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

VERBATIM REPORT

TWELFTH MEETING OF COMMISSION A

HELD ON THURSDAY, 12 JUNE 1947 AT 2.50 P.M. IN THE PALAIS DES NATIONS, GENEVA

Mr. MAX SUETENS (Chairman) (Belgium)

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CHAIRMAN (Interpretation): You remember that yesterday at Commission A we finished with Article 34 and referred it to the Sub-Committee with a view to taking into account all the opinions expressed, in order to submit to us a final draft. I suggest that the Sub-Committee dealing with Article 34 be the same as the one dealing with 14, 15 and 24 under the Chairmanship of Dr. Coombs. I will propose to set up another Sub-Committee to deal with Articles 35, 36 and 38, but as Article 34 is closely connected with the question in Articles 14, 15 and 24, I think it is better that the same Committee takes care of the whole matter. Does everyone agree?

We are now discussing Article 35 on Consultation - Nullification or Impairment. There are several amendments, some of which completely alter the draft of this text and propose to change the place of the text in the Charter. The first amendment in that connection is the Cuban amendment which proposes that this Article should be deleted, and that a new Article 85A, the text of which paragraph 1 of appears in W/175, page 4, should be added. As for paragraph 2, the wording will remain the same as the present Article 35, paragraph 2, with a difference in the first sentence. Then there will be some alterations and the addition of a new Article 86A. To this amendment from the Cuban delegation can be added the amendment of the United Kingdom delegation, which proposes that paragraph 2 be transferred to Article 86 and that Article 35 (2) and 86 be combined in a new re-draft. This can be compared with the French amendment, page 5, document W/175, which proposes that paragraph 2 of Article 35 be deleted and replaced by a new Article in Chapter VIII. We have not yet received the new draft proposed by the French delegation. The aim of all these amendments seems to be to avoid the establishment of a special regime for the complaints arising from Chapter V of the Charter - a regime which will be very general and applicable to all the Articlesof the Charter. This is a very important Article, and I will invite the authors of the amendments to defend them. First of all the delegate for Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, the Cuban Delegation think that the case has been presented so clearly by the Chair that we only need add a few words by way of explanation of the purpose of our amendment.

We consider that, inasmuch as there is a proper place for this document in Chapter VIII, and it is dealt with by the different functions and procedures to be carried out, all the matters arising out of the question of interpretation or by any action of the parties in the application of the principles or Articles of this document should be brought to the consideration of the Organization in the same way: that is to say, to establish a general procedure and not special procedures for every one of the chapters.

This multiplication of procedures would, in our opinion, lead to great confusion, whilst the other form, as is known in all countries - the procedure of the amicable solution of business differences or disputes - is only one procedure, with several different clauses. If that procedure could be followed in the Charter it would give much clearness to the whole situation contemplated.

So far as we can see, these different amendments - the United Kingdom, the French and the Cuban - more or less have the same idea. The only difference, it seems, is that in the Cuban proposal we prefer to take out not only Paragraph 2 but also Paragraph 1, because Paragraph 1 relates especially to the cases covered in Chapter I, and if we leave this paragraph in Chapter V we are doing exactly the thing we want to avoid, that is to say, a special reference in every chapter instead of having one single reference to the way of acting in the cases foreseen.

These proposals are designed to regroup the remedies created by the Charter for settling, either amicably or, by a legal procedure, questions or disputes arising out of the wording or the application of the Charter, or which may develop by actions directed against the purposes of the Charter or situations having the effect of nullifying or impairing its objects.

Our amendment is intended, furthermore, to avoid a multiplication of the procedures provided for.

CHAIRMAN (Interpretation): The Delegate of the United Kingdom.

Mr. R.J.SHACKLE (United Kingdom): Well, Mr. Chairman, I do not think I really have very much to say. I think that, as I have already remarked, the object of the propositions of the Cuban Delegation, the French Delegation and ourselves is really the same; that is, to bring together in one place and co-ordinate the procedure for the settlement of disputes throughout the Charter. Our own proposal has been circulated as Document W. 161.

I take it that it will not be in order to go very deeply into the merits of that particular proposition, which presumably will come up for discussion when Chapter VIII is reached.

As regards the suggestion that the existing Paragraph 1 of Article 35 be also transferred to Chapter VIII, I rather doubt if that is necessary. In the first place, the various other chapters of the Charter - that is to say, Chapters III, IV, VI and VII - do lay down their own procedures for consultation, and, apart from that, we have in our proposed amalgamated text of Article 35(2) and Article 86 proposed

a Paragraph 2 which itself provides for consultation in any circumstances. Perhaps it would be in order for me to read that one paragraph. It is as follows:-

"If any Member considers that another Member has adopted any measure, whether or not it constitutes a breach of an obligation under this Charter, or that any situation has arisen, which has the effect of nullifying or impairing any object of this Charter, it may invite the Members concerned to consult thereon and they shall endeavour to reach a satisfactory settlement."

That would be the first step in the whole procedure and I think that would cover the case of consultation and there would be no harm, to say the least, in leaving the present Paragraph 1 of Article 35 where it is, in the General Commercial Policy Chapter.

CHAIRMAN: The delegate of France

M. ROYER (France) (Interpretation): As the delegate for Cuba has explained, the three amendments, that of the delegation of Cuba, that of the United Kingdom and that of France, have all the same aim more or less, that is to say, to transfer paragraph 2 of Article 35 to a Chapter of the Charter other than Chapter V; because we want the system to apply not only to Chapter V but to the Charter as a whole. And we have proposed to maintain paragraph 1 of Article 35 in Chapter V, as the United Kingdom delegate has explained, because we find it is useful to deal with the question of consultation on a purely administrative basis as provided for in this paragraph, and we think there is a very great difference of nature between the consultation provided for in paragraph 1 and that provided for in paragraph 2 of Article 35. That in paragraph 1 is purely administrative consultation to settle details; whereas paragraph 2 establishes a system which is much more ambitious and vast and which is the way in which various Members would fulfil the obligations. Therefore we think there are two completely different ideas there and they should be in two different Chapters.

(Continued after Interpretation)

(Interpretation): I wish to add, Mr. Chairman, a few minutes ago you mentioned that you did not have any new text from the French delegation in substitution for paragraph 2. I wish to say that in the meantime we have seen the Australian proposal and, apart from a few minor changes which we might ask for in the drafting of the proposal, we should be prepared to accept it as it stands.

CHAIRMAN (Interpretation): Since the delegate for France has mentioned the Australian proposal I think I should give the floor to the Australian delegation to defend their amendment, which does not

tend to change the place of Article 35 but merely to make precise the procedure in order to avoid any ambiguity or misunderstanding.

Dr. H.C. COOMBS (Australia): Mr. Chairman, as you have stated, the Australian amendment is essentially a drafting amendment and is intended to clarify the Article so that it makes clear the intention as we understood it, of the London Committee. We feel, for instance, that the present phrase "nullifying or impairing any object of this Charter" is not very satisfying English and its meaning is fairly obscure. I am not quite sure how you nullify or impair an object, or precisely how you identify what are the objects of the Charter. It has purposes and it has provisions, but "objects" is a somewhat vague word in this context and we feel that the Article can be improved by referring specifically to the benefits which accrue directly or indirectly to the Members as a result of obligations undertaken by Members either in the Charter or as a result of it.

I should like to emphasise that by the word "benefits" we conceive not merely benefits accorded for instance, under the provisions of Article 24, but the benefits which other countries derive from the acceptance of the wider obligations imposed by the Charter: that is the benefit which we, amongst other people, would derive from the acceptance of the employment obligation by major industrial countries, and the benefit which industrial countries would derive from the improvements in the standard of living resulting from the operations of Chapter IV to countries with under-developed economies. So I would like to make it quite clear that we have used benefit in this context in a very wide sense.

We have also sought to make quite clear the circumstances in which a review of obligations can be sought. We have done this by setting out precisely in the first paragraph under a sub-heading,

in sub-paragraphs (i) (ii) and (iii) the precise circumstances:

(i) the application by another Member of any measure, whether or not it conflicts with the provisions of this Charter; or

(ii) the failure of another Member to carry out its obligations under this Charter; or

(iii) the existence of a ny other situation

provided that these three groups of circumstances have the effect of depriving a country of any benefit accorded to it directly or indirectly under the Charter, or that the promotion by it of any purpose of the Charter is being impaired. In the latter connection we have particularly in mind the circumstances whereby action of those kinds may make it difficult or impossible for a country to carry out its own obligations under the Charter and thereby prevent or impair the promotion by it of the purposes of the Charter which deals with the reduction or elimination of trade barriers of one sort or another.

We then go on to make more precise the machinery routine to be followed by the country seeking to have its obligations reviewed and the procedure which the Organization itself shall follow. Our purpose here is merely to clarify the obligations of the parties concerned and to ensure, so far as is practicable in an article of this kind, that undue delay will not be involved in the handling of the obligation.

I think that it is not necessary for me, Mr. Chairman, to say any more on the precise intention and purpose of our draft. I would like to refer very briefly to the suggestion that this part of the Article might be transferred to another part of the Charter. On the face of it, that does appear to be an attractive suggestion. We agree that there is a profound difference in principle between the contents of paragraph 1 of Article 35 and paragraph 2, but I must confess, while I do not wish to raise any objections to the transfer at this stage, that I have just a shade of doubt as to whether, by putting this into Chapter VIII, we may not be spreading the effects of it fairly wide.

Speaking for ourselves, we quite clearly have in mind primarily the implications under Chapter V when we prepared this draft, that is, we were contemplating circumstances in which countries may wish to seek to have their obligations under Chapter V reviewed, and before I commit myself finally on the question of whether it is appropriate to transfer this to Chapter VIII, I would like to look at it in the light of the obligations imposed in other Chapters. Whether it is necessary to provide the same sort of escapes for those, whether countries would, in fact, wish to seek them, are questions which we have not had time to study adequately, but I would be quite happy, Mr. Chairman, for the sub-committee to be asked, when it is considering our amendment, to consider it in the

light also of the possibility of it being transferred to Chapter VIII, provided that that does not commit me to supporting such a transfer at this stage.

CHAIRMAN (Interpretation): From this preliminary debate, I think two conclusions emerge. First of all, that paragraphs 1 and 2 apply respectively to entirely different questions and situations. If we look at the report of the First Session, we see very clearly that paragraph 2 applies to the Charter as a whole. We see mentioned in particular in Chapter III, and this makes it clear, that the Preparatory Commission has prepared a report showing the procedure recommended for negotiations dealing with tariffs and preferences and that members should proceed according to Article 24 of the Charter. "Under the revision, any action by a Member or the development of any situation, which impaired or nullified any object of the Charter (including any object set forth in Chapter III (Employment)) can be an occasion for the lodging of a complaint with the Organization". This makes it clear that paragraph 2 applies to the Charter as a whole. Therefore, there is some foundation in the idea that the place of paragraph 2 should be changed to a more general Chapter of the Charter, but I would like to have the opinion of other members on that question.

CHAIRMAN: The Delegate of the United States.

Mr. EVANS (United States): Mr. Chairman, in the first place I agree completely with your analysis, and a similar analysis has led the United States Delegation to the following conclusions. First, that we would prefer not to see paragraph 1 moved. We would prefer to see it in its present form and place.

Secondly, that the proposal to move paragraph 2 to Chapter VIII or some other place in the Charter probably has a good deal to recommend it, though we would, like Mr. Coombs, want to reserve judgement on that until we had seen the exact form that the paragraph might fit.

It had occurred to us that these various proposals, particularly the very valuable proposal of the Australian Delegation, should be referred to the Sub-Committee as a basis for consideration and a re-draft of the paragraph without final prejudice to the question of whether or not it stays in this Chapter or is placed somewhere at the end.

In its present wording it refers to situations which conflict with the purposes of the Charter, and probably any new wording would be equally applicable, whether here or later in the Charter, so we believe the Sub-Committee should consider this paragraph on its merits, and when it is drafted - an adequate paragraph - refer it for consideration in the re-drafting of Chapter VIII.

CHAIRMAN: The Delegate of Cuba.

Mr. GUTIERREZ (Cuba): Mr. Chairman, in the light of the discussion which has just been heard, it is apparent that almost all the other Delegations are in accordance with the distinction between paragraph 1 and 2.

We consider that the consultation provided for in Chapter I is

is a consultation of an administrative character, and that the other consultation is a procedural one, or certainly different.

Of course we do not agree with that sense, but we must always consider that when there is such accordance with all the other Members, they must be right and we must be wrong. We were taking this Amendment only, and possibly from a juridical, or an international constitutional point of view.

We are seeking the different kinds of consultation for every kind of difference, and it is not good procedure to establish one procedure for every case; on the contrary, there should be one general procedure, and included in that procedure, all the cases for consultations, either administrative or other kinds. Of course we are aware that an administrative consultation would be the first step, and then if that failed would come the other procedure.

Nevertheless we do not want to detain the work of the Commission, and if there is such a big difference of opinion, we do not insist, for our part, on the elimination of paragraph 1 of Chapter V; but we should insist that paragraph 2 be placed in its proper form in the Draft Charter that relates to it, because even this same wording of paragraph 2 refers to the cases which can arise and have the effect of nullifying or impairing any object of this Charter, or else that would be in conflict with the terms of this Charter; so it means the Charter as a whole. That is why I think it is a wise thing to take the matter to the Sub-Committee and make a more deep study of the matter there.

CHAIRMAN: Mr. Speekenbrink, the Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): Mr. Chairman, we have already referred to the London discussions, and I add something.

When we discussed paragraph 2 Article 35 there in the Sub-Committee it was noted during the discussions that we extended the scope of this Article, and it was only for convenience sake that we did not discuss whether it would be advisable to change the place of that Article, and put it may be later on in the Charter.

So that as the scope of the Article tends to cover everything under the Charter we are in favour of the proposal that it should be transferred to Article 85 or 86, as has been proposed by several Delegations.

With regard to the first part of this Article, there in the wording of it we made no such important changes, and we had in mind there the stipulations of the present Chapter. I stated yesterday that as a rule I am in favour of fewer and more comprehensive clauses, so that I am inclined to support my Cuban colleague there, that it should be better to have one Article at the end of the Charter covering the whole procedure, and not a Chapter on special procedures provided for.

It may be a matter for further study, so I will not insist here that it should be done, but simply would like to support the Cuban Delegate.

CHAIRMAN: The Delegate of Norway.

H.E.M. ERIK COLBAN (Norway): Mr. Chairman, I am not quite sure of my opinion as to where paragraph 1 and paragraph 2 of Article 35 should be placed. I feel that there is very much to be said in favour of transferring paragraph 2, at any rate, to the last Chapter of the Charter; but I must reserve my final opinion until we have discussed it in a sub-Committee. Before sending it on to the sub-Committee, though, I would like to ask that the attention of the sub-Committee should be drawn to the insufficiently speedy procedure provided for in paragraph 2.

It states: "and if necessary after consultation with the Economic and Social Council of the United Nations and any appropriate intergovernmental organisations". I feel very strongly that that is a means of sidetracking the whole issue. What can the Economic and Social Council advise the I.T.O., with the Technical Experts Commission with an Executive Board? I think that we cannot get any advice from the Economic and Social Council, and as far as both the Economic and Social Council and other international intergovernmental organizations are concerned, I think that Article 81, paragraph 2, entirely covers the point, providing for close, organised contact between I.T.O. and all these organisations. It is superfluous to emphasise once more in paragraph 2 of Article 35 that I.T.O. will make a thorough investigation in certain important cases.

I do not make any formal proposal, but I would like the ad hoc sub-Committee to be kind enough to study this problem. In the Cuban proposal it is suggested that the word "Chapter" in the third sentence of this paragraph 2 should be replaced by the word "Charter". In the Australian proposal the word "Chapter" is maintained, and without wanting to take any final stand on the matter, I feel that the Australian proposal is the preferable one.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, I thought it necessary to comment on the point raised by M. Colban, particularly so as to make it clear why we maintain this reference to consultation, where necessary, with the Economic and Social Council, and so on.

We do attach a good deal of importance to the inclusion of those words for two reasons. First of all, it is clear from the context of this Article that the circumstances in which a Member may seek to take action under this Article are fairly wide and rather varied in character. Indeed, some of them may well fall outside the field in which the I.T.O. itself has a prime responsibility or a claim to greater "expertise" (if we can use that word) than other Organizations in the international field.

For instance, speaking for ourselves, we have been concerned particularly, when considering this Article, with the possibilities of a general deflationary situation which would make it difficult for us to maintain our obligations; and in such a situation it does seem to us important that the I.T.O., before taking action of the kind contemplated here, should discuss with the agencies appropriate to a consideration of such a situation, what the facts actually are, the causes underlying the situation and the possible lines of remedial action. It is, furthermore, in relation to the last point that we think it is exceedingly important to maintain these words.

As I have mentioned before, we do not put the emphasis we do on this Article because we wish Members to be placed in a position to take retaliatory action against other Members. What we are anxious to do is to see the causes of the situation removed, and we only provide for the modification of obligations accepted

by Members where other means of correcting the situation are not found to be practicable, and it is just because the action called for to correct a situation of that kind may well involve the activities of a number of inter-governmental organizations that we think it important that consultations should take place.

We would consider it a very great pity if countries were released from their obligations under the Charter, either generally or in relation to particular Members, if it were possible by combined action through the cooperation of the Economic and Social Council and the other intergovernmental agencies to correct the basic situation with which the claim was designed to deal. So both because the I.T.O. will, we feel, need to go these other bodies in order to put itself in a position to make an honest judgment, and because remedial action may well best be taken outside the field of activity of the I.T.O., we consider it of great importance that the provision should remain for consultation with the Economic and Social Council and other appropriate intergovernmental organisations. We would point out to Mr. Colban that the inclusion of the words "if necessary" makes it appear that, if the matter is exclusively one within the competence of the I.T.O. itself, then the I.T.O. is not called upon to consult with anybody.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, I simply want to state very briefly our views on various proposals that have been made. With respect to paragraph 1, we agree with those delegations who feel that this paragraph deals with an entirely different matter and that it could remain in its present position. We agree with that point of view. With respect to paragraph 2, we agree with the suggestion which has been made that we should take the Australian text as a basis for the discussion of that paragraph. We feel that that represents a clearer statement of what is intended, and the Sub- Committee might well consider that as a basis for their discussion.

With respect to the suggestions which have been made with reference to consultation with the Economic and Social Council and other intergovernmental agencies, we feel that that reference should remain in this paragraph for the reasons stated by Dr. Coombs. We envisage like him that the difficulties that arise under Chapter III in this Charter will be dealt with by the procedure under this Article, and Chapter III covers matters which involve very deeply the activities of other intergovernmental organizations. For that reason we attach considerable importance to retaining the reference to consultation with those other agencies.

Finally, with respect to the question of placing paragraph 2, we are favourable to the idea that this should be consolidated with 86 and moved to Chapter VIII at the back of the Charter.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to be allowed to speak very shortly with regard to the remarks of my Norwegian colleague referring to the Economic and Social Council. We just wanted to extend the scope of this paragraph, and we felt clearly that otherwise there might be the danger that the ITO would become a kind of octapus likely to absorb the work of other organizations, and just to prevent any misunderstanding there we add the words "if necessary" so as to make it clear that if no such danger should appear, the ITO would act of its own accord.

M. ROYER (France) (Interpretation): Mr. Chairman, since you have opened the debate on the amendments to Paragraph 2 of Article 35, and you have expressed your intention of referring these amendments to the Sub-committee, I would like to mention two points: first of all, the Sub-committee on Article 35 should study the Report made by the Sub-committee on Chapter III. In this Report the Sub-committee on Chapter III recommends that the Sub-committee on Article 35 should look at the Report and see to it that the final text reproduces the will and the intentions of the authors of the London text and covers adequately the provisions of Chapter III.

The second observation, as Mr. Coulson pointed out, is that the procedure may involve delays which might be too long, and, in the Australian proposal, among the consultants we see not only the Economic and Social Council and other inter-governmental organizations but also the State Members. This is something new, which was not in the New York text, and, if we have consultation with all the Members of the Organization before we can act, I think we run the risk of prolonging too much the procedure of consultation.

Before we go any further, I think we should ask the Australian Delegation whether they insist on the inclusion of State Members in Paragraph (3) of their proposal.

With regard to the last sentence, and the question of whether it should apply to Chapter V or to the whole system of investigation included in the Charter, I believe it would be better provisionally to keep the text of the Australian proposal or limit it to the obligations arising under Chapter V.

CHAIRMAN : The Delegate for Belgium.

M. Pierre FORTHOMME (Belgium) (Interpretation): What I wanted to say was covered by the first part of the French Delegate's statement.

CHAIRMAN: Mr. Shackle.

Mr. R.J.SHACKLE (United Kingdom): I would like to add a few words, Mr. Chairman. First of all, I would say we are disposed to agree in general with the Australian Delegate's suggestions and think that they are improvements. Clearly that is without prejudice to the possible transfer of the second part of Article 35 to Chapter VIII.

I also agree that the revised text proposed by the Australian Delegation would make a very simple basis for the Sub-committee to work upon.

I would like to make one verbal suggestion in regard to the underlined words which appear in Line 8 of Document W. 170. It seems to me that we should do better to make it read: "any benefit accruing to it directly or indirectly by this Charter." I think that "benefit accruing" is better than "benefit accorded."

As regards changing the word "Chapter" to "Charter", it does seem to me that really depends on where we put the passage. If it goes into Chapter VIII, then clearly I think it will be desirable to change "Chapter" to "Charter". If, on the other hand, it stays where it is, then it would be appropriate to keep the word "Chapter".

There is just one general consideration I would like to put forward on the question of possible transfer. As I see it, this Article, as it was widened in the discussions in London,

was really meant to act as a sort of general balancer. It was meant, I am sure, that a balance could be preserved between Members' rights and obligations under all the various provisions of the Charter. If a Member were to find that he was not getting his rights under one part, it might be restored by some modification of his obligations under that or another part. It does seem to me that, if we aim at producing such a balancing factor for the whole of the Charter, it is probably appropriate it should be possible to grant disponsations under any part of the Charter. It is rather a priori sort of argument, but I would recommend that to the attention of the Sub-committee.

Dr. H.C.COOMBS (Australia): Mr. Chairman, I would like first to say, in reply to the point raised by the French Delegate, that we would not regard the retention of the words "consultation with Members" as vital. We were anxious, for the same reasons as I explained in relation to consultation with other organizations, that whatever recommendations the Organization did make, or whatever dispensations it granted, should be made first of all with an eye to the changing circumstances which create the problem, and that it might be possible to do something along those lines by consultation with Members which would, perhaps, avoid the type of action referred to later in the Article.

However, we recognize that it would be open to the Organization to consult with Members and it would be unnecessary to refer to it here, so we would not regard its retention as important in the same way as reference to the Economic and Social Council and other organizations.

I would say also that I agree completely with the verbal change suggested by the Delegate of the United Kingdom; that to substitute the word "accruing" for "accorded" would be an improvement.

CHAIRMAN (Interpretation): I think we are now ready to refer this question to a sub-committee.

Mr. J.E. HOLLOWAY (South Africa): Mr. Chairman, I would like to direct attention to a matter of interpretation which involves an important question of principle in the Australian amendment. I agree with Mr. Shackle that the Australian amendment is a better basis for consideration of this matter by the sub-committee than paragraph 2 of Article 5 in the New York draft. It introduces at least one new and important point of substance which the New York draft does not contain. It makes it perfectly clear that a complaining member must be able to show prejudice before he brings any complaint forward, whereas the New York Article was somewhat like an Irish fight, the sort of thing in which anybody could join in on any of the very vague phrases which occurred in that draft.

I am not sure, however, - and this is the point of principle on which I would like elucidation - I am not sure that the Australian amendment does not go a good deal further than probably the Australian delegation would want it to go. To clarify the issue I should like to put a series of precise questions, and with Dr. Coombs' permission I will use Australia as an example:

If you read the words in paragraph 2 (a), the first batch of underlined words "....the promotion by it" - that is by a Member - "of any of the purposes of this Chater is being impeded, as a result of-(a) the application by another Member of any measure, whether or not it conflicts with the provisions of this Chapter;" does not mean that a Member who has a market in Australia can complain to Australia that it maintains too high a level of tariffs and that therefore it prevents the other Member from increasing the employment which it is committed to under the Charter.

Secondly, I would question whether this does not involve the implication that if the Organization considers the circumstances serious enough, it may relieve that Complaining Member of its obligations to Australia, and if that is the case, whether it may not happen that Australia's competitors in the market of the Complaining Member would get Most Favoured Nation rates, but Australia's exports to that Complaining Member might have to pay some rate higher than the Most Favoured Nation rate, which is left entirely indefinite and in the hands of the Complaining Member.

I think if those questions are dealt with it will show whether Australia intends to go as far as this Article seems to me to go and whether other Members are prepared to follow it on that long course.

CHAIRMAN (Interpretation): I suppose Mr. Coombs, having been asked a question, would like to answer himself.

Dr. H.C. COOMBS (Australia): Well, Mr. Chairman, I am not quite sure if this is not a situation in which I might not claim the privilege of a Minister in Parliament and ask for notice, since it is obvious that the question is designed to be difficult! But I would like to answer it very seriously, because I think it does raise quite a difficult problem.

If we look at the wording of the Article I do not think that in such a situation as Dr. Holloway describes it could reasonably be said that the existence of a high tariff in Australia took away from the complaining country any benefit accruing to it directly or indirectly under the Charter. It might be possible, perhaps, to argue that it did impede the promotion by that country of some one or more of the purposes of the Charter, since the purposes are fairly general in character. The difficulty with a clause of this sort, however, is that it is

designed to deal with situations about which it is fairly difficult to be precise. For instance, the first sub-paragraph

"(i) the application by another Member of any measure, whether or not it conflicts with the provisions of this Charter"

is, I think, taken over automatically from a standard clause in the old type of Trade Agreement and was designed, I presume, to deal primarily with possible attempts to evade obligations accepted in an exchange of tariff concessions.

It may be argued, perhaps, that we have given so much thought to this and we have covered so many potential situations in the Charter, that, so far from trying to provide for covering situations not dealt with therein, we might give a prize to anybody with sufficient ingenuity to find something that is not covered. But I think what it comes down to is that we will be prepared to rely upon the Organization, which is, after all, the representative of the countries forming the organization, interpreting a clause like this reasonably, to ensure that complaints are made on matters which are relevant to the general subject matter for which the Organization is responsible, and to deal with the purposes of the Organization, and that, if a complaint were made, which, while verbally it might be brought in under the particular provisions, the Organization would dismiss it because it judged that the relationship of the complaint to the subject matter with which the Organization has properly to deal, was so remote that it could not, in any case, consider the circumstances sufficiently serious to justify any action as is provided for in clause (c).

Since, over the last couple of weeks, we had a discussion on a related matter, in which Dr. Holloway took a very active part, I have given some thought to the possibility of variations in this clause which might tend to avoid what I feel he has in mind, that is, an attempt to use the provisions of this clause to interfere in the domestic policies of another country when they are not, to any significant degree, affecting the commercial welfare of the complaining country, or where they are fundamentally irrelevant to the purposes of the Charter.

I find it difficult off-hand to see precisely what change could be made with that purpose without detracting from the very real value of the Article as we see it. However, I see some advantage,

Mr. Chairman, in the sub-committee giving some thought to this question. I do not think any member desires that, as a result of this clause, either his or any other country's domestic policies, insofar as they are not international in their impact and connected with international trade and commerce in their impact, should become a subject of question and investigation by the International Trade Organization, and possibly released from other obligations.

On the other hand, it would be a very great pity if, because we could not trust an international organization formed out of our own membership to interpret this clause intelligently and with sufficient discretion, we were to deprive ourselves of the opportunity of having our own obligations reviewed in circumstances which made it impossible for us to carry them out. If we destroy that opportunity, then I believe that we will face a very real danger and the International Trade Organization will crumble at the first serious international economic situation.

CHAIRMAN: Mr. Forthomme.

Mr. FORTHOMME (Belgium) (Interpretation): In addition to the statement made by Dr. Coombs, I would like to remind the Committee of the fact that the onus of the proof is indirect relation with the oddity and strangeness of the case envisaged; and one should ask the Organisation in a case of that kind for more proof and for the discovery of more facts. Especially when the damage claimed by the plaintiff is of a very intricate nature, and when applying this clause to the cases mentioned, one should indicate the degree of care and caution to be exercised by the Organisation in each case; and in that respect I would recommend the changing of the order of subparagraphs (i) and (ii) in the Australian draft.

I think that the question of the failure of another Member to carry out its obligations under this Charter should become (i) and the present subparagraph (i) should become (ii), and that we should ask for more facts and guarantees for the application by another Member of any measure, and so on, and for a maximum of guarantee in the case of the existence of any other situation.

There is a question of graduation between (i) (ii) and (iii).

CHAIRMAN: The Delegate of Chile.

Mr. GARCIA OLDINI (Chile) (Interpretation) I was surprised to see that the question which has just been raised had not been raised before; and in reality I do not think it is proper for the Delegate of Australia to ask for an explanation by saying that the clause mentioned in the Australian text is to be found in all the general texts of commercial agreements.

In reality we know this is a reproduction of the text established in New York; but when dealing with a common clause

in any bilateral treaty this is of less importance than when dealing with a Charter which is of a very general and multilateral application, and which confers very wide powers to an international organisation - even the power, in that case, to take some action against the Member or Members to which this clause might apply, and I think that the meaning of this clause is that if a Member applies any measure, whether or not in the Charter, there may be sanctions against him and even eviction (to be polite) from the Organisation.

I think that in order to avoid this possible infringement of the Organisation in the domestic commercial policy of the Members, it is not sufficient to ask us to trust the Organisation to interpret this clause reasonably. I think the very fact that we are asked to trust the Organisation proves that there exists some danger, the importance of which may not have been sufficiently stressed, and I think that when we ask the Sub-Committee to study this clause we should draw its attention to this question and ask the Sub-Committee to try and consider a draft motivating that part of the Article very seriously, and not leaving it in a sentence referring also to "other situations", because these may include regulations which are not applicable to that case, and which would not cover the case.

CHAIRMAN: The Delegate of South Africa.

Mr. HOLLOWAY (South Africa): In spite of what Dr. Coombs said, I did not ask this question to be difficult, but rather to focus attention on the choice which is before us in a very difficult question.

Now Dr. Coombs' answer naturally was given on the spur of the moment, and he probably did not notice that I was concentrating attention on that choice; but he immediately said that he did not

think that a Member could go to another Member or to the Organisation in the case which I had put forward on the grounds that any benefit accorded to it directly or indirectly has been nullified or impaired. I agree, I agree. But I put the question of the alternative. My whole question is whether that alternative is in. The alternative is all, and I quote these words: "The promotion by it of any of the purposes of this Charter is being impeded".

Now one of the purposes that this Member has to promote, and a purpose very important to every Member, is to increase its employment.

Therefore, it seems to me perfectly clear that if the tariff of another country puts difficulties into it, this paragraph enables it to raise the issue. I do not think you can get away from it. Dr. Coombs says it is very difficult to be precise in these matters. Well, then, why be so very precise in this particular way? I am fully in agreement that when any benefit accorded to a Member directly or indirectly by this Charter is being nullified or impaired, then these consequences should follow. I am not at all sure that they should follow in the second case, or, in other words, that we should make provision for this alternative because of a Member raising the question.

Now Dr. Coombs has a second defence. We must have a certain amount of faith in our Organization and I am in full agreement with him; but remember, please, that under this Article you have got the dispute, with a month or several months of discussion between the two Members, before the Organization gets to hear of it. I am fully with Dr. Coombs and with, I think, all the Members of this Conference that where benefits accorded to the Member directly are being impaired by the action of another Member, then we should provide for this action. I think if we go beyond that, then a consequence may follow which I will just drop very quietly into the minds of Members here -- very quietly - no doubt here and there it may fall on fertile soil and that is that you may be faced with the question that the customs tariff policy which your Parliament follows is called in question by another Member. I shall leave it at that. The matter will no doubt receive more attention.

I do want to pay Dr. Coombs this tribute: that he has already improved the draft, and I have no doubt that he will improve it a little more in the sub-Committee.

CHAIRMAN: The Delegate of Brazil.

Mr. E.L. RODRIQUES (Brazil): Mr. Chairman, after listening to several remarks made by the Delegates here, I arrive at the conclusion that it would be better, perhaps, in order to avoid hard feelings, to establish that all consultations should be done through the Organization and not direct from country to country. It is an idea, I suggest, to be considered by the sub-Committee.

My reason for asking this, is that, as you know, all matters connected with this Article 35 constitute great difficulties in different countries and this would greatly facilitate understanding; and, at the same time, by putting consultation through the Organisation, all countries can profit and advise.

CHAIRMAN: The Delegate of the United States.

Mr. John W. EVANS (United States): Mr. Chairman, if I may revert to the question raised by Dr. Holloway, I want to support the suggestion that the sub-Committee consider very carefully the question of whether the purpose of this paragraph may not have inadvertently been expanded too much by the Australian text.

I should suggest that among other possible solutions which the sub-Committee might consider in order to bring the cosmic scope of the present Australian wording into more worldly dimensions, would be the substitution for the word "Purposes" with a capital "P"

Dr. H.C. COOMBS (Australia): Mr. Chairman, I think that a number of the suggestions which have been made for the improvement of the draft that has been submitted should receive the careful consideration of the Sub-Committee, in particular in relation to the point made by Dr. Holloway that we are conscious of the difficulties which he referred to, particularly in relation to the use of the phrase "promotion by it of any of the purposes of this Charter", and we would be glad to consider any variation of that which would result in its meaning being more precisely limited. Also, if I can follow Dr. Holloway's agricultural imagery and if I can drop a seed into his mind, he might be able to help us to think of a better word that "benefit". One of the reasons why we felt it necessary to add the second part of that sentence was the feeling that the word "benefit" by association might tend to be interpreted in an unduly narrow way, relating particularly to the exchange of tariff concessions or something of that sort. If it is clear that "benefit" will be understood in the way in which I described it when I was explaining this re-draft some minutes ago, then I think it might be possible to change the latter part of the sentence in a way which would make it much less objectionable in the light of the consideration that Dr. Holloway submitted.

M. AUGENTHALER (Czechoslovakia) (Interpretation): I only have a few remarks to present, especially with reference to the statement by the delegate for Brazil. He explained that, in his opinion, it will be better that all questions should be referred to the Organization and be dealt with through the Organization instead of being dealt with through direct negotiations between members. Personally, I believe that the first discussion should take place directly between members, which is the normal diplomatic way of

dealing with this question, and that only after the discussion between members has taken place in important cases, the Organization should deal with this question. On the other hand, I think that the Sub- Committee should try to find a way to seeing whether it would not be possible to reach a situation where some of the members could agree between themselves to eliminate some parts of the Charter.

CHAIRMAN (Interpretation): I think we can consider the discussion of Article 35 as closed, and refer the question to the Sub-Committee. We shall give to that Sub-Committee, as a general directive, the task of studying Article 35 on its merits, and later on decide the place it should have in the Charter. We should also tell the Sub-Committee to take the Australian proposal as a basis for discussion, and in addition to take into account all the views expressed in this debate.

M. ROYER (France) (Interpretation): Before closing the discussion on Article 35, Mr. Chairman, I would like to remind you that two Delegations, at least, in New York, made reservations on the last sentence of the first paragraph of this Article. They were the Czechoslovak Delegation and the French Delegation. They had envisaged either to specify that part of the sentence, which is too absolute, or to delete that last part and to revert to the London text.

CHAIRMAN (Interpretation): I quite agree.

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): I do not want to add to what my French colleague has said, but only to state that all Members should be allowed the same privileges.

CHAIRMAN (Interpretation): We can now pass on to the next Article.

With regard to Article 36, I would remind the Commission that the text was drafted neither at the First Session in London nor by the Drafting Committee in New York. We had as a basis then only the United States draft. Since that time the United States Delegation have altered their original draft and the revised text appears in Document W. 165. There is also a new text suggested by the Czechoslovak Delegation, which is contained in Document W. 171. These two Delegations will have the floor to explain their proposals.

The Delegate of the United States.

Mr. John W. EVANS (United States): Mr. Chairman, since the original United States draft to Article 36 has not been debated, I suppose I might make quite a long speech about it, but I will not attempt to do that.

I should like to point out, though, before I run through our revised draft of Article 36, the principal considerations which prompted us in submitting this quite drastic change from our original proposal.

We had in mind - I think more clearly than at the time the original draft was submitted - the same considerations which have led the Czechoslovak Delegation to submit a wording of their own for this Article. We had come to recognise that some countries may be faced with very serious problems from a rigid application of the principles laid down in this Article if there were no discretion in the Organization and no such escape for the Member concerned.

In approaching the re-draft, we have tried very hard to consider the position of such countries and we believe that we have, in fact, accomplished an Article here which, whilst it does not lose the essential value in the original proposal, does take care of these special and difficult problems.

With that introductory remark, I should like to refer briefly to what we had in mind in each of the new proposed amendments.

The first one is, I think, quite simple and hardly requires any explanation. It seems quite clear that no Member of the Organization should be allowed, or should want to, enter into any negotiations with a non-Member in order to obtain from that non-Member special privileges at the expense of other Members which it would not have been entitled to obtain from another Member. That is the only purpose of Paragraph 1. The earlier wording, I think, has been improved by the substitution of the final phrase, which is underlined. The earlier wording was subject to a possibly too broad interpretation. It might have been understood to require that a Member suspend commercial treaties

or other arrangements with non-Members which were not harmful in any way to a third Member.

Paragraph 2 is, in essence, a means of assuring that if any non-Member wishes to become directly entitled to the benefits which are extended to Members, he should become a Member of the Organization and be subject to its obligations.

Paragraph 3 also seems to us to be essential, by virtue of the timing and the schedule under which this International Trade Organization is coming into being. The nations here represented are negotiating important concessions with each other. In doing so, they will have covered a very large part of the total commodities in world trade. A much larger number of countries - though not larger in the sense of the total trade they do - are not participating in these initial negotiations and yet many, if not most, of the Members represented here have Most-Favoured-Nation treaties with many - and in some cases nearly all - of the Members not represented here.

The result of that situation is that a good deal of the inducement to Members not now present - the inducement to join the Organization and to adopt its obligations as well as to receive its benefits - may be lost if the Members outside of this group who are non-Members of the Organization do invoke their Most-Favoured-Nation privileges. This becomes parallel with the provisions with regard to tariff negotiations respecting Members who do not participate in the initial negotiations, and the purpose of that is to prevent non-Members from receiving greater benefits than Members are permitted to extend to non-Members in precisely the same situation.

Our new paragraph 4 provides - and here is where we feel that we have carefully considered the special problems of any country whose trade may be carried on largely with non-members - that a Member who feels he cannot conform with the obligations to paragraph 2 and paragraph 3 may ask the Organization for an extension of the time period which, in any event, is allowed to elapse before this paragraph becomes effective. It also provides that unless the Organization withholds permission for the extension, it is automatically granted. No action by the Organization will resolve in the member obtaining the extension requested. Thirdly, if the Organization should refuse that extension, it provides that the member is free, regardless of other provisions in the Charter, to withdraw from the Organization.

We feel that that should provide the necessary flexibility and necessary safeguards for any member country. I think that is all I have to say, Mr. Chairman.

CHAIRMAN: Monsieur Augenthaler.

M. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, Gentlemen, the matter we are discussing today is one of far reaching importance, and possibly of vital interest to some countries.

As you all know, the Preparatory Committee at its First Session in London left Article 36 for consideration at a later stage and now we are called to take a decision.

The draft we had the honour to present to you is based on the following considerations:

By adhering to the Charter, the Members have to accept a certain code of manners in international commercial relations. It is only just and proper that they should not forget their obligations when they have to deal with non-members, and that is the reason of

paragraphs 1 - 5 of our draft.

Members or their citizens should not, even if they have the opportunity take advantage of the situation and seek in non-member countries special privileges or preferential tariffs. Neither should they be party to agreements which would be contrary to the general purposes of the Charter as they are laid down in Chapter I, as for instance would be an agreement of some countries to oppose industrial and general economic development of undeveloped countries, and so on.

It is equally understood that each Member, by virtue of the most-favoured-nation treatment, is obliged to accord to all Members concessions granted to any non-member.

On the other hand, it would be unjust to prevent any Member from concluding normal commercial treaties and from obtaining tariff concessions in a non-member country merely because this non-member country has by some chance no commercial treaty with any Member. In this case, the Member country concerned would be penalized because a non-member cannot agree with some Members.

As to point 4 of our suggested new text, some explanations may be necessary, because as it stands it could seem to be too far reaching which was not intention. If we agree about the matter itself, I am quite sure that we might find a better wording. What we intended to say here is, in fact, that if in January we find ourselves on the European Continent we cannot go around in bathing suits even if at this moment in California people are sunbathing on the beaches.

What I should like to stress is the fact that if the important interests of some country, having an important part of its foreign trade with possible non-Member countries, might be seriously prejudiced by the detailed application of the provisions of the Charter, some means should be found to help this country to overcome those difficulties without acting against the principles of the Charter. A concrete example may make my point clearer. As you all know, import or export restrictions are used sometimes not only for reasons of balance of trade difficulties but equally as a means for bargaining. Now, Members have obligations in this matter, for instance the publication of their quotas as long as they apply them; non-Members have no obligations of this kind. In this case non-Members will be exactly informed about anything that is going on in the Member country and thus the bargaining possibilities of the Member would be substantially weakened to its detriment. This would be an instance, when the Member could abstain from the publication of quotas and their administration, but confidentially inform the other Members mainly interested in the trade of the respective countries on the administration of quotas of goods where they have a substantial interest.

But this brings us to another point, namely, to the general problem, and that is, whether Members should be compelled to withhold from non-Members benefits enjoyed by virtue of this Charter and to come into economic conflicts with the respective non-Members. It is quite clear that if a country has a normal commercial treaty based on the most-favoured-nation clause with a non-Member, it cannot withhold from this country tariff reductions unless it renounces the commercial treaty with this country. To renounce a commercial treaty is a very serious step, because such a measure inevitably leads to counter measures being taken by the other country

We in Czechoslovakia once had a situation of this kind in our trade relations with Hungary, and the result was that trade between the two countries fell to one tenth and has never since recovered. Would the Members, if compelling another Member to take such a step, be ready to compensate the Member for the losses which it might incur, not to speak of possible political complications?

It is true that the United States Amendment provides for an exemption of the Member with the approval of the Organisation, but I doubt if my country would agree to submit its international trade and possibly general international relations to a fortuitous majority. We fully appreciate the wish of the United States that the Charter should be universal, and our aims are identical. But we doubt if this aim can be attained by introducing into the Charter a form of economic sanctions which ultimately may be more prejudicial to the Member itself than to the non-Member.

The idea of introducing into a Charter of international trade penalties or economic sanctions of this kind is unique in world history. The world once applied economic sanctions. This was in 1935, in the case of the Italian attack on Abyssinia, and we all know that no great power was as vulnerable as Italy to economic sanctions. But the sanctions failed; their most important result was the movement of Italy towards self-sufficiency. I agree that here it is not the question of applying sanctions to the same degree as was then envisaged for Italy, but we see in these provisions possibilities of most serious economic conflicts. That is why we are of the opinion that anything which might bring a country into such a position should be deleted from the Charter. We are still only a Preparatory Committee, and even to-day we cannot say what will be the content of the Charter, and hence to which parliaments and to which countries the Charter in its final form will be

acceptable.

I should particularly like to stress that Czechoslovakia is unwilling to have economic conflicts with anybody. It makes no difference whether the country be near or far, great or small. We do not feel like world champions, and all we want is a quiet seat in the audience and we do not mind if it is even somewhere in the Gallery.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, there is no doubt that this is perhaps the most difficult question with which we have to deal, and the difficulty arises from the fact that we do not understand, and we cannot in the nature of the situation understand, the problem which we are trying to solve. No-one can know at this stage what countries will be Members of the Organization if it is established, and what Members will not be. Consequently, we are attempting to deal with a problem the nature of which we do not understand, in circumstances where I think it is practically impossible to reach any satisfactory conclusion.

However, for the purpose of making some progress on it, I assume that we have to proceed on the assumption that there will be non-Members. If, of course, all significant trading countries of the world are, in fact, Members of the I.T.O., then the problem ceases to have any significance; but if any significant trading countries are outside the Organization then the question does become one of quite an acute character.

As far as the Australian Delegation is concerned, we find ourselves in very strong agreement with the basic principle underlying the Czechoslovakian Delegation's remarks, which, as we understand it, were to the effect that it would be unwise for any rules of the Organization to make impossible the conduct of ordinary commercial relations between countries in close economic inter-relation, merely because one is a Member of the Organization and the other is not. It does seem to me, therefore, that we must consider this problem along the lines of trying to make possible

friendly commercial relations between Members and non-Members, while, at the same time, preserving for Members, presumably, at least some of the benefits which accrue as a result of their membership.

There are two particular problems. One is the status of existing agreements between countries which do become Members and between countries which do not become Members on the other hand. In the absence of knowledge about the content of those Organizations, I find it very difficult to reach a conclusion as to whether their continuance would, in fact, impair the benefits of membership for the other countries who are Members of the Organization. On the other hand, I feel quite satisfied that the continued existence of agreements in some form should be provided for, since otherwise the maintenance of normal friendly commercial relations might be prevented.

Since that is so, it does seem to me necessary that we should provide for the possibility of new agreements between members and non-members, by which at least some of the benefits available to other members are granted to non-members in return for benefits received. It might be desirable to make such agreements subject to examination and approval of the organization, but I think it is an essential minimum that that possibility should be provided for. I would like to point out the snowball effect of any provisions which do prevent reasonable commercial relations between members and non-members, since if they are so close to the economic relations between a member and non-member that the prevention of normal relationship between them proves to be an overriding consideration to the member, so that he is obliged to withdraw, then you merely have a situation in which all the countries which are closely related to that country economically find themselves in difficulty in retaining membership and we might find very quickly the necessity of withdrawal of countries who have close economic relations, not merely with the original non-members but with one another, and we might find that the provisions which we introduced for the purpose of making membership attractive, and so building this organization into a truly world organization, had the exceedingly undesirable and unintended effect of dividing the world into trading blocks. I wonder, Mr. Chairman, whether - and I will not put this formally - I could put the suggestion that we form a Sub-Committee to consider the matter. That Sub-Committee should give very serious consideration to whether it is necessary to defer consideration of this problem until we know something about the real elements in the situation. At present the Charter does provide for an interim period during which a foremost treatment is extended to non-members - that was, provided a time was given during which they could make up their minds.

Might we not also regard it as a time during which this problem could be studied with some understanding of what the real problem is? By that time, we would at least know who are the members. We would not necessarily know whether the non-members would become members, but at any rate we would be considering the problem with a good deal more reality to it than we possibly can at the moment. Could we not provide for that interim period and nothing else, in the Charter, but give a direction to the organization that it should study the question of the relationship between members and non-members in the light of the membership as it had existed after the organization was set up, then the nature of the commitments which existed between members at that time and non-members, and the economic relationship as it existed between members and non-members with a view to putting forward proposals to members at the end of a specified period, covering desirable relationships on a permanent basis between members and non-members.

CHAIRMAN: (Interpretation): The Delegate for India.

Mr. B.N.ADARKAR (India): Mr. Chairman, we have followed with great interest the remarks made by the Delegate of Czechoslovakia and the Delegates of the United States and Australia. We would associate ourselves completely with the general principles enunciated by the Czechoslovak and Australian Delegates.

It was decided at the London Conference that this very delicate question should be settled at a later stage and I would draw your attention, Mr. Chairman, to a passage which occurs in the procedural memorandum on tariff negotiations on Page 51 of the Report of the London Conference, which says that the tariff concessions granted under the agreement should be provisionally generalized to the trade of other countries pending the consideration by the International Conference on Trade and Employment of the question whether benefits granted under the Charter should be extended to countries which do not join the International Trade Organization and which, therefore, do not accept the obligations of Article 24.

It was the intention underlying this paragraph that the question of treatment of non-Members should be considered at the International Conference on Trade and Employment. This was a sound decision, a very wise decision, we feel, and we think that we should adhere to it. As Dr. Coombs has rightly pointed out, it will not be possible for us to make any realistic appraisement of the factors involved until we know which countries are going to be classed as non-Members and how important they are in world trade.

As regards the merits of the question, as I said, we heartily support the remarks made by the Delegates of Czechoslovakia and Australia. The Australian Delegate was quite right when he pointed out the adverse effects where any such provision is likely to have on the trade relations between Members and non-Members, particularly in situations which a particular Member may have close economic relations with a particular group of non-Members. As Dr. Coombs has pointed out, this particular fact may lead to snowball effects, thereby diminishing the utility of the Charter that we are going to institute.

So far as India is concerned, we have Most-Favoured-Nation agreements with many countries and India will be most unhappy if she is placed in the position of having to terminate these agreements and to introduce discrimination in her relations with countries with which she has been carrying on trading on a Most-Favoured-Nation basis for ages past.

It is the object of this Charter to eliminate discriminatory treatment wherever it exists. I am afraid this particular provision will operate to creat discrimination where it does not exist. It is true that this discrimination is not inspired by any vindictive spirit. It has the very laudable objective of bringing non-Members to their senses. Even so, it implies a threat and it will not make for a proper atmosphere for the consideration of this Charter, whether at this Conference or the World Conference, if such provision is included in the Charter. The International Trade Conference should be an association of trading Members with mutual interests and appreciation of the benefits likely to accrue under the Charter and that should be the binding force behind that association.

If such a provision is introduced into the Charter, each Member may have to consider that, irrespective of any consequences, good or bad, that may accrue to it by adhering to this Charter, there will be at least one very undesirable consequence, namely, that its trade with a large number of powerful trading countries in the world will be subject to discrimination. I do not think that such a feeling will be conducive to a proper consideration of the Charter. Therefore we want the World Conference to be started in a proper atmosphere, which would not be attained by introducing a provision of this sort at this stage into the Charter.

It is quite true that some provisions dealing with relations with non-Members may be found to be necessary at a later stage, but we would be well advised to leave that matter to be considered at the proper time, when we know how many countries are going to be classed as non-Members.

We shall be meeting at the World Conference with a large number of countries not represented here and we shall be offering this Charter to them for their consideration. If this offer is backed by an implied threat, it will appear as if we are presenting them with an accomplished fact. I therefore suggest that we should defer consideration of this to a later stage.

There is just one consideration that I would like to add, Mr. Chairman. We have, in dealing with the procedure for tariff negotiations under Article 24, in Paragraph 3, provided for procedure whereby, if a country, after joining the Organization, fails to conclude a satisfactory tariff agreement

with another Member, the Organization can decide whether it has failed to negotiate without sufficient justification, and, if the Organization comes to the conclusion that a Member has failed to negotiate without proper justification, the Organization can authorise the withholding of tariff benefits from that Member.

Under the present arrangements, tariff benefits to be exchanged under the Charter are going to be provisionally extended to all countries of the World. The position is that under Article 14 only Members of the Organization are entitled to Most-Favoured-Nation treatment. Non-Members are not entitled to Most-Favoured-Nation treatment. It is therefore perfectly open to any of the Members of the Organization, if they so decide, to withhold the benefits of the agreement from certain non-Members. That being so, then surely that will also act as an important deterrent factor against any widespread feeling on the part of non-Members to decide not to join the Organization.

There is therefore already here a provision which non-participating countries have to take into account, namely, insofar as they do not enjoy Most-Favoured-Nation treatment under their existing agreements, Members may withhold from those countries the benefits provided under the Charter. I think we should be satisfied with that provision and, if necessary, we could insert a provision that the Organization, although it expects the countries represented here to extend the tariff benefits to all countries of the world, it will not disapprove of particular Members withholding these benefits from non-Members at a suitable stage.

CHAIRMAN (Interpretation): There are still several speakers on the list and, as it is quite impossible to hear them all tonight, I will give the floor to the first on my list which is Dr. Colban of Norway.

DR. E. COLBAN (Nowway): Mr. Chairman, I entirely share the opinion expressed by the Australian delegate and support his suggestions which, by the way, also fall into line perfectly with the views expressed by the Czechoslovakian and Indian delegates.

CHAIRMAN (Interpretation): Therefore, Gentlemen, the meeting is adjourned until tomorrow at 2.30, when the first speakers will be New Zealand and the United Kingdom.

I am told that tomorrow afternoon the Executive Committee will discuss document E/PC/T/91, and that will be the first item which we will discuss tomorrow afternoon.

The meeting is closed.

The meeting rose at 6.05 p.m.