give it a name. Protocol of Signature does not say anything.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): Referring to the second paragraph, this Protocol, I believe, was drafted at a time when the general plan was that all countries would sign the Protocol at the same time on the same day. Therefore, the second paragraph reads: "Having this day, through their duly authorized Representatives, signed the General Agreement ....." etc.

I think there are really two ways of settling this: either we can change it to read "Having this day signed the Final Act of the Second Session, to which is appended a General Agreement on Tariffs and Trade", or we can simply say: "Having signed the General Agreement on Tariffs and Trade". The difference between them is this: that the first alternative assumes that all countries, in addition to signing the Final Act at Geneva, will sign this Protocol relating to the Charter.

The second alternative envisages that the Protocol relating to the Charter will be signed only when the Trade Agreement is signed.

I think perhaps it might be well - unless some countries have difficulty with it - to envisage the signature of this Protocol at the time of the signing of the Final Act.

CHAIRMAN: The Delegate of the United States proposes that this Protocol of Signature should be signed at the same time as the signature of the Final Act; this would involve a consequential change in the second paragraph. It would then read: "Having this day, through their duly authorized Representatives, signed the Final Act of the Second Session of the Preparatory Committee," etc.

I think we had better discuss this point before discussing the proposal of the Delegate of Cuba, because that would affect whatever decision we make regarding the title of the Protocol.

The Delegate of Cuba,

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I think I heard the Delegate of the United States make an alternative proposal; that is to say, that this text should read as you have said, or simply say: "Having signed here an Agreement", without any reference to the day. It is an alternative proposal and I think it is very important; for example, I am entirely in agreement with the second proposal but I am not in agreement with the first.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): Yes, Mr. Chairman, I did present two alternatives, but I thought we would prefer the signature at the time of the signing of the Final Act. That was the proposal I made.

CHAIRMAN: That was my understanding, too.

Dr. Gustavo GUTIERREZ (Cuba): The Final Act? Then, Mr. Chairman, I think the second proposal is far better than the first

one, because if you take the Protocol as a whole, it says "Having this day ..... agree that the objectives laid down in the Preamble to the Agreement .....", so if you take away the Agreement and you make a reference to the Final Act, what in the world are we doing here? The real connection of this Document is with the General Agreement. If you take it away, the connection with the General Agreement, in my opinion, has no sense.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): My proposal had in view the reference to the Final Act, which has attached to it the text of the General Agreement on Tariffs and Trade, and the Agreement here would simply be that the objectives laid down in the Preamble to the Agreement could best be attained, etc. In other words, you would still retain the reference to the General Agreement but only as an appendix or attachment, so to speak, to the Final Act. This is merely a preambulatory part of the Protocol, at any rate; the substantive part is in the last paragraph.

CHAIRMAN: The Delegate of France.

Mr. ROYER (France) (Interpretation): Mr. Chairman, I would like to second the statement just made by the Cuban Delegate. We have already made an innovation here on this question, by applying an Agreement before it comes into force. There was a novel by Wells which described a Time Machine: here we are going to have an Agreement which will enable us to go back on time. It would seem rather strange. We are to sign the Agreement and the Protocol at the same time, but really I do not think we could state here that we are going to sign a Final Act to which the Agreement and the Protocol and so forth, would be appended.

CHAIRMAN: The Delegate of New Zealand.

Mr. J.P. JOHNSEN (New Zealand): Mr. Chairman, I also support the view put forward by the Delegate of Cuba, and now also by the Delegate of France. I am afraid that we could not commit ourselves to an action based on signature of the Final Act. That action would have to be in conformity with the signature of the General Agreement.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADAKAR (India): Mr. Chairman, the Indian Delegation also associates itself with the view expressed by the Delegate of Cuba on this point.

CHAIRMAN: The Delegate of China.

Mr. D.Y. DAO (China): Our views are the same as those expressed by the Delegate of Cuba. Because to sign the Final Act, and to assume the obligation to observe to the fullest extent the principles of the Charter are not the same thing.

CHAIRMAN: There does not seem to be any substantial measure of support for the proposal of the United States Delegate and therefore I take it he does not wish to press it. I should like to know what proposal he would make for the redrafting of this second paragraph.

Mr. J.M. LEDDY (United States): The only amendment I suggest here is to propose the suppression of the words "this day"; because the signing of this document will take place upon different days by different countries. I think, perhaps, we might just leave it that the Legal Drafting Committee will look closely at the provisions for signing this particular document and the provisions for signing the other documents.

Perhaps one way of handling it would be simply to say:

"The Governments signatories of the General Agreement ....." as we have now for the Preamble - and then list all the countries represented here in the Preamble, although we are not sure that all the countries represented here will sign the Agreement.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I am only wondering what will happen to this Protocol if for instance some country does not sign. So I suggest we take the old form, which has many precedents, and start the Protocol in the following way:

"At the moment of signing the General Agreement on Tariffs and Trade the undersigned, duly authorised ....." and then "agree with the objectives" and so on.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I am in general agreement with what Dr. Augenthaler just said, for the reason especially that this Protocol may very well be signed after the Havana Conference, and it would seem a bit odd to sign a Protocol where you make certain references to a Conference which has not already been held. I think it is better to leave out that reference and go directly to the main point which is the last paragraph.

Mr. R.J. SHACKLE (United Kingdom): A small point, Mr. Chairman. It seems to me that the form suggested by Dr. Augenthaler would be quite all right, except that I feel you have to make some reference to the Governments, because this is not a personal agreement between individuals, so you have to say something like "agree as follows on behalf of their respective Governments" and then set out whatever the Agreement is. I think it is necessary that there should be some reference to the Governments. Otherwise I think the suggestion of Dr. Augenthaler would be satisfactory.

CHAIRMAN: Could we agree on some such text as that and meet Mr. Melander's point by deleting the reference to the Conference and simply refer to the Charter?

Mr. J.M. LEDDY (United States): I do think we must refer to the Charter recommended to the Conference by the Preparatory Committee. That is the only document that any of us know about, and some of us will be signing before the Conference.

CHAIRMAN: Perhaps, as the hour is getting late and we have to adjourn in order to be back here for our meeting at 9 o'clock, we could leave it to the Secretariat to redraft these first

three paragraphs of the Protocol in the light of our discussion now, and then we could take up the matter when we meet again at 9 o'clock?

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, what shall we take at 9 o'clock?

CHAIRMAN: I want to just mention the order of business which I propose to take up, the various matters still outstanding.

After we have dealt with this Protocol of Signature, I think perhaps we should take up the Protocol relating to Occupied Territories, which is based on the proposals submitted by the United States Delegation; then the Protocol of Interpretative Notes; then the various Annexes to the General Agreement on Tariffs and Trade, and then, if we still have time, the Report of the Sub-Committee on Article XXVI, Modification of Schedules. Then, if there is still time, I propose that we take up the texts proposed by the Delegation of the United States for the new Articles XVII, and XXIII.- Joint Action by the Contracting Parties; but I take it we will be lucky if we reach those two points tomorrow.

M. ROYER (France) (Interpretation): Mr. Chairman, is it possible to postpone until tomorrow the discussion on the Protocol relating to Occupied Territories? We are awaiting instructions from Paris and if this discussion were to take place tonight I am afraid I would not be in a position to express an opinion on the subject.

Mr. R. H. SHACKLE (United Kingdom): Mr. Chairman, I support that.

Mr. C. H. CHEN (China): I also support that.

CHAIRMAN: If that is the general wish we will postpone discussion on the Protocol relating to Occupied Territories until tomorrow.

The meeting is adjourned.

(The meeting rose at 6.10 p.m.)