

UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL
PREPARATORY COMMITTEE
of the
INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report
of the
NINTH MEETING
of the
PROCEDURE SUB-COMMITTEE
of
COMMITTEE II
held in
Room 243
Church House, Westminster
on
Saturday, 9th November, 1946
at 10.30 a.m.

CHAIRMAN: Dr. A. B. SPEEKENBRINK (Netherlands)

(From the shorthand notes of
W.B. Gurney, Sons and Funnell,
58 Victoria Street, Westminster,
S.W.1.)

THE CHAIRMAN: The meeting is open. We now have before us paragraph 2 of Article 29.

MR. SHACKLE (United Kingdom): Might I say one word before we leave paragraph 1? You will remember that last night I said I was taken rather by surprise by the great width of the opportunities for action which this paragraph affords, but I did not press my point. Before we pass on to paragraph 2, I should like to say that there are, scattered up and down throughout this Charter, a number of escape clauses and waivers. The United Kingdom Delegation would like to look at the general picture as a whole. It is my suggestion that we should consider as it were all the waivers and escape clauses and try to form a general estimate of them before we pronounce finally upon particular ones. It seems to us that the question of escape clauses and waivers is one that needs looking at as a general picture.

THE CHAIRMAN: That will be quite natural; other Committees have done some of the work, so we shall have to have the whole picture. That is one of the reasons why we should also have a Drafting Committee again in New York, to get it tuned up.

MR. MCKINNON (Canada): The Canadian Delegation has been driven to pretty much the same point of view as that expressed by Mr. Shackle. We are getting so many escape clauses in that it may be well to list them and look at them. It has almost reached the point when we may have a chapter on escape clauses.

THE CHAIRMAN: Would it not be wise to draw the attention of Mr. Wyndham White to this, and ask him whether it would be possible to get a list of these escape clauses as they come out of the work of the other Committees?

MR. MCKINNON (Canada): That might be a practical suggestion; it would let us look at all the escape clauses and see them not only in relation to one-another but also in relation to the whole Charter.

THE CHAIRMAN: Then I will ask the Secretary to convey this message to Mr. Wyndham White. Now we have before us paragraph 2 of Article 29. Paragraph 1, we decided yesterday, should be recast by the Rapporteur and we shall receive it at the beginning of next week. We have yet to look into that in conjunction with the proposals of the Cuban Delegation as set out in the paper mentioned yesterday.

MR. ALAMILLA (Cuba): As I said before, this is not a controversial matter, it is a matter of procedure that proper defence should be given to all the parties concerned. It is a matter therefore in which everybody should be interested to see that everyone is duly protected. I suggest that to the Rapporteur, in order that he will take it into consideration along with the other suggestions of procedure included in both these paragraphs and bring out a text on which we could discuss the matter in more detail. I think that would be better than including here something which someone might oppose. We feel that it is necessary to cover the situation a little more completely in regard to the nation supposed to be causing the damage to the other. The second nation is fully protected, but we feel that the nation supposed to be causing the damage should also be protected by having the right to bring the matter before the Organisation. We do not consider it is a controversial matter, but a matter of procedure, and I do not think we should waste our time here discussing it before the Rapporteur has had time to look at it.

THE CHAIRMAN: To clarify the question for the Rapporteur, there are a few things that the Rapporteur has still to deal with in regard to the proposals of the Delegation of Cuba, one is the question of labour standards. That we have left to the other Committee. The present point is this: as "a" is drafted injured parties have the right to discuss what action they will take

but the accused has no proper means of defence. I think that is the point to be looked into by the Rapporteur. I think he should see whether Articles 29 and 30 should be redrafted accordingly.

MR. ALAMILLA (Cuba) Exactly.

MR ADARKAR (India): Mr Chairman, under the procedure described here a member has to give prior notice and to have prior consideration with the other members affected by the proposed action before taking the action. A point was raised in the full Committee, which the Indian delegation supported, that any action of this sort to be effective must be taken quickly, if the threatened injury to the domestic interests is to be avoided. From that point of view would it not be better if we so re-wrote the section as to require the member concerned to inform the Organisation and to start this process of consultation after taking the action which is needed if the circumstances are so urgent as to make that course necessary?

THE CHAIRMAN: This point was indeed discussed there, and I think the suggestion was made as to whether we should not include in the draft something that would require prior notice to be given as early as practicable, or something like that, and then look into it and see whether in certain circumstances only notice after a measure had been taken should be needed. I think they were the two points that were left open there. As far as my recollection goes, as I mentioned yesterday, mention was made there also of Article 50, paragraph 4, which provides as follows: "To consult with Members regarding disputes growing out of the provisions of this Charter and to provide a mechanism for the settlement of such disputes." The same thing was again mentioned in connection with paragraph 2 of Article 55, which speaks about "waiving, in exceptional circumstances, obligations of Members undertaken pursuant to Chapter IV of this Charter." We further have paragraph 7 of the same Article, where it is said that "The Conference shall establish procedures for making the determinations and recommendations provided for in paragraph 3(c) of Article 20; paragraph 2 of Article 29; and Article 30." These are all procedures envisaged to see that we have a proper system to work this clause and to protect members against unilateral action of a harmful nature unless it is really warranted. So that when we look into this paragraph we have to keep these other Articles also in mind.

MR LEGUYER (France)(Interpretation): It is quite correct to have those Articles in mind, Mr Chairman, as you have said. I should like to point out that those Articles, 50, 55, and so on, are being discussed by Committee V., and the French

delegation in particular intends to present some amendments to be discussed; therefore I think that we cannot know before some days the position taken by Committee V. in connection with those Articles dealing with the modification of the charter, and so on. We should discuss these questions without being too much concerned with the discussion in Committee V., and then, when we know the decisions taken in Committee V., we can adjust our own decisions then.

THE CHAIRMAN: Is not this the case? This is the main Article, laying down a certain action that we should take; and then the other parts of the charter at which Committee V. is looking should then provide for the mechanism arising out of this principle; so I think therefore we should start to discuss this, otherwise Committee V. will not be able to go on with it.

MR HAWKINS (USA): I do not think there is any great difference of view here in reality. The Article as drafted provides for the fact that before action is taken notice shall be given as far in advance as may be practicable. That makes it somewhat loose. In essence, what the Article provides is that there ought to be advance notice and as long advance notice as a country can give in all the circumstances. It seems to me it is a desirable principle to retain.

MR ADARKAR (India): Mr Chairman, it is not merely the prior notice that is involved here but also the consultation that members effect in respect of the proposed action; so the procedure laid down is that the member, as soon as he decides upon a particular course of action which is necessary to prevent injury to the domestic industry, gives notice to the Organisation as early as practicable and then starts consultation under the auspices of the Organisation with other exporting countries - with the countries from which it imports - with regard to the proposed action. The procedure should be a little more elastic than this if the objective is to be achieved; and I think the procedure should be that the members should be permitted to take action subject to consultation which may take place a little later, and the notice should be issued at once.

THE CHAIRMAN: May I just say one word here? I think that we should agree about the principle of the thing that is to be put into Article 29 - that if possible there should always be prior notice - because there might be sound reasons for

saying, "Well, this is a very unfortunate affair that could have been prevented", or that the other country could very easily have taken some action to prevent the thing happening again or going on. On the other hand, I can also see that the thing may be so serious as to make it necessary to take immediate action, but that should be in exceptional cases, and I think we have to try to find a formula here which, while stating the principle of prior notice as early as practicable, gives the right in very exceptional cases, where perhaps there is a glut in the market or something like that, to take immediate action.

Mr HAWKINS (United States): I think I agree with what you just said, but I would like to point out that this is not quite as impracticable as it may sound at first reading. In emergency of the sort we speak of here can be foreseen to some extent, or at least suspected. In other words you can see a situation developing which may have the effect contemplated in this Article. Now if you consult as far as possible in advance you may bring to the notice of other countries that this situation is developing, and the country concerned may have to take action. In other words, I think there would be time for advance consultation. I would also like to point out that this is inter-Governmental consultation, so it is not going to be public and it would stimulate the inflow of goods. However, I think the Chairman's suggestion that there might be provision made for quicker action in exceptional cases is sound.

Dr COOMBS (Australia): It would then be preceded by the words, "wherever practicable". It would then read something to this effect: "Any member shall, wherever practicable, give notice in advance to the organisation and afford the other members having a substantial interest as exporters of the product concerned, an opportunity to consult". Then should be added these words: "In any circumstances the members will advise the organisation of action taken and provide other members an opportunity to consult on that".

Mr MCKINNON (Canada): Before that is translated, might I suggest it be slightly amended. "Before any member shall take action pursuant to paragraph 1 of this Article it shall, unless the circumstances are exceptional, afford the organisation and other members", and so on, "an opportunity to consult".

Dr COOMBS (Australia): May I suggest a further change: "Unless the circumstances make this impracticable".

Mr MCKINNON (Canada): Instead of "unless the circumstances are exceptional".

THE CHAIRMAN: Perhaps we could meet both delegates on this and say:

"Unless certain circumstances make this impracticable". I have another

point to make. Paragraph 2 has to be read in conjunction with paragraph 1, and paragraph 1 says, "any product is being imported".

I just mentioned that because Mr Hawkins said you can see something developing. It states very expressly there, "is being imported".

Mr ALAMILLA (Cuba): I wanted to avoid a discussion on procedure, but as we have gone into it I am going to speak very clearly about it. We oppose these unilateral actions, and we consider it to be very dangerous. Further I am going to explain the way in which we think this Article should work, and how it could always be foreseen. Consultation should be undertaken before such unilateral action is taken, which may have very drastic consequences to the other country. First of all we have to take into consideration that this only arises because of developments which affect the obligations incurred under this Article. One country is said to have committed an error because he did not foresee all the consequences of his action. If that country did not foresee the consequences he should see them as soon as possible, and as soon as he sees them consult the other members in order that they may know what he is going to do. In that situation we think that he should give notice to the organisation, and the other members of the agreement should have a chance to say something about it. After that I admit that if no agreement can be reached, then both parties should have the right to refer to the organisation. But I am willing to allow the party who considers himself in a terrible danger of being damaged to do what he pleases under his own responsibility. But I should also give the right to the other member to bring the matter before the organisation. Therefore, if action is taken in a just way, then the other members have recourse against the decision and will be able to protect themselves.

THE CHAIRMAN: I think that is understood. Therefore I again say that paragraph 2 is to be read in conjunction with paragraph 1. It says "unforeseen developments". If you get very good crops you get a glut in the market. There you would have the possibility of entering into

an agreement to prevent serious happenings. I have already drawn attention to the fact that we should look carefully at the words, "is being imported" in conjunction with paragraph 2. If we have in paragraph 2 some words like I have suggested here, "unless exceptional circumstances make this impracticable", I think we have covered it, especially when our Rapporteur will have seen if he can add something to this Clause to protect that offending member; give him a chance to defend himself. In that case I think your point will be met, if not fully, then at least 90 per cent.

Mr. LAMILLA (Cuba): I believe it is met, except for one specific point, which is that in exceptional circumstances it seems that you are to do what you like without consultation and without notification, and that is what we think is a very dangerous thing to do.

MR. LECUYER (France) (interpretation): I think all of us who have experienced practical commercial difficulties in international trade know that it is impossible in some cases to subordinate to previous negotiations certain emergency cases. There are cases in which we are compelled to take immediate action. For example, we have to do it in cases where we have an overflow of goods; we have to act immediately. Therefore it is impossible in some cases to wait for negotiations under certain measures are taken.

MR. HAWKINS (United States): Could I make one comment on what the Cuban Delegate said? He said that a country which invokes this exception commits an error. I would only like to suggest that there be more errors of that sort, because what he has done is to reduce the duty to the point where, in some circumstances, it may get him into difficulties. If he has got a way out of those temporary difficulties he will then be encouraged to make more errors of the kind suggested.

MR. ALAMILLA (Cuba): May I put forward an idea which may affect a compromise of views. I think notification should always be given, but in the matter of the consultation I can see the point raised by the Delegate for France. However, in that case, as we believe the consultations should always also take effect, we may put a limit to the time of those consultations. The time could be fairly short, and if the consultations did not come to anything the member might have the right to do whatever he pleased. Thus, it is not a question that the consultations may last a long time, but that there is at least an effort at consultation and a chance for the other members knowing what the thing is all about and being able to study the situation. May be that would be a solution to the problem.

MR. ADARKAR (India): The Cuban Delegate has suggested that prior notice should be given in every case. Prior consultation is equally necessary. So far as the prior notice is concerned, I think the words "as may be practicable" more or less cover the point that we have in mind, because that gives

sufficient freedom to the country. It may be that the notice may not reach the party concerned before the action is taken; but the country should make a bona fide attempt to intimate to the Organization and the parties affected what is its intention as early as practicable. That, of course, cannot be questioned. As regards consultation, our fear arises from the fact that consultations have not taken place in time and the situation may be so urgent as to require immediate action. I only wish to add that the danger which the Cuban Delegate apprehends, of members taking advantage of this provision more often than the circumstances require, is not very great because any member taking such action will have to consider two sets of circumstances. It will have to consider the consequence of delaying that action from the point of view of threatened injury to its domestic industries; and on the other hand it has to consider the consequence of taking any precipitate action on its export trade, because if such an action is taken the other members may be free to withdraw from the country concerned certain benefits which they extend to it. Therefore there is no danger of tripartite action being taken by members so long as the members know their immediate interests I think the use of this provision will be kept within limits.

THE CHAIRMAN: After all the remarks that have been made - if I see them clearly - I think the suggestions made here for making this clause less dangerous, and to prevent real abuse of this clause, are in my opinion more or less sufficient, even after the remarks of the Cuban Delegate. There will be prior consultation unless exceptional circumstances make it impracticable. I may say, it will be one case out of a hundred that may happen in that way. Perhaps it is judged on a country which is a long way from other countries. However, there are countries bordering on each other, and therefore the thing may happen fairly soon. You will have consultations fairly quickly, which may be necessary because one, two, three or four days may be very important. We cannot simply take that possibility away from other countries.

MR. ALAMILLA (Cuba): I do not want to go on with this discussion. I suggest we give all these ideas to our excellent Rapporteur for him to try to bring back something to cover all these points which have been raised here, if that is possible; and if it is not possible to indicate to us which are the ones that cannot be arranged. Then, when we have the new draft, we will be able to discuss the problem more intelligently, which is just a matter of procedure and safeguard for both parties. I am looking at one party just as much as the other. That is all we ask for.

THE CHAIRMAN: I think I entirely agree with the Cuban Delegate, that we have now discussed it enough. I think when we see the new draft of the Rapporteur most of our objections will have been settled.

MR. SHACKLE (United Kingdom): Before we leave the paragraph, if we are about to leave it, there is one tentative suggestion I would like to make in relation to the last sentence. I have heard the fear expressed that in the event of action being taken on the lines contemplated here you may get counter action and retaliation which might, so to speak, develop into a campaign of a dangerous nature, which might tend to disrupt the Organization. With a view to preventing that sort of train of circumstances it has been suggested that there should be a provision that the counter action taken in a given case should be of, as near as may be, equivalent value or effect to the action in reprisal for which it is taken. I believe that is a common doctrine in international law, the so-called doctrine of reprisals: the action you take as a reprisal must be, as nearly as may be, of equivalent value. I am wondering whether there would be any merit in writing some such words as these into the last sentence:

"Members adversely affected may, unless the Organization recommends otherwise, suspend the application to ^{the} trade of the member taking such action, of concessions of as near as may be equivalent value granted under this Charter."

I do not make that a firm proposition. It is a tentative suggestion which I throw out for consideration.

THE CHAIRMAN: I think that might be a useful suggestion.

MR. HAWKINS (United States): There is merit in the idea; it gives the Organisation some sort of guide as to how to act. We have to consider how to word it; it should be "some substantial equivalent" or something of that kind.

THE CHAIRMAN: Can we now agree to leave Article 29 to the Rapporteur for redraft, of which we shall get the text next week?

Agreed.

THE CHAIRMAN: Now we come to Article 30.

MR. COOMBS (Australia): Before we pass on to Article 30 I think I should inform the Committee of developments which have taken place in relation to the work of Committee I, which have some bearing upon this section. You will recall that it was suggested in the discussion of the employment provisions that there should be undertakings in relation to employment and the use of international resources by the member countries, and that there should also be a provision that, in the event of failure to carry out these undertakings, resulting in an extensive decline in the effective demand of those countries for the products of other countries, for a review of the provisions accepted in Chapter 4 of the Charter. Committee I has reached substantial agreement on the provisions relating to employment which they wish to propose, and while their final report is still in process of preparation, there are certain principles which have been agreed upon in the Committee which make action, possibly in relation to this section, necessary. If I may summarise the main points which will, I understand, be embodied in the Report of Committee I it will make the point clear. It was agreed that there was a problem in that countries whose economies were being subjected to deflationary pressure as a result of a serious or abrupt decline in the effective demand of other countries, and it was generally

agreed that there must be some adequate safeguards to meet these contingencies. It was noted that certain safeguards are embodied in the provisions of the Monetary Fund, but it was agreed also that the Articles of Agreement of the International Trade Organisation should themselves contain adequate safeguards. The provisions relating to the use of quantitative restrictions for the balance of payments would be, of course, one such safeguard, but it was considered that the provisions of the Draft Charter should be examined carefully to determine whether they are adequate to deal with the circumstances of a country adversely affected by a decline of effective demand elsewhere.

What Committee I has done, therefore, is to pass this problem on to Committee II. In this connection it was the view of the Australian Delegation, as you will recall, that something which might be called an escape clause, linking up the employment and other related provisions to the obligations accepted under Chapter 4 of the Charter, should be included. While I am not quite sure whether this is the proper time to discuss it, I did want at this stage to let the Committee know, because it seems to me that it is in relation to this section "G" that consideration should be given to the question. We have drafted a possible wording for such an additional article to follow Article 29, which we have called Article 29A, and which I will have distributed to Members. As I say I am not sure whether the Committee will wish to discuss it now, but it might be of assistance if it is available, and you, Mr. Chairman, could perhaps decide how you wish the matter to be dealt with.

MR. ALAMILLA (Cuba): The Cuban Delegation also had been considering this effect of the resolutions or conclusions which Committee I might reach on these matters of employment, and after a lot of discussion among ourselves in our Delegation we came to the conclusion that the best place to add it was not in Article 29, as I suggested previously, but on Article 30. Therefore we were waiting until Article 30 came before us in order to put our views to the Committee. We have no objection to discussing them in relation

to the project of the Australian Delegation, and then we might decide whether they should come in Article 29 or Article 30.

MR. HAWKINS (United States): I wonder whether Article 55(2) has been considered in this connection? I should think that Article 55 (2) would cover everything in these exceptions. It would cover other things also, within the competence of the Organisation. There is a further question also, the balance of payments exceptions, which is still in process. That would have a definite relation to this question. There will be some kind of a let-out there which seems to me would also cover this case. In other words, what I do not understand is the need for special exception of this point, which is certainly covered by Article 55(2) and which very likely will also be covered by the balance of payments exception when we get it formulated.

MR. COOMBS (Australia): Could I make a suggestion? I quite agree with Mr. Hawkins that the necessity for an article of this sort does turn upon another of the escape clauses which exist in the document and upon their adequacy to deal with a situation of this sort. It seems therefore that the proper way to handle this might be to add this to the list of escape clauses which the Chairman undertook to have prepared, and we could then look at them collectively in the light of the various types of situation which it is expected they may have to deal with. If we could do that we could leave this now and deal with it when we look at all the escape clauses together.

I might mention, as Mr. Hawkins has referred to Article 55(2), that I am not exactly happy to leave this type of situation to be covered by that Article, although I quite agree it is covered and so is any other escape clause already embodied in the document. I prefer however to leave that for the moment. I would like to mention one point, because I think it would be worth while if our Rapporteur gave some consideration to it. I have some doubts as to whether 55(2), which comes in the section dealing

with organisation and is primarily a machinery clause is the appropriate place for substantive escape clauses. I feel myself that the content of 55(2), so far as it refers to an escape, ought to be put back in Section G of Chapter 4, and that Article 55(2) should refer only to the machinery for dealing with that and perhaps any other escape clause. I would prefer to see something added in Section G which provided for this type of escape in exceptional circumstances, on the decision of the Organisation and in accordance with criteria and procedures to be approved, and then to set out in 55(2) a provision as to how these criteria and procedures are to be established. That is purely a drafting point; it seems to me to be a bit untidy to have an escape clause tucked away in a section which deals with mechanics. I just mention that point so that the Rapporteur may give it consideration.

On the main issue, if it would be acceptable to you, I would suggest that this suggested draft might be added to the list of escape clauses when we come to consider them altogether.

MR ALMILLA (Cuba): We have no objection to leaving the substantial discussion of this problem until the time when we discuss the other escape clauses, but I think it would be useful for me to give you just a thought that we had in suggesting that this clause should be placed in Article 30, because we think that it will help everybody to get an exact idea of the problem. As you know, originally we also suggested, as well as the Australian delegation, that it should come in Article 29, in this Section G. We still feel it should come in Section G, but our feeling now is that it would be better to put it in Article 30 than in Article 29, for these reasons. Article 30, as it is contemplated and drafted now, deals with the situation of two members having a problem between them, and then bringing this problem to the Organisation, and the Organisation then looking into the matter and maybe deciding that the other member is entitled to suspend the application of any concessions granted to the other. Now, what we are thinking here is not of the situation between two members but of the situation between three or more members, that is, the situation of a member in respect of the market of a third party. We thought it would be logical to deal in Article 30 not only with the situation existing between any two members but also with the situation between two members and a third party, or maybe several members and a third party, and where the suspension of concessions given to only one member might not effect a cure of the problem in question. Therefore we were thinking that in this Article the same procedure should be laid down in that case of more than two members as in the case of the two members alone; so that when, say, two members are injured by a situation caused by a third member, that case may be brought to the consideration of the Organisation, and then the Organisation may take decisions that would be I will not say binding but that would be in the form of recommendations not only to the member itself but also to the other member of the market where the situation is taking place. I believe that if we word this clause to contemplate both situations we shall be able to deal with the situation which the Australian delegation is contemplating here.

MR SHACKLE (U.K.): I would just like to say that in such consideration as the United Kingdom delegation has been able to give to this question we had provisionally come to feel that Article 30 was the right sort of context in which to include a provision of this kind, if it is decided to have one. It may be worth considering possibly the question whether the matter might be covered by some expansion or amendment of the terms of Article 30 as a possible alternative to a separate Article. I merely throw that suggestion out for later consideration.

DR COOMBS (Australia): I would not like to enter into a discussion at this stage on the appropriate place for the inclusion of this Article or provision. It does seem to me to be essentially a drafting matter and one which we could consider after we had discussed the substance of it. Offhand, I find it rather hard to see how the thing would fit in with Article 30, which I took to be rather a means of undertaking to consult if any member feels that you are evading an undertaking which you have given by the use of other provisions, that is, if you are dodging an obligation to make a tariff become effective by using exchange regulations, state trading operations, customs regulations and formalities, sanitary laws, and so on. Article 30 is for the purpose of protecting the benefits which countries believe they ought to obtain from a concession granted to them; and it does not seem to me an appropriate place, therefore, for the incorporation of the type of provision which we have in mind; but I am prepared to leave that question really to the examiners as a drafting matter when we have made a decision on the basic issue as to whether something of this sort needs to be included.

Mr McKINNON (Canada): Various delegates have expressed views as to whether it would be appropriate under Article 29 or under Article 30, and I am beginning to wonder whether it is appropriate at all under Chapter IV. It seems to me that this is a very general and broad escape clause and the type of situation to which Dr Coombs refers might arise, not necessarily out of a violation of a commitment under Chapter IV.

Dr COOMBS (Australia): It arises out of a failure to give effect to a commitment under Chapter I.

Mr McKINNON (Canada): That is the point. In the event that this is finally adopted it would entail a consequential change of wording in two places.

Dr COOMBS (Australia): It is a matter of complete indifference to us whether it is in Chapter I or Chapter IV, but Committee I thought that since the kind of obligations it is sought to waive here are the obligations embodied in Chapter IV, it was desirable that Committee II should have a look at them. It does seem to me that the question of the place of the thing is immaterial. The critical thing is that we should look at this together to see whether something of this sort is necessary. If it is necessary we can argue with Committee I whether it stays in Chapter IV or whether it goes to Article 55(2). I think it would be best to leave it at that, Mr Chairman.

THE CHAIRMAN: My first reflection would be this, that it certainly has a bearing on the problems we are discussing here, and perhaps on Articles 29 and 30. On the other hand, we do not know at this moment the outcome of the discussions with regard to balance of payments restrictions, which are also closely connected with this. Furthermore, we have, as Dr Coombs rightly pointed out, to look at this in conjunction with all the other escape clauses already in the Charter. There is this third point. As far as I understand it in Committee V there have been some discussions on Article 55(2), and the idea was put forward whether we should not delete the words "Chapter IV of this Charter", so as to make

this general clause refer to all the chapters of the Charter. I really do feel that for the time being we should go into whether it is already covered by the other clauses or not. In that case we must have a combined meeting with Committee V, after we have had all the escape clauses before us. I think that will be the only intelligent way in which we can deal with this problem. If that is agreeable to the meeting, then I would suggest that as soon as possible - perhaps in the middle of next week - a combined meeting of Committees V and II and perhaps even Committee I, which perhaps could be under the Chairmanship of Dr Coombs, so that we would have all the points proposed. (Agreed).

We still have Article 30 to look into more closely. I suggest we now try to reach some conclusions on that Article.

Mr MCKINNON (Canada): Does your suggested programme envisage looking at the other escape clauses before we pass this one in the Joint Committee?

THE CHAIRMAN: I think it would certainly be useful. May we now turn to Article 30?

Mr HAWKINS (United States): The question here will arise beginning with the second sentence, the first sentence being only a general obligation to consult. The delegate of Cuba has raised a point which I think could be considered now independently of the question just raised by Dr Coombs, although it might conceivably have a bearing on it. As the delegate of Cuba has correctly said, this Article is pretty much narrowed down to questions arising between two parties, a complaint by one party that another is not carrying out the letter of the Charter - which involves the question of interpretation - or is not carrying out its spirit. I should be quite happy to hear the suggestions of the Cuban delegate on this subject. I should say in advance that we would be quite prepared to broaden that Article. I cannot give you the exact wording, but it could be made to cover any situation. I also suggest, although only tentatively, that it might be made to cover the Charter

as well as the Chapter which would take into account certain obligations in other parts of the Charter. I think that the delegate of Cuba has given thought to this, and he might be asked to give us his ideas, that is, if he is now prepared to put forward any ideas on this.

Mr. J.L. MILLER (Cuba): I will not try to give a drafting of my own, but I will try to make my idea clear. If it is accepted we may pass it to the Rapporteur to try his hand at it. My idea is just this. This Article considers the situation of two members. I believe that it should be enlarged to consider also the possibility of a third party being involved in the situation, and that recommendations should not be made to only two parties. The second point is that we consider here only the problem that may arise from the operation of Chapter IV, and I think it should be enlarged to consider the situation which may arise on the non-compliance of all the obligations on the whole Charter. Those are the two enlargements I would submit to the Committee. On the third point as to which obligations are to be freed, I would suggest that in this case we should treat them as obligations arising from Chapter IV. That is the difference I would like to point out. I want to point out also that should there be cases of non-compliance of the whole of the Charter, the effect would be to free them of the obligations or the benefits given in Chapter IV. I do not know if my idea is clear.

MR. SHACKLE (United Kingdom): While this is not to be taken as a serious proposition, I cannot help remarking that effect would be given to the Cuban Delegate's point, as far as I can see in the English text, if in the Charter in the first three places where it comes in the Article you substitute the letter "r" for the letter "p", so that it would read "Charter" instead of "Chapter."

THE CHAIRMAN: That sounds quite simple - so simple that I am a little bit suspicious.

MR. SHACKLE (United Kingdom): I do not advocate it seriously.

MR. DANKAR (India): There is reference here to the objects of this Chapter. The objects of the Chapter have not been specifically stated anywhere else, and they are only to be inferred from the provisions of the Chapter. Therefore from that point of view also the reference to the objects of the Charter would be more easily understood than the objects of the Chapter.

THE CHAIRMAN: We are in this difficulty here. We are trying to fit in under Section G and under Chapter IV of the Charter the whole work of other committees, and the commitments as they have worked them out. Before taking any provisional decision on that I think we should see more clearly what is involved in this change. With regard to the work of Committee V especially I cannot see us dealing with it in this way without having a proper idea of what we are going to do. I think that here the opinions of the drafters of the Charter would be very welcome.

MR. HAWKINS (United States): This Article is growing into something a lot bigger than ever intended - which is saying nothing against it. The original antecedent of this Section -- and like almost everything else in it it has antecedents in other instruments -- was a provision developed in the London Economic Conference to deal with matters of protectionism. There the question came up whether we should list all of the things that a country could not do which might destroy the value of concessions made. We got such a long list that they finally hit upon

a clause something like the one that is here. We took it up, starting with that, but we broadened it. That clause related only to matters which were not in conflict with the agreement but had the effect of nullifying or impairing its objects. In this draft that has been broadened to cover violations of the agreement; and that is where it has rested until today's meeting. We now have two suggestions to broaden it very greatly, making it go far beyond what the drafters intended. As I say, that does not mean it is wrong to broaden it, but I think we should be aware of just what we are doing. I think it would probably be as difficult for many of the members of this committee as it is for me, even although I had given some previous thought to this point, to reach a conclusion on this particular Article with the proposed amendments today. I think what we should do is to consider the proposals that have been made, and then examine the other provisions of the Charter which would be brought in under it by this minute change suggested by Mr. Shackle. I do not think we can consider it intelligently in all its implications unless we all have an opportunity to do that.

MR. LECUYER (France) (interpretation): I think there is another reason for hesitating here. The drafters of the Charter -- and here Mr. Hawkins will tell me if I am wrong, but I do not think I am -- have considered Chapter IV as a whole, which is connected with tariff negotiations, and this Chapter can probably be put into effect independently of other Sections, as inter-governmental agreements or restrictive business practices. Therefore, it might be inadvisable to extend this Article to the whole Charter. If we intend to do that we should place it elsewhere than in Chapter IV.

THE CHAIRMAN: I think the French Delegate has made a very useful remark here. I would not like to lengthen the discussion at this moment, because we certainly will not be able to reach a definite conclusion without giving the Rapporteur, in consultation with the drafters of the Charter, some chance to reflect on it. I suggest he does it in two ways. First, that he tries

to limit it only to Chapter IV to see how it should read after all our discussions. Secondly, he should try his hand at the broader formula, which may then have to be placed somewhere else in the Charter, and will certainly be a matter for discussion with Committee V. As we have only 15 minutes left I suggest we restrict the discussion to Article 30 on the supposition that it would only apply to Chapter IV, and to any points that are not clear or any additions that should be made.

MR. ALMILLA (Cuba): In that case, I suggest we take the second part of my proposition, where not only the cases of two members but the cases of two members with a third or more members may arise. I want to safeguard our position, if it is not covered here, to try to put in some other clause when the thing comes up to see how this same procedure of the two or more members can be applied also to some cases that may arise from non-compliance of the Charter by those who are not in in this Charter.

MR. HAWKINS (United States): I do not see the principle of the Delegate of Cuba has said. It is rather tricky drafting; I wonder if the Delegate has a draft?

MR. ALAMILLA (Cuba): I have been drafting for a week and I have not succeeded, that is why I want the assistance of the Rapporteur because he is much more able than I am to do this.

THE RAPPORTEUR: I think we need a Commission rather than a Rapporteur.

THE CHAIRMAN: I think we ought to give him a good dinner after this.

MR. ALAMILLA (Cuba): Perhaps we should all offer him flowers, as we did to the lady the other day.

MR. MCKINNON (Canada): Is the point of the Delegate of Cuba that this wording restricts the negotiations arising out of the complaint to the two members? I do not agree that that is necessarily the case under this wording, but if so is his point that it should read something like this: "by any Member or Members"? Is that the extent of it?

MR. ALAMILLA (Cuba): Yes, and I suggest that the recommendations should go not only to those two but to other Members.

MR. MCKINNON (Canada): If that is the whole point I do not think that the amendment is extremely difficult to make. I am just afraid that that is not the whole point, and that the Delegate is not stating it so that I understand him. It seems to me that in the English phrase "any other Member" might be understood three others.

MR. ALAMILLA (Cuba): You have to read what is said at the end - it only gives to the complaining Member the right to suspend a specific obligation under the Charter. If you will consider also the case of a third or more Members, you have to re-draft the whole thing, so that the recommendations should go not only to the complaining Member but also to the other

Members who may come into the problem.

MR. SHACKLE (United Kingdom): Might I ask the Delegate of Cuba whether, in the case he has in mind, it is not probable that other Members would also themselves be sufficiently interested to make a complaint, so that when we say "the complaining member" we in fact mean "the complaining members".

MR. MCKINNON (Canada): That is what I meant - a group.

THE CHAIRMAN: If I understand the Delegate of Cuba rightly, it is this: he has a serious complaint and other members of the Organisation may say that this complaint is justified. He wants not only himself but the other countries concerned, who are important clients of the other country, to take action. Is that it?

MR. ALMILLA (Cuba): It is possible that a third party would also be interested in the matter but it might come to the point where he will not agree about it because it does not affect his markets. That is why I would like, even in the case where the third party is not concerned or interested, the Organisation to be able to make recommendations to him and not only to the complaining member.

THE CHAIRMAN: If the Committee is agreeable we will have the translation later. The position now is that our hard-worked Rapporteur, and our even more hard-worked Mr. Hawkins, have to leave at a quarter to one and I should like to leave them a good week-end to prepare all the drafts. I suggest then that we all think this over; the Rapporteur will see whether he can fit in an amendment, and we can discuss it when we have the draft before us. I would like to make only one remark for my own part: are the provisions relating to State trading operations clear enough in this draft of Article 30?

If this is agreeable, we can fix our next meeting for Tuesday next at 2.30 or 3 o'clock. The Rapporteur will then have had time to do certain urgent work to complete our drafts. If we meet at 2.30 we shall perhaps have time for tea, but I am afraid we shall have to meet practically every day next week to finish the whole thing, and perhaps have to meet in the evenings as well.

The Committee rose at 12.26 p.m.