

UNITED NATIONS

NATIONS UNIES

RESTRICTED
E/PC/T/B/PV/20
10th July, 1947.

ECONOMIC
AND
SOCIAL COUNCIL

CONSEIL
ECONOMIQUE
ET SOCIAL

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

VERBATIM REPORT

TWENTIETH MEETING OF COMMISSION B

HELD ON THURSDAY, 10th JULY, 1947, at 3 P.M. IN THE
PALAIS DES NATIONS, GENEVA.

The Hon. L.D. WILGROSS (Chairman) (CANADA)

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CHAIRMAN: The Meeting is called to order.

Commission B is meeting to-day to consider Chapters I and II of the Draft Charter. We shall take as our Working Paper Document E/PC/T/W/238 which is to be read in conjunction with the Report of the Drafting Committee in New York.

We propose to take up first Chapter I, because there seems to be more material to deal with in Chapter I than in Chapter II, and it would, I think, expedite our work if we took up Chapter I first.

If that is agreeable to the Members of the Commission, we will commence by considering the amendments to the preamble and paragraph 1 of Article 1, submitted by the Belgian-Luxembourg Delegation; a re-arrangement of the preamble and sub-paragraph 1 submitted by the South African Delegation, and amendments to the preamble and sub-paragraph 1 of Article 1 proposed by the United States Delegation. After we have considered these amendments, we will then take up the other sub-paragraphs of Article 1.

CHAIRMAN: If that procedure is agreeable, the discussion is now open on the proposals of the Belgium-Luxembourg, South African and United States Delegations regarding the Preamble and Paragraph 1.

Does any Member of the Commission wish to speak on these proposals regarding the Preamble and Paragraph 1?

The Delegate of South Africa.

Mr. A.P.VAN DER POST (South Africa): Mr. Chairman, I hope that you will permit me in my remarks to refer briefly to the general tenor of our proposed amendment to Article 1, because the Preamble is closely bound up with the re-arrangement of some of the other Articles and of Article 1.

In submitting to the Commission the draft on the purposes of the International Trade Organization standing in the name of the Delegation of South Africa, I wish to express our appreciation of the work done on this Article by the New York Drafting Committee. In its draft, the Drafting Committee has given us a good basis on which to work and justice to the New York Committee demands that I should explain that we have made full use of that basis.

Our draft is not substantially different from the New York draft. The differences in the later paragraphs are mainly slight differences in drafting.

As far as the introductory part of Article 1 is concerned, the New York draft also gives us a valuable lead, but it assumes a relationship between the I.T.O. and the United Nations which should not be assumed, in our opinion, but rather expressly defined in such a document as the Charter we are attempting to write in Geneva. In elucidation of this

observation, may I explain first that the South African Delegation, in searching for another formulation of Article 1, started off in full appreciation of the great goal which the United Nations set themselves in their Charter, namely, the goal of peace, as expressed in the first objective defined in that Charter in the words "Determined to save succeeding generations from the scourge of war". But we also appreciated to the full the connection which the United Nations found between peace and economic and social progress, - not that peace is solely determined by economic and social conditions. On the contrary, even more important than material conditions are perhaps spiritual factors. But our Conference has been entrusted with the important task of attempting to promote better economic and social conditions and, therefore, we of the South African Delegation, while recognizing the importance of other factors, particularly the spiritual factor, in the promotion of world peace, have found it sufficient in our draft to stress economic and social progress in relation to world peace.

Chapter 1, Mr. Chairman, dealing with the purposes of the I.T.O. is the one part of the Charter where we can permit ourselves some mental licence - the bulk of the Charter is necessarily prosaic, if not drab in parts - but here at the very beginning where we can indulge in some idealism - and the world today certainly needs somewhat more idealism - Chapter 1 is the one part of the Charter where we can permit our minds a flip of imagination - and that the South African draft does without sacrificing realism.

The New York Draft assumes a certain relationship between UNO and ITO. It begins by saying that, "In pursuance of the determination of the United Nations to create conditions of economic and social progress, essential to world peace, the States party to this Charter hereby establish an International Trade Organization". In its opening paragraph, the New York Draft, therefore, assumes that it is a function of the ITO to co-operate with the United Nations in the promotion of the United Nations objectives, in other words, to do certain things envisaged by the United Nations. But to express myself somewhat bluntly, what right or authority have ^{we}/to assume that the ITO is the chosen means to the United Nations objectives towards economic and social advancement? The object of the South African draft is to answer that question and give the ITO the necessary status.

That draft proceeds from the United Nations Charter in the recognition of the United Nations supreme purpose the pursuit of world peace. By implication, the opening sentence of the draft recognises that it is also an object of countries which will subscribe to the ITO Charter to pursue that supreme aim - world peace.

But the United Nations' field is a much wider field than the ITO field will be, and we therefore have to narrow down our pursuit of peace to our own field. The United Nations Charter points the way - the way of what I would call the bridge between the United Nations and the ITO. If we study the first page of the United Nations Charter, we find that it defines four objectives and four means to those objectives - the four being, in each case, economic and social.

"We, the Peoples of the United Nations, determined to promote social progress and better standards of life are, for this end,

determined to employ international machinery for the promotion of economic and social advancement for all peoples", and those are the opening words of the United Nations Charter, but that is peculiarly the field which we are trying to deliniate for the ITO. Therefore, the South African draft states that the countries who adhere to the ITO are determined, in the field of trade, industry and social advancement, to realise the objectives set out in the Charter of the United Nations, and therefore, also, the supreme aim of peace.

That sentence bridges the gap between the United Nations and the ITO and also gives the ITO the status necessary to justify the States party to its Charter to "establish an International Trade Organization for the purpose of resolving economic and social problems by co-operation and attaining higher standards of living, full employment and conditions conducive to economic and social progress and development", and to define the means to that purpose as is done in paragraphs 1 to 8 of the South African draft. In that draft, the emphasis is on co-operation in the solution of economic and social problems as well as co-operation in national and international action in the utilization of the means to the end.

In this connection, I would explain that in the South African opinion the purpose of the ITO is not sufficiently brought out in the New York draft, in which it actually is hidden away in sub-paragraph (a) of paragraph 1. We have, therefore, taken the liberty to split up paragraph 1, especially sub-paragraph (a), and to summarize in effect paragraph 55(a) of the United Nations Charter and call it the purpose of the ITO.

In doing so, Mr. Chairman, we also had in mind that an Article defining the purposes of an Organization should be so drafted as to make an appeal not only to those directly interested in the Organization, but also to that vast multitude of outsiders

who would be anxious to know something about the Organization, but have neither the time nor the inclination to wade through its Charter. Mere mention of Article 55 (a) of the United Nations Charter does not serve this purpose. The reader, particularly the casual reader, does not want to turn up the United Nations Charter - he wants to know immediately what Article 55 (a) stands for. Therefore, the South African draft attempts to give him the information he would desire, in the hope, of course, that the form in which it is supplied may encourage some outsiders at least to take a greater interest in the ITO, and its work.

The New York draft, moreover, Mr. Chairman, does not define the specific purpose of the ITO, it merely states that the States party to the Charter establish an Organization through which they will work for the fulfilment of the purposes set out in the Articles that follow.

In doing so, the New York draft intermits ^{the} purpose and/means to the purpose. The United Nations in their Charter, however, have shown us the proper way to proceed in this respect.

"Determined to save from the scourge of war, determined to reaffirm faith in human rights, to establish conditions and, lastly, to promote social progress" - these are the purposes of the United Nations, but

"For these ends, the United Nations will practice tolerance, unite their strength, ensure that armed force be not used, and promote economic and social advancement, as the means for the accomplishment of its purpose."

The South African draft follows this set up. The purposes of the ITO are (a) resolving economic and social problems by co-operation and, (b) attaining higher standards of living, full employment and conditions conducive to economic and social progress and development, and the means to this end is national

and international action (in other words co-operation) for doing the various things set out in paragraphs 1 to 8 of our draft.

I do not think it is necessary for me, Mr. Chairman, to explain these paragraphs in detail. That can be done better in the Sub-Committee, or if we consider the Articles by themselves, individually. These paragraphs define the various means to the end, in detail. They are not substantially different from those defined in the New York Charter, or from those embodied in the various drafts submitted to this Preparatory Committee by other Delegations. I would claim, however, that the manner in which they have been set out, and particularly the splitting up of subparagraphs (b) and (c) of Article 1 and their restatement as separate paragraphs (1) to (4) promotes greater clarity and better emphasis.

We have also taken the liberty of making slight changes in word order and construction and even in the substitution of one word for another. For example, paragraph 2 of the New York draft reads: "To further the enjoyment by all Member countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development".

Paragraph 5 of our draft, which is the corresponding paragraph, reads "to further the enjoyment, on equal terms, by all Member Countries of access to the markets of the world and to the products and productive facilities which are needed for their economic development and prosperity". I submit that as re-drafted paragraph 2 - or as now proposed paragraph 5 - will make for greater clarity and better emphasis.

In this connection I would draw attention to the re-print of this paragraph in Document T/W/238, page 5 where the little word "the" has been omitted before the words "markets of the world".

Another change of words to which I might draw attention is the substitution of "abstain from" in our paragraph 8 for "avoid recourse to" in paragraph 5 of the New York Draft - in each case, the third line from the end.

One very important addition to the New York paragraph 4, I would specially draw attention to. Paragraph 7 of our draft formulates as a prerequisite of co-operation in the solution of problems in the field of international trade, employment and economic development - as a prerequisite, I say, of a fuller understanding of one another's problems. Our paragraph reads "to encourage amongst Member Countries a fuller understanding of one another's problems and thus to facilitate, through consultation and co-operation, the solution of problems in the field of international trade, employment and economic development".

It is because of a lack of understanding of the problems of others, whether they be individuals, private or public bodies, nations or states, that so many efforts at co-operation, at the solution of problems, at the attainment of peace, have failed and will continue to fail.

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To encourage better knowledge and fuller understanding amongst men and countries of the various problems facing their colleagues is, therefore, a very important function that the International Trade Organization can perform. In fact, I doubt whether it is too much to say that the success of the International Trade Organization will depend, to a large extent, if not wholly, on the success it attains in enabling Member Countries to acquire that fuller understanding of one another and one another's problems. Consultation and co-operation within the International Trade Organization's borders can have no results unless Member Countries realise that knowledge and understanding of one another. May we hope that the International Trade Organization will not fail its Members in this respect, nor its Members fail the International Trade Organization, because knowledge is the basis of understanding which, in turn, is the basis of co-operation, and co-operation, finally is the basis of world peace.

May I, with these words, submit our draft to the favourable consideration of the meeting.

CHAIRMAN: Any other speakers?

Mr. WILCOX (United States): The Agenda that has been prepared for this Meeting provides the suggested Amendments presented by various Delegations referring to paragraph and sub-paragraph in a way that makes it rather difficult for me to address myself to it, since what is being done in the re-draft of Article 1 is pretty much what has been done in the proposed re-draft of South Africa - that is, a certain re-arrangement of the present material.

I think that is also the Belgian idea. So if I may I will speak with reference to the Draft as introduced by the United States, and which tends to explain what we there had in mind. Let me say first that whereas the introductory Chapter in the New York Draft contains a number of ideas which appear to us to be valid and desirable and worthy of retention, the organisation of the material seems to be somewhat illogical and repetitive.

There is a great deal of duplication and overlapping, for instance, there is reference in the Preamble to the conditions of economic and social progress, and there is reference again in paragraph 1 (a) to conditions of economic and social progress. There is a reference in 1 (a) to higher standards of living, and then we find reference in (b) to high and steadily rising levels of effective demand and real income. There is reference in (b) to the expansion of production, exchange and consumption, and then in 1 (c) to an expanding world economy.

There is reference in 1 (b) again to the development of the economic resources of the world, and then there is paragraph 3 on the development of economic resources. There is discussion in

1 (b) of the reduction of tariffs and other trade barriers, and then we find paragraphs 2 and 4, and so on; and all we have attempted to do is to retain almost precisely the existing text and re-arrange it, and I hold no particular brief for our re-arrangement as opposed to that suggested by South Africa or Belgium. It seems to me that that problem will have to be wrestled with in the Drafting Committee, but I would like to indicate the reasons for the particular arrangement that we chose.

The first point to make is that our Preamble relates entirely to the obligations of States party to the Charter. The States party to the Charter hereby undertake to promote national and international action, and the purposes are set forth as the purposes of the States party to the Charter, and not the Trade Organisation. Following these purposes, we have at the end the paragraph which says, in order to effectuate these purposes, the States pledge themselves to accept obligations set forth in the Charter, and hereby establish an International Trade Organisation through which Members will co-operate. We had thought that in the Charter a large number of substantive commitments on the establishment of the Trade Organisation are incidental to the fulfilment of these commitments. Another thing that we have done throughout the Charter is to use the word "countries" instead of "Members", because we have put the reference to the Organisation as amended at the end of the Charter. What we seek with reference to countries is an objective, and I see no objection to using the word "countries" throughout the statement of general purposes. It is our opinion generally that matters should be left general. On the other hand, in the very last line we

retain the word "Members" immediately following the words International Trade Organisation; and we think by that device we may have obtained the reference to Members of the Organisation that is needed for the Chapters on Employment, Commercial Policy, Cartels, and so on; so that we can move that "Member", or "Membership", back into the Organisation Chapter, where we feel that it belongs.

The only argument I have for keeping the Chapter on Membership, Chapter II, is that people would start reading Chapters III and IV and so on and Members have not been mentioned before. Therefore we propose to mention them in Chapter I.

We have two new things here. The first is the reference in our paragraph 2 to "encouraging the international flow of capital for productive investment". That, of course, follows upon the amendments that we have introduced with reference to that subject and is a very considerable abbreviation of our earlier amendment. The earlier amendment was "to encourage the international flow of capital for productive investment through measures designed to ensure fair and equitable treatment of investments". We have in this re-draft considerably contracted the wording that we previously suggested.

The other new thing that we have included is in sub-paragraph 4, which now reads: "to facilitate the solution of problems in the field of international trade, employment and economic development". Our suggestion there is that we should include mention of each of the areas covered by the Chapters of the Charter: "to facilitate the solution of problems relating to international trade, including problems of employment, economic development, international investment, commercial policy, business practices" and so on.

Aside from these points, I believe that the only other thing that is involved in our suggested amendment is a re-arrangement of the wording of the definition of the substance of the Charter -one, to eliminate duplication, and two, to bring about a more logical arrangement of the material.

I might say in this connection that I think that this could be further simplified with value, but there are words in here to which various Delegations attach considerable importance, and there may be no harm in being explicit. We

refer, for instance, in paragraph 1 to standards of living, real income and effective demand. It is all the same idea. I am not sure that you need to say it three times; but I have no objection to saying it three times. I think you will find on examination that that is true of each of the points. But we are not particularly insistent on the exact wording. This can be taken as a suggestion for the re-organization of Chapter I for the consideration of the Drafting Committee.

CHAIRMAN: The Delegate of Belgium.

M. van TICHELEN (Belgium) (Interpretation): I would like first of all, Mr. Chairman, to associate myself with the lofty feelings expressed by the representative of South Africa. I think that it is not useless from time to time to recall here the purposes of our meeting, in order to keep those purposes in mind and try to carry them out now, without waiting further.

Like all the other countries, my country is divided by two feelings: one is the desire to go back home with a text likely to ensure the progress of the world, and the other is the desire to adopt measures likely to overcome existing difficulties. In other words, we are confronted with a number of beautiful promises and hopes and we have to take cautious measures which take the form of what has been described as escape clauses.

I can assure you, Mr. Chairman, that our Delegation will do everything that is in its power to make the feeling of idealism prevail over the necessity of taking measures which are due to existing difficulties, but difficulties which we hope will soon disappear and should not form the essential element of our concern.

In the presence of the amendments submitted by the United States and the South African Delegations, we have found, in the two texts, equal qualities and therefore it was extremely difficult for us to make a choice. Finally we have given our preference to a text that would run along the general lines of the South African amendment, because we have found a valuable element in it, in this sense, that it draws a distinction between the main purposes and the secondary or minor purposes or the means to reach the main purposes.

In the other text we have found that all the aims are on the same footing and that there are so many objectives that it is permissible to ask oneself whether the Organization will be in a position to pursue them all at the same time. We fear very much that, being faced with difficulties in the carrying out of the provisions of the Charter, the Organization will have to make a choice, and I think that if we give the same importance to all the purposes at the same time we run the risk of coming to a deadlock. For instance, let us take a definite purpose, that of expanding production.

It is quite possible that this purpose cannot be achieved if it is found necessary to avoid excessive fluctuations of world trade, and I think that, if we desire to overcome such difficulties, it is of paramount importance to make firstly a list of essential purposes, and secondly to list the means to reach these purposes, or to list the secondary purposes.

Finally, as regards the question of wording, I think this can be usefully dealt with at a later stage by the Subcommittee or Drafting Committee.

Mr. A.H. TANGE (Australia): Mr. Chairman, before I proceed, may I ask whether you would prefer that I discuss only paragraph 1, or discuss the amendment to the whole Article?

CHAIRMAN: The amendment to the whole Article.

Mr. A.H. TANGE (Australia): Mr. Chairman, after reading the three amendments proposed to Chapter I, my delegation believes that there is something in each of them which could be usefully amalgamated into a text which would be an improvement on the New York draft. So far as the preamble on paragraph 1 and the paragraph are concerned, we prefer, on the whole, the Belgian text. The Belgian text is so formulated that the Article expresses one group of superior purposes, and then sets out a series of other purposes which might be called intermediate objectives. They are objectives which are important enough in themselves, but which are subordinated, as it were, to the superior group of objectives. The South African amendment achieves the same purpose, but uses different language, and the significant change in the South African draft is that it drops specific quotation of the objectives of the United Nations in the economic and social field. We think that this would be a disadvantage, and it seems to us that we should ask

this question: "Does the statement of economic objectives of the United Nations, as quoted in the New York text, namely higher standards of living, full employment, and conditions of economic and social progress of development, provide a sufficiently wide umbrella under which you can specify the particular objectives which will be the special concern of the ITO in achieving those purposes?"

We believe that the Charter of the United Nations does give you an adequate umbrella, and it should be retained because, to our mind, it has additional advantages. We believe that it is useful to retain a reference to these United Nations objectives, as a kind of symbol of the family relationship among the specialised agencies and the United Nations. I believe we need feel no diffidence about asserting that the ITO will attempt to achieve these particular objectives, and on this score I do not foresee the same sort of difficulties as the Delegate of South Africa. We believe that mention of the United Nations objectives might encourage the particular attainment of the kind of co-operation between the two Organizations which we laid down as an objective in other Articles, and there is a general overall advantage in implying the ultimate indivisibility of economic and political harmony.

Moreover, it would be helpful to the United Nations to have a specialised agency whose work and operations were directed ^{towards} /assisting the United Nations in the achievement of its objectives and my government is as interested in the success of the United Nations as it is in the success of the International Trade Organization, and we believe that anything which can be done to assist the family of agencies in the achievement of those particular purposes, should be done.

In paragraph 1 we come to the group of various peoples' children, about which Mr. Wilcox spoke. We feel that these

children should be classified according to their size and weight, and that perhaps the United States text gives us a somewhat ragged classification. We believe that the text could be usefully rearranged to place the promotion of full employment side by side with the raising of standards of living, and that the development of a steadily growing volume of effective demand, in the words of the United States text, might be moved down to take the place of full employment as it appears in their draft.

It is a suggestion which perhaps the Sub-Committee might look at. It is that the rearrangement that we propose would, in our mind, accord more closely with the order which now appears in Article 3 of the revised text of the Charter, where you have specified first of all, the avoidance of unemployment or under-^{to}employment, as a means to full employment, and then you specify the creation of opportunities, the promotion of production and promotion of effective demand as a means to the promotion of full employment.

Similarly, we feel that the mode of expression of these objectives which we have suggested would accord rather more closely with the obligations which all Members have accepted in Articles 55 and 56 of the Charter of the United Nations, and insofar as this general purpose of the Article of the ITO Charter purports to be a restatement of an undertaking by Member States in the field of employment and related matters, we believe that there should be a similarity between the declaration already made in the United Nations Charter and the declaration made in the ITO Charter.

On the objection raised by Mr. Wilcox to the repetition of the phrase "economic and social progress" in the New York Draft - and I believe it appears again in the Belgian text - that does not cause us any particular difficulty, but if it does offend, perhaps the repetition could be corrected by altering the opening phrase in the first two lines of the Belgian text.

There is one aspect of the United States Draft which, on the whole, we prefer to the Belgian Draft, and that is the expression of these objectives as being the responsibility of the States party to this Charter, rather than the responsibility of the Organization. On the whole, we prefer to have them set forth as objectives which each Member undertakes to pursue through the Organization.

To move on from the preamble on Article 1 to one or two other aspects of the United States amendment, we have some difficulty in deciding about paragraph 2 in the United States amendment in view of the fact that the subjects contained there, namely, investment and other aspects of industrial and general economic development, are still under discussion in the sub-committee which is handling Chapter IV and the particular Articles in Chapter IV. We find nothing objectionable in this objective, namely, the encouragement of an international flow of capital for investment, but whether or not it is relevant to the purposes of the International Trade Organization, will, we believe, depend to a large extent on discussions in other Committees which have not yet been completed.

In any case, we feel that the balance in that paragraph is somewhat upset, and we find that the whole of Chapter IV, apart from encouragement of investment, is compressed into the single word "otherwise" which, to our mind, somewhat disturbs the balance and

fails to give an adequate appreciation of the alternative measures of promoting a general economic development, which it will be the task of the International Trade Organization to promote.

Similarly, we have a reservation about the use of the phrase "international investment" in paragraph 5, until such time as the other Committees have finally agreed upon the way in which the subject of international investment will be treated.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. FAWCETT (United Kingdom): Mr. Chairman, we in the United Kingdom Delegation have studied these Amendments, and we too think that they all contribute in varying degrees of importance to Article 1 of the New York text. But I think there is one general point which we would like to make on this Article, and that is the connection between the word "purposes" in this Article and the expression "purposes of the Charter" where it appears, and it appears in many places.

Now this expression "purposes of the Charter" has given a great deal of difficulty, particularly to the Legal Drafting Committee in New York, and the Legal Drafting Committee here. We had a good deal of discussion as to whether we should speak of the purposes of the Organisation or the purposes of the Charter, and I think that it would be useful if the Commission could perhaps decide the question here. It seems to us that the States who sign this Charter alone have purposes. They meet together and determine those purposes, and write them into the Charter; and it follows that the Organisation has no purposes and no powers other than those provided in the Charter, and it cannot in the course of its work and development acquire any purposes otherwise than by an Amendment of the Charter.

We feel that that is a very important principle to establish, because there is a danger, and I think I have even heard it in discussions at this Conference, that it may be possible to take action that is not quite in accordance with, or is even contrary to, the provisions of the Charter; but that in some metaphysical way it will be concordant with the purposes and therefore it may be permitted.

Well, we feel that is a very dangerous point of view, and we feel that it should be made quite clear in this Article which deals with purposes that it is only the States Members of the Organisation who have purposes. That principle, I think, is already recognised in the Charter, in, for example, Article 38, where it is provided that separate customs territories shall for the purposes of Chapter V be treated as if they were separate Members - not as Members, but as if they were separate Members, and that seems to me to mean that the rights and obligations, at least in Chapter V, are imposed on the States not as Members of the Organisation but as separate customs territories. In other words you have some rights and obligations and some purposes which belong very clearly even in the Charter as it stands to the States parties to the Charter, and not to those States as Members of the Organisation.

It is true that in Articles 83 and 84 we say that the Organisation has legal personality, but that is nothing more than a fiction to enable the Organisation to acquire property and so on, and do various things which it would be otherwise awkward for it to do, if we did not clothe it with this fictional personality in the Charter; and therefore I do not think from that that it can be concluded that the Organisation has any purposes.

We feel, therefore, that the inclusion of the purposes in an Article and not in the Preamble to the Charter has a very great use, because the purposes of the Charter then become a provision of the Charter, and I would like the Commission to consider a little whether, that being so and the purposes being made an Article and therefore part of the Charter, we cannot get rid of the expression throughout the Charter of "the purposes of the Charter", and say simply "provisions of the Charter", which

I think will remove the source of danger which I have indicated, and I think will perfectly satisfactorily cover what is meant. The provisions of the Charter are all the provisions, including Article 1, which sets out the purposes of the States setting up the Organisation.

Well, with those considerations in mind, we feel that the United States Amendment to this Article comes really nearest to the way we would like to see it done. In the U.S. Amendment the link between what we may call the Preamble and the main numbered paragraphs is the word "undertake". That is the same idea as in the New York text, but the U.S. Draft has, to our mind, a great advantage in that it separates this undertaking from the establishment of the Organisation. It makes it quite clear that the State will undertake to promote international and national action for the achieving of these purposes. They are then set out and then in a final paragraph the States establish the Organisation; and that seems to us the clearest and best way of putting it. The South African and Belgian/Luxemburg Amendments are not quite so clear in that respect.

The South African Amendment places the Organisation at the beginning, and does slightly suggest that it is the Organisation which has the purposes, and similarly, in the Belgian/Luxemburg Amendment, the Trade Organisation has a rather prominent place before the word "purposes" is mentioned. Therefore we think that the suggestion by the United States is far the clearest and the best; but there are certain points in the Belgian/Luxemburg Amendment, and the South African Amendment, which we think could also be added.

The first is the Belgian suggestion that the words "as an agency" should be added after the word "Organization". That seems to me to look forward to the time when the Organization is a specialized agency of the United Nations, and it also stresses once again that the Organization is only a machine: it is something subordinate to the States setting it up - it is an agency of the States, and that seems to us a very valuable amendment.

The South African preamble, we think, is also an improvement on the New York text, and has the advantage that it does set out in rather braver terms the general purposes, and is to be preferred, because the New York text - and, I think, the texts suggested by Belgium and the United States - are a little bald at that point.

The only thing I would like to ask the South African Delegate is whether he would not agree to have the word "employment" substituted for "social advancement" ("Being determined in the field of trade, industry and social advancement"). Since the idea of social progress is fully covered in the words lower down in the preamble, where Article 55A of the Charter of the United Nations is quoted, we wonder whether "social advancement" is really proper in the place where it occurs. Social advancement is, of course, one of the ultimate goals of the Organization; but it is not a primary one, and it rather goes outside, we feel, the real field of the I.T.O. - it is not properly in its field. We think the words "in the field of trade, industry and employment", or even "trade and employment" (which, after all, is the correct title of the Conference at the present moment) would really be preferable, and I would like to know if the

South African Delegate considers that a possible amendment.

To conclude, I would say that we would like to see the United States draft adopted as the lay-out of the Article; but with the South African preamble as far as the words "United Nations", but omitting the words "The States party to the present Charter hereby establish an International Trade Organization", and then continue down to the end of the preamble. I may not have got my selection of what I want to strike out quite right, but that is a matter of drafting; but it is the establishment of the Trade Organization that I would want to see taken out. If the preamble is joined on to the United States draft at the point where the United States draft says that "the States party to this Charter hereby undertake", that seems to us the vital link; and then, in the last paragraph of the United States draft, insert the words "as an agency" after "they hereby establish an International Trade Organization".

Finally, I wonder if the Commission could give some little direction to the Legal Drafting Committee on this expression "purposes of the Charter". It may be thought that the expression "purposes of the Charter", which I think is not unsatisfactory, is sufficient; but if my suggestion that the words "provisions in the Charter" should be substituted throughout wherever this expression occurs does find any support, then I think it would be useful for the Legal Drafting Committee to be given some guidance on the point.

CHAIRMAN: The United Kingdom Delegate wishes to add a brief suggestion to those he has put forward in the speech we have just heard. So, with the permission of those Delegates who have asked for the floor, I will just call upon the Delegate of the United Kingdom to add his brief suggestion to those he has already made.

Mr. J.E.S.FAWCETT (United Kingdom): Mr. Chairman, I wonder if, on the question of the expression "purposes of the Charter", it would not perhaps be of assistance to the Commission if they were to direct the Legal Drafting sub-committee to consider it and produce a very brief report for consideration by the Commission or its sub-committee at a later stage. I think that might be best.

CHAIRMAN: I think it would be very helpful if the legal and drafting committee could first of all consider this question and submit a recommendation before we consider the matter in full Commission. Next week, after we have discussed the question of voting and composition of the Executive Board, we will have to direct our attention to the proposed re-arrangement of material in the Charter suggested by the United States Delegation, and if at that time we could take up this recommendation here it might be the best way in which we could deal with it.

Does that procedure meet with the approval of the Commission?

The Delegate of Czechoslovakia.

M. Stanislav MINOVSEY (Czechoslovakia) (Interpretation): This is a very important decision to take, Mr. Chairman, and I suggest that we take it after the discussion and not right away.

CHAIRMAN: My proposal was that we should take it up next week, after we have considered the other questions that are before the Commission.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to support what has been said by the Czechoslovakian Delegate, before deciding to refer the matter to the Legal Drafting Committee.

I think it would be a good thing if the Members of this Commission had a possibility of expressing their opinion on the matter raised by the United Kingdom representative.

CHAIRMAN: Would the Commission then, agree to discuss this question now, or shall we postpone it till next week?

Dr. GUSTAVO GUTIERREZ (Cuba): The Cuban Delegation, Mr. Chairman, is of the opinion that we should proceed with the general discussion of the Chapter, and at the end of this discussion next week, take up the particular question presented by the representative of the United Kingdom.

CHAIRMAN: The Commission is, therefore, of the view that we should discuss this question before receiving a recommendation from the Legal Drafting Committee? As I understand it, then, it is not the view of the Commission that we should, first of all, have our recommendation from the Legal Drafting Committee?

Mr. A.H. TANGE (Australia): Mr. Chairman, in my view it would assist us to discuss the question after we receive the opinion from the Legal Drafting Committee, which will go through the Charter and which will examine the implications of the use of the particular phrase which we are discussing, ^{and} after we have received the report we would then discuss it in full Commission with a better appreciation of what it involves. I would, therefore, propose that we defer discussion, as I have suggested, until after we receive an opinion from the Legal Drafting Committee.

M. STANISLAV MINOVSKY (Czechoslovakia) (Interpretation): Mr. Chairman, I do not think this is a legal matter, but rather/^amatter of principle which we should solve here.

CHAIRMAN: Perhaps it would meet with the wishes of all the Members of the Commission if we simply requested the Legal Drafting Committee to prepare a paper setting out the question at issue, giving indications of the parts of the Charter that are involved in the proposal to change the words "purposes of the Charter" to "provisions of the Charter". It would simply be a paper which we could use as a basis for our discussion without any recommendation.

M. STANISLAV MINOVSKY (Czechoslovakia):(Interpretation): Mr. Chairman, I take it that we cannot see the implications very clearly. The purposes are the enunciation of a general principle, while the provisions themselves show how to attain those purposes. These are two concepts which are quite different and, as far as I am concerned, are perfectly clear to me.

CHAIRMAN: The question at issue may be clear to the Delegate of Czechoslovakia and a number of other delegates, but there may be other Members of the Commission to whom the issue is not quite so clear. I wonder if it would be satisfactory if we could ask the Delegate of the United Kingdom if he would be willing to supply the paper which would supply the basis of our discussion.

Mr. E.H. KELLOGG (United States): Mr. Chairman, I was merely going to suggest that the Legal Drafting Committee would probably have a better draft of the two sides of this problem than any other group which we could have available. Possibly they could, after some deliberation, present a paper showing both sides, and possibly they could present a compromise solution which would be satisfactory to us all in tangible terms.

M. ROYER (France) (Interpretation): I am going to make a practical suggestion, Mr. Chairman, I think that the Legal Drafting Committee can do some very useful work as follows: we could ask this Committee to examine the whole Charter and indicate to us those articles where the expression "purposes of the Charter" or "purposes of the Organization" are used, and to examine the scope of these articles, because if it is desired to withdraw from the discussion the concept of a purpose, the discussion here becomes meaningless.

According to the legal value given to the word "purposes", article 1 will be drafted in one way or another way, but if we want to withdraw from the discussion the idea of purposes, then it is unnecessary to discuss this any longer.

CHAIRMAN: The Delegate of Cuba.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I would like to make a suggestion that we do not go further into this discussion which, in my opinion, is really too technical. The question of the distinction between "principle" and "provision" is studied by students of law in the first years of their career, and we are not now going to enter into international discussion about that differentiation.

Therefore, in order to be practical, I think it would be a good thing if we asked the United Kingdom Delegate to present his paper to the Legal Drafting Committee, have the Legal Drafting Committee work on that according to the suggestions both of the United Kingdom Delegate and the French Delegate, and in the meantime we will continue the consideration of the whole thing, because it is a very technical point, and I do not think we should discuss such a thing as that until it has been further explained.

CHAIRMAN: I think we have enough suggestions now to know in what way we should proceed, and I would like to suggest that we follow the proposals just made by the Delegate of Cuba and France that the United Kingdom Delegate should bring the question up to the Legal Drafting Committee, with a view to seeing that some paper could be presented to us for discussion, if it is found necessary by the Legal Drafting Committee.

Is that agreed?

MR. L.C. WEBB (New Zealand): Mr. Chairman, I did not quite catch the force of your suggestion, but I take it that it is still proposed that this issue will come up in the Commission at a later date?

CHAIRMAN: If the Legal Drafting Committee so desire.

MR. L.C. WEBB (New Zealand): Well, I am afraid I do not follow the proposal, Sir, because we have taken no decision on this question this afternoon, so surely it hardly rests with the Legal Drafting Committee to decide whether it should come back for discussion.

M. S. MINOVSKY (Czechoslovakia):(Interpretation): Mr. Chairman, a suggestion has been made here and it is now proposed to refer this to some other Committee without giving us the opportunity of expressing our points of view. In my opinion, we should discuss it right away.

CHAIRMAN: Well then, in view of the points that have been raised it will be necessary for the Legal Drafting Committee to present us with some paper which will enable the discussion to be carried on in this Commission, because I am sure that many of the Members of this Commission are not quite clear as to all the issues involved in the proposal that has just been made. Is that agreed?

Agreed.

The discussion will now be resumed on Article 1. The first speaker on my list is the Delegate of France.

M. ROYER (France) (Interpretation): I must confess, Mr. Chairman, that I feel rather embarrassed, because it was my intention to develop some ideas not directly regarding the problem raised by the United Kingdom representative, but his general conception.

Article 1 needs two requirements. One has been developed by the South African representative very eloquently, and it is a solemn confirmation of general purposes, which purposes remain to be determined. States will meet to sign a convention, which will be without precedent in economic history, to re-establish order; to promote social and economic progress in the world..

The first part of the Article is, therefore, similar to any preamble in an ordinary convention; but in addition to this, Article 1 has a determined legal value, because it contains provisions of positive law, and therefore, before referring the matter to a sub-Committee and asking the sub-Committee to draft a final text for Article 1, I think it would be a good thing to examine thoroughly the legal scope of the Article and to examine all the Articles in which mentions are made of the purposes of the Charter, in order to see if there is no contradiction in the text of Article 1 itself.

Now the question is, on the other hand, whether we should choose between the New York text, which lists a considerable number of purposes on the same footing, which would raise the danger of conflicts of interpretation, or if, like the South African amendment, we should adopt a shorter text. Personally I prefer the latter solution, provided this is possible. If it is possible to reach unanimous agreement on a shorter formula, which would, for instance, repeat the contents of Article 55 (a) of the United Nations Charter, the French Delegation would be very gratified, because if there were only one purpose to the Charter it would be very easy to solve the problem, but if there are five, six or seven different purposes, with contradictory implications, there would be, as was pointed out by Mr. Fawcett, the danger of legal conflicts which would be almost insoluble.

For this reason, the French Delegation is in favour of the South African amendment provided, I repeat, that this is feasible.

May I recall that a few months ago we had to start from a concise formula, but everybody wanted to add something and we finally came to the text submitted by the New York Drafting Committee.

On the general scope of Article 1, we have two conceptions here: one is the purpose of the Charter, to set up an international organization; another purpose of the Charter would be simply to register the agreements arrived at by the contracting parties. According to this latter conception, the Organization would be a mere machine or an instrument of the contracting parties. This is the problem raised by Mr. Fawcett when he spoke a few minutes ago.

The French Delegation is of the opinion that there is no reason to ask for the International Trade Organization more rights or less privileges than for the other existing organizations;

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for instance, may I recall that in Article 2 of the United Nations Charter we read: "The Organization and its Members," which shows that the Organization of the United Nations has its own clearly defined legal personality. This is also the case of other organizations.

And now Mr. Fawcett has just disavowed his own child. I refer to Article 83, which he has interpreted as meaning that it had been suggested just in order to make it possible for the Organization to acquire property, have a banking account, etc. I am not of the same opinion. I think that this Article is intended to give the Organization exactly the same status as that of other international organizations and therefore I do not see why, for the International Trade Organization, we should go back to about a century ago, or even more, and revert to the status of the Congress of Vienna, that is, the status of a mere diplomatic conference or a club in which well-behaved people would exchange abstract ideas.

This does not mean that the French Delegation desires to confer upon the new organization exorbitant privileges, but when we refer to purposes we have in mind similar purposes as in the case of the statute of a bank or a company, and the first Article of a bank or company is always entitled "Purposes of the Corporation."

As for the way to reach those purposes, I agree with the suggestions made by the United States Delegation, that we should give permanence to the undertaking made by the States, provided the result is the setting up of an organization endowed with a legal personality. To that effect it would be necessary to modify slightly the United States amendment.

In this amendment, the undertaking of the Member States is set out on two different planes. First, in the preamble and then it is stated that "States undertake etc." This might give a wrong impression, and I think a solution to that difficulty would be to state, in the last paragraph "Consequently, the States agree to accept the obligations set forth in this Charter, and they hereby establish an International Trade Organization in order to aid the foregoing purposes".

Now, as regards the use of the words "as an agency", in the Belgian proposal, I wonder if it really means an international agency of the United Nations or if, in the opinion of the Belgian Delegation, the use of this word "agency" means a legal agency. We have submitted no amendment to this text, either in London or in New York or here. With regard to the mention of Article 55(a) of the United Nations Charter, we have no objection to it being expressly mentioned, but I do not think this is essential, and, as in the South African amendment, I am of the opinion that it would be sufficient to repeat the essential provisions of 55(a) without expressly mentioning the Article. There would be some disadvantage in that because we will invite a number of countries that are not Members of the United Nations, and we should find perhaps some difficulty in adhering to a Charter which contains an express preference to the Charter of the United Nations.

With regard to point 2 of the United States draft, my Delegation, like the Australian Delegation, would like to wait for the result of the discussion of the Sub-Committee on Chapter IV. With regard to point 3, we are very glad to see that the United States have mentioned all the countries, and the United States Delegation are right when they raise thus the principle of freedom of access to the markets for all countries without any distinction.

I think that the word "product" could be usefully replaced by the expression "sources of supply", because this is more important, and on point 4 I suggest that we replace the words on the second line - "all forms of discriminatory treatment" - with "all harmful forms of discrimination".

Finally, in point 5 I suggest that we substitute "affecting" for "relating to".

I agree with certain formulæ contained in the South African amendment. We have no prejudice as regards Article 1, provided that a close legal connection is established between the purposes as mentioned in Article 1 and the other provisions of the Charter, to avoid any possibility of conflict

Finally, we are of the opinion that the important problem of the purposes of the Charter or of the Organization should be settled, and we think that the Preparatory Committee should, once and for all, take a decision as to whether the new Organization must be mistress in its own house, or just merely a diplomatic conference.

CHAIRMAN: The South African Delegate has asked for the floor in order to reply to the suggestion made by the United Kingdom Delegate regarding the re-arrangement of the South African amendment.

DR. W.C. MAUDE (South Africa): Mr. Chairman, I do not propose to join in the hunt for the fox, which Mr. Fawcett has mentioned. This is a chase which has been going on for a long time and I am perfectly happy to leave that to the Commission. I do not propose to discuss the verbal amendment but merely to answer one specific point on the suggestion of the change of "social advancement" with "employment". I might mention that at one stage we had in mind the words there "the field of trade and employment", to coincide with the title and name of the Conference, but after seeking advice and consultation with other people, we would be quite willing to consider the suggestion of the United Kingdom Delegate.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I have learnt through practice and experience the wisdom that there is in an old French proverb "Le mieux est l'ennemi du bien". Really, of all the

Chapters of the Charter, I think that Chapter I, Article 1, is the best drafted of all, and yet we have heard today very illustrative gestures implicating, not only economic principles, but law principles, philosophical principles and even psychological principles, and that is why I am very much afraid to accept all these changes proposed in the drafting of Chapter I.

This Chapter I and its Article, we can think what we like, can do only two or three things, and has to do those things. The first one is to be the constituent act of the Organization, if we want to have an Organization; the second is to establish the purposes of the Organization and the third, which is not so clear, would be the establishment of the objectives of the Organization. In the old text books of International Law there was a very clear distinction between principles, purposes, objectives, provisions, undertakings, but in the new world that we are living in, we have now found words that greatly confuse terms of technology that have a very established meaning, and so it happens with the word "purposes". Purposes, in my opinion, relates to something psychological, that is, something that is inside the minds of the persons that are drafting a law or a constitution. It could be considered the philosophical aim of the act, while the objective is the focussing of those philosophical principles into realities, into certain activities, into objects. Here, all is confused, and then would come the distinction between what is the principle or the purpose or the objective, and the provisions to carry out those principles, purposes, or objectives.

If we wish to establish these differentiations in the Charter in this article and through all the other articles of the Charter, it would mean difficult work, because we are working here as economists and not as experts on law or philosophy.

Nevertheless, if you take the amendments presented, you will find, especially in the Belgian/Luxembourg amendment, as well as in the South African amendment, that they really have the three main aspects of a constituent document. They establish the Organization - that is what they call the constituent act - then they talk about a purpose, and immediately when they say, with different words, "For the furtherance of these purposes the Organization will seek", I call those objectives. When the South African Delegate says "To this end, of promoting national and international action, designed to", those are objectives, so the two amendments, in my opinion, are better from the technical point of view, as to the structure of the framework of Article 1.

I must declare myself a little bit puzzled about the amendment of the United States Delegation, because I have been trying to find out where the constituent act of the amendment is, and what I have found is the proposition to delete the part that says "establish an International Trade Organization through which they will work for the fulfilment of the purposes set out hereunder", and instead of that the United States Delegation uses this phraseology: "The States party to this Charter hereby undertake to promote national and international action for the fulfilment of the following purposes", so the International Trade Organization disappears - vanishes into the air. There must be some reason for that, so that is one of the questions that I wish to put to the United States Delegate.

Of course, I know that we have Chapter VIII, covering Organization, but if we abolish in this first Chapter the establishment of the International Trade Organization as an agency of the United Nations, I do not see how the Organization in Chapter VIII can work, so that is a problem, in my opinion, of

primary importance. Perhaps I had read this United States amendment too quickly and thus had not found where the constituency of the International Trade Organization was.

Now, all the other matters are, in my opinion, juridicial and technical matters that can be settled after the clarification of the discussion.

The other question that I wish to put to the United States Delegation is that I have found, in relation to paragraph 3, that the United States Delegation proposes the deletion of the corresponding actual sub-paragraph 3, and this is one of the most important provisions of the Charter in relation to what have been called the under-developed countries.

We do not desire to divide the nations of the world into classes, but there are facts, and one of the facts of international life is that there are nations highly developed from the economic point of view, and many other nations that have not completed the stages of their economic development. In this Commission, we might say that we are in a proportion of fifty-fifty; but when we come to the World Conference, where probably sixty nations will be represented, it will be almost impossible to add much to the number of those industrialised nations, and, on the contrary, practically all of the other nations of the world might be considered in the early stages of industrialisation. If we scratch out this sub-paragraph which was inserted from the beginning in London and afterwards in New York, it will create a certain fear in those nations, because this sub-paragraph, though it might not, in my opinion, express the purposes and objectives of the Organization very technically like the others, is very clear in its meaning from the economic point of view.

This sub-paragraph says that one of the purposes of the Organisation is to encourage and assist industrial and economic development of Member countries, particularly of those still in the early stages of industrial development; and instead of that we find in the U.S. Amendment, in relation to paragraph 1, that they undertake to promote national and international action for the following purposes:

(1) To raise standards of living, assure a large and steadily growing volume of real income and effective demand, and contribute - and so forth; and

(2) To develop the economic resources of the world by encouraging the international flow of capital for productive investment, and otherwise assisting the industrial and general economic development of all countries, particularly of those still in the early stages of industrial development.

I think it is a tremendous difference, between the actual text of sub-paragraph (3), which has, as its real purpose and objective, as is said there, to encourage and assist the industrial and general economic development of particular countries, particularly those still in the early stage of industrial development, while in this Amendment now it seems that this case of the economic development of Member countries, particularly of those still in the early stages of industrial development, is only a possibility for the use of international flow of capital for productive investment; and as I am sure that is not the aim of the United States Delegation, I wonder if I could receive some explanation, especially of the deletion of sub-paragraph 3.

That is why I did not enter into this magnificent controversy

on philosophic principles which we have had the good fortune to hear to-day, and kept outside it, so as not to be implicated too deeply in it; but I would simply ask to maintain in Article 1 more or less the structure presented by the Belgian and South African Amendments, and would very much thank the U.S. Delegate if I could know the reason for not establishing the International Trade Organisation here, and for the deletion of sub-paragraph (3).

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I would like to add a remark with regard to the translation. It seems to me that an expression that I have used has been taken too literally, and I would like to explain myself.

What I wanted to say was that the constituent act of the International Trade Organization was placed at the beginning of this Article in the Draft Charters of New York and London. It is amended to disappear, however, and only a reference is made to it in the very last lines of Article 1 - so far away from the beginning that it almost indicates that it has vanished in the air.

Of course, I want to make it clear that I have seen in the Article the creation of an international organization. My attention is drawn to the fact, more particularly after what has been said by the Delegate of the United Kingdom, that this new Organization will have no juridical personality in contrast with the personality of the different states that comprise it - there would only be rights and obligations of the states, and not rights and obligations of an international organization - and we very much favour the idea that the International Trade Organization will be a juridical body different from all the states. In the common state of society, the State is different from every one of the citizens that make the State, and that is why we put emphasis on the amendment of the United States Delegation, which has taken away the constituent act of the Organization from the very beginning and placed it in the last line of Article 1.

As there must be some reason for that, I would like to know it.

CHAIRMAN: The hour is getting late, and I have still one more speaker on my list, but perhaps we might adjourn the Debate now, because I feel that before referring these proposals to a Sub-Committee it will be necessary that we take a decision on the question of principle involved in the Belgian and South African Amendments, which is that, first of all, there should be stated the purposes, and then, following that, the means whereby those purposes may be attained.

I therefore propose that to-morrow we continue the discussion and after the discussion is concluded we endeavour to reach a decision on this particular point for the guidance of the Sub-Committee.

The Commission will meet to-morrow at 2.30 p.m. in this room, and we will attempt to conclude the discussions both on Chapters I and II.

There being no further business, the Meeting is adjourned.

The Meeting rose at 6.20 p.m.