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

VERBATIM REPORT

FOURTH MEETING OF COMMISSION B

HELD ON SATURDAY, 31 MAY 1947, AT 10.30 A.M., IN THE PALAIS DES NATIONS, GENEVA

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

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CHAIRMAN: The meeting is called to order. We shall resume our discussion of the United States revision of Article 40. The first speaker is the delegate from New Zealand.

Mr. G. LAURENCE (New Zealand): Mr. Chairman, the only point I had in mind to raise at the time of the adjournment last night was to ensure that this paragraph would not be referred to the Sub-Committee before the first item on page 9 of W/132 had been discussed by this Commission.

CHAIRMAN: The New Zealand delegate has proposed that, before the United States proposal - revision of Article 40 - be referred to the Sub-Committee, there should be a discussion of the United Kingdom and French reservations regarding the submission of written complaints on behalf of any affected person. Is that right Mr. Laurence?

Is that agreed? If so, I would propose we should take up this point now, and then return to the discussion of the proposed revision of the United States of Article 40. The delegates of France or the United Kingdom wish to discuss this point?

Mr. S.L. HOLMES (United Kingdom): I will ask my French colleague to speak first.

M. LECUYER (France) (Interpretation): I feel deeply honoured by the gesture of my British colleague, who deferred to me, especially as the amendment had been prepared by the United Kingdom Delegation and the French Delegation had adhered to it.

In order to explain the matter fully, I should also say that there was French initiative at the basis of this Article. We considered that the intervention of private persons in such complaints was regrettable and that is the reason why, in New York we suggested that private individuals should act only with the assistance of their Governments.

This is a rather difficult legal conception, due to the fact that the French word "assistance" has no exact equivalent in English legal terminology, although it has a very precise meaning in French.

This is the reason why we gave up our amendment and adhered to the British text, which says that complaints should be lodged by States on their own behalf or on behalf of the injured parties.

Why did we envisage the deletion of direct intervention on the part of private individuals or companies? The question has two aspects: one is the legal aspect, and on this point I shall be very brief because this is a delicate matter on which I am not competent. We have here prominent lawyers and I should run the risk of receiving from them remarks or lessons that should be taken in the sense of correction of what I say. I shall therefore only make a remark based on common sense.

What do we intend to do? Do we intend to defend particular interests, particular commercial practices, such as counterfeiting.

The reply is "No." Our intention is only to protect international trade and therefore we have to deal with a clause of general interest and it is not a private individual who is in a position to form an exact idea of what general interest is and to defend it. This is the responsibility of governments and States. I admit that the New York text provided that a complaint made by a private individual should be examined by the Organisation with the authorisation of the Government of which this individual is a national, but it is not exactly the same thing. What would happen? We all know - without casting any aspersions on administrations - that it is sometimes rather difficult for a national administration to resist certain particular interventions, for instance, on the part of a powerful Company, and when a powerful Company asks some minor official to defend certain interests it may be difficult for that official to refuse the necessary visa or authorisation and he will think "Well, after all, let them take their chance." The case will be different if the Government itself takes the matter in hand and submits the case to the Organisation because then the Government's responsibility will be involved. Thus we will avoid a multiplicity of ill-founded complaints and perhaps even certain cases where there might be some attempt at blackmail.

There are also other reasons. It is, I think, also necessary that the Government should be in a position to intervene in what should be described as the subsequent procedure. Let me explain this: The Organisation will carry out investigations in various countries and in particular in the country of which the complainant is a national. It will therefore be necessary for the Government to be in a position to intervene and help in the investigation. It is also possible that the national home-legislation should be resorted to in that particular country, and that the Government

concerned should take action under that particular legislation. For that reason too, it is necessary for the Government to be in a position to follow the matter closely with the Organisation.

For these various reasons we on the French side must insist that the matter be considered either by this Commission or by sub-committee 2, and we are of opinion that the Governments should be absolutely compelled to intervene in the procedures, at all the various stages of the procedures, on behalf of the party injured.

CHAIRMAN: Is there any other speaker?

M. STANISLAV MINOVSKY (Czechoslovakia) (Interpretation): The Czechoslovakian delegation were always of the opinion that we should not open the door to the possibility of private persons, representing private interests, presenting complaints and causing those difficulties to governments, difficulties which may in certain cases be created for political motives. Therefore we support the amendment presented by the two delegations.

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, I would like to say that I deferred to the French representative not only because he has been present in New York but also because of his great knowledge which I think has been reflected in the remarks he has made. I think it falls to me to say that the point is clearly a difficult one. It has two aspects; one whether or not governmental authorisation of the putting forward of the complaint is required, and the second is, I think, a kindred point. The second aspect is whether we should allow a complaint which originates with some private individual or enterprise to be explained by the private individual or enterprise in person.

I would myself feel that the matter should be capable of solution by sub-committee 2; but, in general, I have of course listened with the greatest respect to remarks by our French colleague which I would say reflected very closely the course of the discussion at New York as reported by our own representative there.

CHAIRMAN: The delegate of China.

MR. C.H. CHEN (China): Mr. Chairman, the Chinese delegation also wished to associate themselves with the amendment made by the United Kingdom delegation and supported also by the French delegation. We think it is simpler for the Organization to receive complaints direct from Members only, and not from any individuals concerned. That would simplify the work of the Organization.

Another point is that it would avoid any risk of unnecessary complaint by individuals, because a given action may affect private individuals to different degrees, and it is better to have the Members, who have the jurisdiction of the individual business enterprises or individual processes, to consider the complaint first. Then, after due consideration, they would decide whether any complaint should be submitted to the Organization or not.

Another reason is that since complaints are likely to be made in English and French, if individuals are allowed to make complaints it would be much easier for some countries to make complaints very frequently and it may be very difficult for other countries to have an equal chance, so that in order to give all the Member countries an equal opportunity to submit complaints, the Chinese delegation feels it is better to have it done either on the Members own behalf or on behalf of business organizations or persons within the jurisdiction of a given Member.

CHAIRMAN: The delegate of the United States.

MR. R.P. TERRILL (United States): Mr. Chairman, it might be well if I recall some of the history of the evolution of this particular point.

In the original draft Charter that the United States suggested for consideration in London, the idea was expressed that it should

be left to the autonomus decision of each country as to the procedure it would establish for the submission of complaints on the part of its nationals, as well as those that it submitted on its own behalf. That is to say, a Member could require that its nationals file no complaints on their own behalf at all, either through the government or directly themselves. That is, if a Member so chose, it would be the sole agency in that country to file complaints.

On the other hand, some countries might feel that they wish to merely authorise the complaints of nationals, that is, take no particular position themselves in a given case. Still other countries might feel that their nationals could file directly with the Organization if they chose.

At London the wording was somewhat altered to provide for a uniform procedure on the part of all countries. The wording in the London text as I recall it at the moment was "with the permission of the Member concerned"; that is to say, the Member Government whose nationals were complaining would have to permit them to file a complaint.

We came to New York and the further suggestion of several Delegations, most notably the Delegations of France and Belgium; and also I thought that with the concurrence of the United Kingdom representative we changed "permission" to "authorise", a slightly more formal word.

Now we have before us a proposal to go still further in the direction of making every complaint to the Organisation a matter of formal Governmental action. The discussion this morning would seem to indicate that various Delegations would consider this to be a rather unrealistic, formal sort of matter, and one which does not have, perhaps, very much substance.

I think, Mr. Chairman, that the United States Delegation would regard this point as really fundamental to the entire character of the procedures, and the machinery provided under Chapter VI for the receipt and settlement of complaints. As we see the matter, Mr. Chairman, the suggested Amendment would force each Government to take a position on each complaint before it was submitted. That would require that in each country an investigation be carried out and a determination would be made with each Government before it submitted the point to the Organisation.

The complaint, in other words, would be a very serious matter. It would in effect constitute a charge against another Member of a breach or violation of the Charter.

That is precisely what we have sought to avoid, and that we had agreed upon generally in the earlier and the present formulation

of the text on this point. We feel that it would be, therefore, a very serious matter if this Amendment were found to be acceptable; and, as a matter of fact, one would hardly need the Organisation at all, if each Government carried out an investigation of its own before it submitted a complaint.

Let me recall to you that before a Government could make up its mind conclusively on the final merits of a complaint as to whether it was interfering with world trade, etc., it would have to consult with other Members and go through a very long procedure, because frequently adequate information is not within the possession of any single Government.

We feel, therefore, that such a requirement would stall the machinery that we have now envisaged in Chapter VI; that it would make it cumbersome, slow and ineffectual, and would probably destroy the meaning and the efficacy of this Chapter. Speaking on the other side of the question very briefly, the present text provides adequate protection against frivolous, malicious, unwarranted, or politically inspired complaints.

There are two steps in the procedure which must be taken before an investigation is conducted by the Organisation. Those steps are:

First, that the Member must authorise the complaint. That is to say, the Member Government must be convinced that the complaint is justified. It assumes, therefore, some measure of responsibility for the complaint in question. Indeed, of course, if the Member itself is complaining, it assumes full responsibility for its complaint. I was suggesting principally a complaint which originated with commercial enterprises within the jurisdiction of a Member.

The second step which would guard against malicious or

unwarranted complaints is the screening procedure set forth in Article 40 in some detail. That is one of the functions of the Organisation, to decide whether in the case of any given complaint it is of such a character that an investigation should be made. As our talks have proceeded in London, and then at New York, I think we have all come to place more and more emphasis on this screening procedure, and we have now provided for it rather fully, and, in the re-drafted text of Article 40 which the United States has laid before you, we have set this screening process up by itself and in some detail.

We would therefore feel, Mr. Chairman, that the present text and the proposed revision of Article 40 as suggested by the United States, takes care of all of the possible objections that have been raised this morning to the present formulation, which is that complaints originating from business entities within a Member country shall be authorised by that Member; and our understanding of that is that a Member need not make up its mind to make any final decision as to whether there has been a violation of the Charter, but it merely must decide whether the complaint appears to be justified. The function of the Organisation is to determine whether there has been in a given case harmful effects on world trade. I submit that this is the entire purpose of the investigation, and that Members should not be required to take a position in the matter before they submit a complaint charging another Member as in effect violating this Charter.

CHAIRMAN: If there are no other Delegates who wish to speak on this question, I would propose that this matter be referred to the sub-Committee 2 , who will be able to take into account the observations of the Delegates who have spoken this morning on this question. Is that agreed?

(Agreed)

I would now like to ask the Commission if we are in a position to refer the United States revised text of Article 40 to the sub-Committee ; or are there any other Delegates who wish to speak before it is referred to the sub-Committee?

The Delegate of Belgium.

M. THILTGES (Belgium) (Interpretation): The remarks of the Belgian and Luxembourg delegations on the draft Article submitted by the United State delegation will be brief, because the French delegate yesterday has already spoken on a number of points and I shall not enlarge on it. I should only like to say a few words in connection with the new paragraph for Article 4C which appears at the top of page 8 of the English text of document W/132.

This is, in our opinion, a substantial change which extents the scope of the text agreed in London, considerably. It is said in the new draft that, if the Organization determines that the practices in question have had, or are about to have, the effect described in paragraph 1 of Article 39, it shall request each member concerned to take every possible action to prevent the continuance or recurrence of such practices. This new text raises a number of objections. First of all I have one remark of detail to make. The substitution of the word"determinations" for the word "findings", is not, in our opinion, in conformity with the proper part to be played by the Organization. What is more important is the commitment to prevent the continuance or recurrence of such practices as substituted for the former wording "the practices". The comments by the United States delegate on this change explain that this is, in fact, a considerable extension of the text agreed in London. It means that they cover similar practices to those which are the subject of an investigation. I should like to recall in this connection that the Belgo-Luxembourg amendment referred to an abusive use of such practices, and for my part I cannot agree with such an extension of the meaning. I would like to make now another remark which is, perhaps, less important, in connection with the inclusion in the text of the words "recurrence" which have not

been adopted in London and which have only been adopted in New York with some reservation. But I will reserve my right of speaking on this matter in the Sub-Committee because it is connected with the Czechoslovakian amendment which has also been referred to the Sub-Committee.

M. STANISLAV MINOVSKY (Czechoslovakia) (Interpretation): Mr. Chairman, the Czechoslovakian delegation considers that considerable parts of the American proposal are useful and acceptable. However, with regard to point 2(c) of the text which, in the American draft, is number 9, we are not of the opinion that the words "the publication of such reports or any portion that may be withheld, if indeed the cause is justified," should be deleted as is proposed by the United States delegation. In fact, this clause which it is proposed to delete does not contain any obligation for the Organization. It simply reserves the right of the Organization to withhold the publication of reports or any portion thereof, if the Organization considers that this cause is justified.

Therefore, we think that the Organization should not be deprived of this possibility and that these words should be maintained.

Mr. F.A. McGREGOR (Canada): Without making any extended comments, Mr. Chairman, I would like to record our agreement with the Czechoslovakian position on this particular point.

Dr. P. LEENDERTZ (Netherlands): Mr. Chairman, I would just like to make one remark. I am fully in agreement with the remarks made by the Belgian delegate. I only want to add that his

objection to the word "determination" might be extended to many points where that word is used, and I do think that that word might cause a lot of misunderstanding because it seems that, in the ears of the American and English gentlemen, the word has a slightly different meaning than in the ears of those who do not speak the language, and I only want to recommend to the Sub-Committee, that it gives its attention to the meaning of this word in the Article.

CHAIRMAN: The Delegate of the United States.

Mr. Robert P. TERRILL (United States): Mr. Chairman, I want to revert to the question that has been raised concerning the proposed deletion in Paragraph 9 of the suggested U.S. re-draft of Paragraph 2(c) of Article 40, concerning the withholding of reports or portions thereof by the Organization.

The record will show that yesterday the United States Delegation put forward two reasons why this should be done: first, on the grounds that the present clause would be ineffectual; secondly, that it would be undesirable, and finally we pointed out what the real substitute for this clause would be. Several Delegations have addressed themselves to this point this morning. I have heard no compelling arguments, except that the clause should be retained. I might therefore just extend my previous remark to say this: as you all know, this Charter was widely discussed in the United States by the public, by various organisations and before the United States Senate. The existence of this particular clause aroused considerable apprehension and therefore, unless there were real compelling reasons for including it, we have been persuaded by the public reaction that it should be deleted.

Mr. Chairman, I do not believe it is sufficient merely to say that in the light of superior wisdom - which has not been expressed - we should retain this clause. If there were compelling reasons, which I confess I do not know at all, then of course we would be perfectly willing to listen and to give them full consideration.

CHAIRMAN: The Delegate of Czechoslovakia.

Mr. STANISLAV MINOVSKY (Czechoslovakia) (Interpretation): Perhaps, Mr. Chairman, the text could be changed so as to make it clear that it should be applied only in exceptional cases. We could find a form of words to indicate that it is only when some vital interests of a Member State are involved that the Organisation would be empowered to withhold publication.

CHAIRMAN: I think that is a matter which might be discussed by Sub-Committee 2.

If there are no other speakers wishing to comment on this particular proposal I think we are now in a position to propose that it should be referred to Sub-Committee 2, who will take into account all the observations which have been made in regard to the United States proposal. Is that agreed?

(Agreed).

At the outset of our discussion on Article 40 it was agreed that the other proposals relating to this Article should be referred to the Sub-Committee without further discussion in the Commission.

I wish to bring to the attention of the Commission an oversight on the part of the Secretariat in drawing up Document W.132. An amendment proposed by the Czechoslovak Delegation, and given in Document E/PC/T/W/119, was not included in the list of proposals relating to Article 40. A note regarding this proposal should be made on Page 9, between items 4 and 5. I would also suggest that this amendment proposed by the Czechoslovak Delegation be taken into account by the Sub-Committee. Are there any objections?

(Agreed).

Before we proceed to Article 41 I would like to make a reference to certain amendments which were submitted after the deadline for the submission of amendments with regard to Chapter VI. One of these amendments is that contained in Document W.138, submitted by the Delegation of the Netherlands, and when we are considering Paragraph 3 of Article 39 I propose that this should also be taken into account by the Sub-Committee.

Another amendment filed by the Netherlands Delegation after the deadline for submission of amendments is given in Document W.139. This relates to Article 42 and I propose that when we come to Article 42 we should also propose that this be referred to the Sub-Committee.

The other amendments which have been submitted after the deadline include an amendment proposed by the Belgian Delegation in relation to Paragraph 3 of Article 39. This is given in Document W.130 Rev.1. This also will be referred directly to the Sub-Committee.

I also understand that the Chinese Delegation have submitted an amendment to Paragraph 1 of Article 39. This also will be referred directly to the Sub-Committee.

Are there any objections?

(Agreed).

We will now pass on to Article 41.

Mr. F.A. McGREGOR (Canada): Before we leave Article 40, May I refer very briefly to the proposed amendment at the bottom of page 8, paper W/132 - the word "as" substituted for a long phrase. The thing that has troubled some of us for a long time is the very frequent repetition throughout several Articles of the Chapter of the sixteen-word phrase "which have or are about to have the effect described in paragraph 1 of Article 39". A very substantial reduction in the number of words can be effected if the single word "as" is used instead of the greater part of the long phrase. Not only would it save typing and paper but the meaning would be more accurately conveyed. The long phrase refers only to the effect described in paragraph 1 of Article 39, but that is only one condition which must be fulfilled before commercial enterprise would properly be subject to investigation; the type of practice, the nature of the commercial enterprise, the scope of its control, are also important conditions and these would be referred to if we would use the words "as described in Article 39". I have not actually counted the number of words which would be saved by this amendment, but I take it that the nett saving would be approximately 85 words. Our other suggestion is to eliminate the words "paragraph 1" (at the end of the same clause) and thus refer to the whole Article which describes in its second paragraph the nature of the enterprises affected, the extent of their control, the type of practice, and the effects.

CHAIRMAN: I am sure that if the sub-committee reduces the number of words in Chapter VI they will earn the gratitude of all members of the Commission.

Mr. W. THAGAARD (Norway): Mr. Chairman, I propose adding the words "in international trade" to paragraph 1, sub paragraph (a) (ii) and to paragraph 2, paragraph (b). We have the words "in

international trade" in paragraph 1, sub-paragraph (a) (i). We ought to put them also in (ii) in the same sub-paragraph and in paragraph 2, sub-paragraph (b).

CHAIRMAN: The delegate of Norway has made a proposal with regard to Article 41 which we are now discussing. It is Article 41?

Mr. W. THAGAARD (Norway): Yes.

Mr. A.P. van der POST (South Africa): But I have still something to say about Article 40 - a question of procedure, arising out of Mr. McGregor's remarks.

CHAIRMAN: Mr. McGregor was somewhat out of order in that we had already decided to remit Article 40 to the sub-committee. But if you have any particular comment to make we will hear it now.

Mr. A.P. van der POST (South Africa): It is not a question of altering principle. It is merely that I would suggest for the consideration of the Commission and the sub-committee that Article 40 deals with procedure in respect of complaints and so forth in fair detail, and I want to suggest for consideration that in the body of the Charter we should not enter into details about procedure. That would more suitably be dealt with in an annex. In the main Articles of the Charter we should really deal with principle; principle of right to complain, of right to be heard, and the obligation to report; but the details of procedure should be embodied in a schedule, a schedule to this particular Chapter, and not as part of the Chapter.

That is all I wanted to suggest for the consideration of the sub-committee, Mr. Chairman.

CHAIRMAN: The delegate of South Africa is somewhat late in making this suggestion with regard to Article 40, but I am sure his comments will be taken into account by the sub-committee. I am afraid I can allow no further discussion to Article 40, as we have already passed on to Article 41.

Are there any comments with regard to the suggestion made by the Norwegian delegate?

MR. S.L. HOLMES (United Kingdom): Mr. Chairman, I have a small point in regard to Article 41, paragraph 1(b) in the United States draft. This reads, at the moment, that the Organization is authorised, among other things, "to request information from Members in connection with such studies". These are the studies relating to restrictive business practices.

It has occurred to us that perhaps it would be wrong to confine one's sources of information solely to Members, and that perhaps consideration should be given to the question whether one might not also usefully ask for information from non-Members, or even bodies which are not solely governmental.

In this connection I would like to refer to the Commodity Chapter, Chapter VII of the Draft Charter, Article 48, paragraph 2 where it suggests in connection with commodity Study Groups that non-Members, having a similar interest, may also be invited to take part in the work of such a commodity Study Group.

I only make the suggestion so that it may be considered, if you agree Mr. Chairman, by the sub-committee which will be looking at this passage.

CHAIRMAN: The study of the proposed revision of Article 41 submitted by the United States delegation, and also the suggestions which have been made this morning by the delegate of Norway and by

the delegate of the United Kingdom do not, I think, give rise to questions of substance which need to be discussed in full Commission. Therefore, I am wondering if the Commission could not agree that this proposed revision submitted by the delegation of the United States, together with the suggestions of the Norwegian and United Kingdom delegates, be referred to the sub-committee without further discussion in this Commission.

The delegate of New Zealand.

MR. G. LAURENCE (New Zealand): Mr. Chairman, there is a question which I think may be considered in respect of Article 41 on the lines suggested by Mr. McGregor yesterday.

I do not want to go into the question again of the merits or otherwise of the registration of cartel agreements, but in re-reading Chapter VI in the light of the discussions yesterday on the merits or otherwise of registration of cartels, it occurs to the New Zealand delegation that in certain cases there may be merit in having something in the nature of a census taken of international agreements in respect of particular commodities.

Yesterday, the registration of cartel agreements was objected to on general grounds, but I think we can all appreciate that different commodities have different standards of singnificance in international trade, tand there are a great number of commodities that do not enter into international trade at all, and it seems to us that there may be occasions when Members may be justified in asking the Organization to consider the question of having cartel arrangements registered or, indeed, in connection with investigations that the Organization becomes obliged to carry out as a result of complaints, there may be merit in asking for a census in cartel arrangements.

Now, in the time that has elapsed since yesterday, we have not had the opportunity of considering just where this question could best fit into the Chapter, if it did find favour with the Commission, but I would ask the indulgence of the Commission to consider whether or not it would be reasonable to oblige the sub-committee to take into account representations which may be made on the lines of the case that I have stated

CHAIRMAN: We had a very full discussion yesterday on the registration of agreements and a vote was taken which I interpreted to be a rejection of the Amendment proposed by the Brazilian Delegation.

The suggestion of the New Zealand Delegation is along somewhat different lines. He is proposing that the Organisation should endeavour to compile a census of agreements. That suggestion could be examined by the Sub-Committee if the Commission thought fit, but I would not want at this stage to reopen a debate on the general question of the registration of agreements.

Any other comments on Article 41?

Mr. MONTEIRO DE BARROS (Brazil) (Interpretation): Mr. Chairman, the Brazilian Delegation agrees that the examination of Article 41 should be referred to the Sub-Committee, but preserves its rights to present Amendments in regard to Article 41, especially after taking into consideration the proposal just made by the New Zealand Delegate, and after discussing the matter with the New Zealand Delegation.

CHAIRMAN: The Brazilian Delegation has the right to submit the Amendment at the start of the discussion in the Commission, and it will be in order for them to submit an Amendment on this question.

Other Amendments will be referred directly to the Sub-Committee.

Any other comments?

Mr. GARCIA-OLDINI (Chile) (Interpretation): Mr. Chairman, I would be grateful if the United States Delegate would kindly explain the meaning of the Amendment regarding paragraph 2(b). In fact in paragraph 2(b) the New York text provided for conferences for the purposes of general consultation; and in the

Amendment which is now before us, the word "consultation" has been replaced by the word "discussion".

Now I think that the word "consultation" had a wider scope than the word which is here before us, and I would like the United States Delegate to explain the exact meaning of this alteration.

CHAIRMAN: The Delegate of the United States.

Mr. TERRILL (United States): The reason that that was done is explained in the comment which was supplied in Document TW/122 on page 11.

The word "consultation" was used in our Amendment of Article 40, the preceding Article, to describe a procedure under which a Member could consult directly with other Members regarding a particular restrictive business practice. That Amendment appears as paragraph 1 of Article 40: "The Organisation shall arrange, if it considers such action to be justified, for particular Members to take part in a consultation requested by any Member which considers that any practices exist which have or are about to have the effect described in paragraph 1 of Article 39".

It would have been confusing, therefore, to use this word "consult", or "consultation", again, in another and quite different context, because the sort of conference that is proposed in Article 41 is not a contentious conference at all; and, in fact, it is quite a different sort of proceeding than we have in Article 40, under points of Procedure. In the latter case, namely, under Article 41, we might envisage the following situation as an illustration.

A commission on business practices has stated a certain

problem which is of general significance to all, or most, of the Members, and it formulates, let us suppose, a uniform clause to be inserted in all national laws regarding a certain subject. It might then call for a General Conference of Members to consider and discuss this proposal, and if they favoured it, to recommend it either directly to the Members or recommend it to the Economic and Social Council for submission to the Members.

Now, that kind of a Conference is quite different from the consultative procedure under Article 40, and if the word "discussion" is too narrow, as it may well be, then we should broaden that in accordance with the suggestion of the Chilean Delegate.

CHAIRMAN: The Delegate of Chile.

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I am grateful to the Representative of the United States, who has to a considerable extent clarified the question now. However, perhaps through some inaccuracy in the interpretation - and I am sorry to be obliged to say so with regard to the interpreter - the Delegate of the United States may have had the impression that I asked him why he proposed to delete the word "consultation". In fact, the deletion of the word "consultation" is adequately explained in the document referred to.

The point of my question was to ask why it is proposed to substitute for the deleted word the phrase "general discussion". Usually general discussion is followed by a particular discussion, and, in any case, it leads to conclusions, whether these conclusions take the form of recommendations or something else. Now, this text which says "general discussion" may create the impression that what is meant here is a sort of general and non-committal conversation, which we can observe in several instances, when various people meet and discuss political, literary or philosophical matters, and do not try to formulate any conclusions, perhaps because they are afraid that the views expressed are too widely divergent. This, of course, is a procedure and a result which we should like to avoid, and we are certain that this is the intention

of all the Delegates. Therefore, I should like to request the representative of the United States, who undertook to change the wording, to go a little deeper into this question, and perhaps to consider a procedure and a wording which would ensure that these discussions should not be without conclusions.

CHAIRMAN: I am sure the point that we are discussing now is largely a question of drafting, and the sub-Committee will take into account the views that have been expressed by the Delegate of Chile.

Any further comments on points of substance in relation to Article 41?

If not, I propose that this Article 41 together with the proposed revision and suggestions which have been made by the delegates of Norway and the United Kingdom and the delegate of Chile, be referred to the Sub-Committee for further study. Are there any objection? Carried.

We now pass on to Article 42. My study of this Article has led me to the conclusion that the main points of substance arise out of the proposed rearrangement and reformulation of this Article submitted by the delegation of the United States. The other proposals are largely matters of drafting and I would, therefore, propose that we follow the same procedure that we did with Article 40, and only consider, in this Commission, the proposed revision submitted by the delegation of the United States, and the other proposals shall be referred to the Sub-Committee without further discussion in this Commission. Any objections? Carried.

Will the delegate of the United States wish to explain the purposes of his proposed revision?

Mr. Robert P. TERRILL (United States): Mr. Chairman, I shall speak only very briefly. We have pointed out, as in Article 40, the improvement of the arrangement of the Article so that it would be clear to people who had not attended the succession of Conferences that we have had, and that we will continue to hold, on the Charter, as to the precise meaning. It has been a very difficult Article to follow, and almost all of the changes, we feel, are those of drafting. There are also a lot of other improvements that will suggest themselves to other delegates, and that can be considered in the Sub-Committee.

There are only, I think, two things that I would like to point out, particularly in order that my colleagues might not think they are falling into any traps as they felt yesterday, or that this is an ominous revision. The first change occurs in paragraph 1 as it is presently drafted. The change is as follows. "Each Member shall take all possible steps by legislation or otherwise, to forbid and prevent, within its jurisdiction, practices." Formerly the obligation was to ensure. It seems to us that it would be much more meaningful if we were to reflect the general obligation of members, that is set forth in Article 39 paragraph 1. There the word "prevent" is used. We believe, however, that in connection with implementing that obligation, members should give notice to those who are affected within their jurisdiction, that henceforth these practices will not be permitted. In other words, they should forbid the practices by due notice in accordance with their own legal or governmental system. In the case of the United States, that would take the form of law. In other cases it might consist of an announcement on the part of the government. We feel that that change is in the interest, certainly, of clarity, and giving a little more backbone to what is intended by Article 39 paragraph 1.

Mr. Chairman, would you prefer that I go on to the other changes that I have? The other point that I would like to call attention to is in connection with paragraph 4. There we have inserted a word which may, or may not, have a particular significance to other delegations. "Each member shall take fullest account of the Organization's determinations, requests and recommendations made on the basis of its investigations and determine and initiate appropriate action in accordance with the member's

system of law and economic organization ... etc." The words "initiate" are added to indicate there that there is some obligation to initiate the appropriate action. In the event that no action is believed appropriate, then of course the member is perfectly free not to take it, and the following paragraph 5 provides for just that contingency. I believe those are all the points I want to mention, Mr. Chairman.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. S.L.HOLMES (United Kingdom): Mr. Chairman, it so happens that on both the points to which the United States representative has called attention we should have felt it necessary to make some comments, because they seem to us to be more than points of drafting and with your permission I should like to refer very briefly to these two points.

In the first place, we find it impossible to agree that the words "forbid and prevent" are better than the word "ensure", even having regard to the explanation given by the United States representative, orally and in this paper.

I think it is a great pity to tamper with the text unnecessarily - I am sure everyone would agree there; and would not everyone agree that there can really be no more lawful expression than the word "ensure", which means, to make certain. Unless there is some really good reason for altering this, we would press that the existing text remains at it is, on the grounds that it is really stronger and not weaker than the alteration which has been suggested.

Secondly, as regards Paragraph 4, it seems to us illogical to make the alteration proposed unless you go a little further, and, if this amendment is pressed, we should have to suggest that the whole expression "determine and initiate appropriate action" be expanded, otherwise we feel that there will be the danger of misconception or a contradiction. We should have to propose something like this: "decide on and initiate the appropriate action, if any, to be taken."

I felt it was desirable just to make these two points, because they were ones which seemed to us to be just a little more than mere drafting alterations.

CHAIRMAN: Are there any other comments on Article 42? If not, I propose that the United States' proposed revision of Article 42, together with the other proposals included in Document W.132 , be referred to the Sub-Committee for further study. Are there any objections?

(Agreed).

Article 43 - there are no observations in Document W.132; therefore I think we can take it that the text as given in the New York Draft is approved for this first reading.

The same applies to Article 44. Are there any objections?

(Agreed).

We now come to the Report of the Sub-Committee, who will propose the inclusion of Article 44A - Procedure with respect to Services. Does any Member of the Commission wish to speak to this proposal?

Mr. W. THAGAARD (Norway): I think we should have some more time before we enter into a debate upon this matter. Personally I am not prepared to speak on behalf of the Norwegian Delegation, because the Members of the Delegation only received this document this morning and therefore we have not had time to discuss it in the Delegation. It is a proposal which calls for examination. It raises a question of principle. The New York Draft is shaped in relation to goods only; it refers to production, imports, exports and purchase and sale of goods.

MR. W. THAGAARD (Norway) (Contd.): We are now to widen the scope of Chapter VI to include services of transportation, insurance, banking and other services and the question arises as to the consequences for other parts of the Charter.

It seems to me that it is necessary to have this matter thoroughly studied and clarified before we take any decision concerning the proposal of the new Article 44 - A. I suggest we have some more time.

CHAIRMAN: With regard to the comments of the Norwegian delegate, I would point out that this is a report of the sub-committee which has been chartered by this Commission to find a solution to these particular difficulties, which is confronting the Commission. This report was circulated yesterday at our meeting, and therefore it has been in the hands of members not quite twenty-four hours, but at least over night.

However, in view of the proposal of the Norwegian delegate, I feel I must put it to the Commission that this report be not proceded with now, but held over to a later stage of our discussion.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I agree that the delegate from Norway, had no opportunity to give further consideration to the document. When he has this opportunity, he will realise that this compromise document does not bring to the Charter the whole matter of transportation or banking or other services, but simply establishes very broad principles that when matters arise, as contemplated in paragraph 1 of Article 39, they might be taken to any of the specialised international agencies that have already been established, and that if it is a case of knowing the agency established, the Organization will act in the

form provided for in Article 61 of the Charter already. It is not a new thing. It is not a rabbit that we have brought out of our hat, it has come out with the co-operation of all assenting opinions, so I think that as soon as we have an opportunity to go into this side of the question, it may be that we will find it very simple.

CHAIRMAN: The delegate of India.

MR. G.L. MEHTA (India): Mr. Chairman, I would like to associate myself with what the delegate from Cuba said just now.

We entirely agree with the Norwegian delegate that we want time to study this, and that it might be considered at a later stage. But I thought that a very fair compromise between the different points of view had been arrived at by the sub-committee, and I sincerely hope that after further examination, the Norwegian delegate will also fall in line and agree with this particular amendment that has just been suggested.

When Mr. Holmes of the United Kingdom said in the beginning that he hoped to produce a rabbit out of the hat I was rather sceptical, I must confess, because I did not see whether there was any hat at all there, but as members have seen, nobody was talking through his hat in this matter, and something much more than a rabbit has been produced.

In fact, Mr. Chairman, you yourself have commented on the procedure and report of this sub-committee, and said that it is an example that should be followed. I therefore hope that this amendment will be accepted in due course.

While I congratulate my friend from Cuba on behalf of our delegation for the initiative that he has taken, may I say, Sir, with due modesty, that this question of the inclusion of services was raised at the London meeting by the Indian delegation, and I think we are also entitled to express satisfaction at the result that has been achieved.

CHAIRMAN: I take it that is the sense of the Commission is with the proposal of the Norwegian Delegate that further consideration of this Report be deferred. I would therefore propose we take up the Report of Sub-Committee 1 when we receive the Report of Sub-Committee 2.

Any objections? Carried.

We now pass to Article 45.

I would like to ask the Delegate of the United Kingdom if he wishes to proceed with their proposed Amendment to Article 45?

Mr. HOLMES (United Kingdom): Mr. Chairman, I do not think I shall be offending anybody if I say at this stage in our proceedings that I am quite unable to withdraw the Amendment we propose to Article 45. Had the proposed Article 44(a) been accepted here and now, the position might have been quite different; but at the moment I must ask that the Amendment remain on the paper.

CHAIRMAN: Under those circumstances we will defer further consideration of the United Kingdom Amendment to Article 45, and also the Chilean re-formulation of paragraph 1(c) of Article 40 mentioned on page 14 of LW/132 until after the Report of Sub-Committee 1 has been considered.

The Chilean re-formulation really relates to Article 45 of the Draft.

Any objections?

I would also propose that the proposal of the Delegation of Australia for re-arrangement of Article 45 and the proposal made by the Canadian Delegation be referred to Sub-Committee 2.

CHAIRMAN: The Delegate of South Africa.

Mr. VAN DER POST (South Africa): Mr. Chairman, I do not want to detain the Commission unnecessarily, but I should be glad if, perhaps, for the guidance of myself and the Committee generally, one point might be clarified, or that somebody could give me an explanation on that.

I said yesterday, when I supported the Canadian Amendment to Article 39, that it had removed certain difficulties I had had in connection with Article 39; but in our Delegation there are some who are not quite satisfied about the implication of 39, particularly as re-worded. Now we have in most countries certain marketing legislation concerning Agriculture, under which certain powers are given to farmers' organisations, and so forth, in marketing. I will quote a specific case. In your re-draft of Article 39 - the Canadian re-draft - there is reference to substantial control or influence of trade among two or more countries in one or more product. The exact meaning of the words "control or influence of trade among one or more countries" - the implication of that - is not very clear to us.

We have, for example, a Citrus Control Board, which is the sole marketing body for South African oranges. It sells to overseas markets and mainly in the United Kingdom, and to some extent in Scandinavian countries, and on the Continent; and, of course, in South Africa. Now the argument has been produced in our Delegation that the South African Citrus Board has a substantial control in two or more countries, namely, its own and the United Kingdom; and that, therefore, this whole Article or Chapter would apply in such a case. I am inclined to think it would not apply to any of the organisations mentioned in Article 31, and I shall be glad, perhaps, if somebody could enlighten us on that point, as otherwise we would have to consider legislation for submitting an Amendment to Article 45.

CHAIRMAN: The Delegate of Canada.

Mr. F. A. McGREGOR (Canada): Mr. Chairman, may I suggest that even though the sub-Committee will now be suffering from a burdensome surplus -- such a surplus as will make it necessary for them to work on Sunday and every night -- it would be desirable for that sub-Committee to take into consideration the references made by the Delegate of South Africa, and if it is found that such an Organization as he has suggested would be wrongfully included, then to consider some amendment to Article 45 and submit it with its report.

Mr. A. P. van der POST (South Africa): That satisfies me, Mr. Chairman, thank you.

CHAIRMAN: Are there any further observations? The Delegate of Brazil.

M. Monteiro de BARROS (Brazil): (Interpretation): Mr. Chairman, I would like to make just one remark on Document E/PC/T/SR.2 on page 5. It is mentioned in the French text that we made a reservation against the inclusion of "private enterprises". This should, of course, be "public enterprises". The English text is correct.

CHAIRMAN: The correction requested by the Delegate of Brazil will be made in the French text. Are there any further observations? (Pause). Then we have come to the end of our first reading of Chapter VI. We will resume the discussion on Chapter VI in Commission B after we receive the report of sub-Committee 2, at which time we will consider the reports both of sub-Committee 1 and sub-Committee 2.

I wish to thank the Members of the Commission for having co-operated with the Chair in enabling us to get through our work in the four days allotted to us. The Meeting is adjourned.

The Meeting adjourned at 1.15 p.m.