This paper has been prepared by the Secretariat for the convenience of the members of the Sub-Committee. It represents an analysis of the main arguments put forward in discussion in Committee and Sub-Committee for an against the proposed Article 18A.

A. IS IT DESIRABLE IN PRINCIPLE, WHETHER OR NOT INCLUDED IN THE CHARTER, THAT THERE SHOULD BE LIMITATION ON DISCRIMINATION IN RESPECT OF SERVICES?

The majority opinion appears to be in favour of the principle of restricting such discrimination.

B. SHOULD THE CHARTER INCLUDE PROVISIONS CONCERNING SERVICES?

(1) (pro): Services inevitably affect trade and unless dealt with in the Charter, other provisions are liable to be nullified.

(2) (pro): The Charter, in Chapters II, III, V and VI, already deals with subjects affecting trade indirectly.

(3) (pro): Discrimination being limited in other fields, under the Charter, services cannot be omitted.

(4) (contra): Services present large and complex problems of which only isolated aspects could be dealt with in a Charter on trade. In order to produce a satisfactory result services would have to be dealt with in their entirety.

(5) (contra): The special expert knowledge required is not available at this Conference.

(6) (contra): The International Trade Organization is not competent to deal with services.

C. DOES THE DRAFT CHARTER ALREADY CONTAIN PROVISIONS DEALING WITH SERVICES?

(1) (pro): Services are already dealt with in paragraph 2 of Article 18, in Article 32 and in Article 50. The close relationship between trade and services is expressly recognized in Article 50.

(2) (contra): The provisions in Articles 18 and 32 only serve to prevent discrimination for the purpose of protecting goods, not of protecting the services themselves.

D. SPECIAL POSITION OF SOME COUNTRIES

(1) (pro): Countries, without access to the sea, which are dependent on imported commodities from limited sources of supply, are at the mercy of the suppliers in respect of freight rates, if vessels and routes can be prescribed.

(2) (contra):
(2) (contra): Countries, dependent on sea communications, which possess a merchant navy, cannot compete with wealthy countries granting shipping subsidies, and would be driven off the seas altogether unless other protective measures are permitted.

(3) (pro): For countries situated on the sea and possessing insufficient natural resources, merchant shipping is an indispensable source of income for a large part of the population; this would be jeopardized if discriminatory measures were permitted.

E. RELATION TO DEVELOPMENT

(1) (contra): Countries not possessing services must be allowed to develop them. In respect of goods, protection is permitted by customs tariffs and subsidies. The former being inapplicable to services and subsidies being impracticable in view of the high cost, government regulation is the only other alternative.

(2) (pro): Exceptions required to permit development of services can be provided for under Chapter III, in particular under Article 13.

F. SECURITY

(1) (contra): The establishment of national merchant navies, which in recent wars have proved to be a vital security requirement, must not be impeded.

(2) (pro): All economic factors have proved vital in modern war. To permit exceptions on the ground of security would make the Charter wholly ineffective.

G. FLAG DISCRIMINATION - FREIGHT DISCRIMINATION

Flag discrimination should not be considered without also considering discrimination in freight rates.

H. DISCRIMINATION BY GOVERNMENT ACTION

(1) (contra): The selection of services is mostly exercised not by governments but by the purchaser on the basis of commercial considerations.

(2) (contra): The note to paragraph 2 of Article 30 expressly excludes services from the restrictions applying to state enterprises. Any provisions forbidding discrimination would, therefore, put privately owned services at a disadvantage.

(3) Discrimination practised by private undertakings is equally harmful to that practised by governments. Any provision would have to deal with both.

I. BALANCE OF PAYMENTS

(1) (contra): Shortage of hard currencies may make it necessary to prescribe use of services payable in available currencies.

/J. PROCEDURE
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(1) Complaints arising from the provisions should be dealt with by special agencies, if such exist, for the services concerned, and in their absence by the ITO.

(2) (contra): The proposal as drafted would compel ITO to take rigorous action against offenders. Article 50 merely gives authority to make recommendations and promote international agreement on remedial measures.

K. DRAFTING

The provisions should be so formulated as to include the concept and term "discrimination" which appears in all similar provisions in the Charter.