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

VERBATIM REPORT.

THIRTY-SEVENTH MEETING OF COMMISSION "A"
HELD ON TUESDAY, 12 AUGUST 1947 AT 2.30 P.M. IN THE PALAIS DES NATIONS, GENEVA.

M. MAX SUETENS (Chairman) (Belgium)

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Delegates are reminded that the texts of interpretations, which do not pretend to be authentic translations, are reproduced for general guidance only; corrigenda to the texts of interpretations cannot, therefore, be accepted.
The Meeting is called to order.

Gentlemen, we are first today to examine the drafts of articles 31 and 32. These two articles have been studied by a special sub-Committee which was set up under the joint Chairmanship of Mr. Colban and Mr. Deutsch of the Canadian Delegation. This sub-Committee presents us with drafts and explanatory notes, and I shall now ask Mr. Deutsch if he has anything to add to those particulars and explanatory notes which appear in the Document E/PC/T/160.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, on behalf of the sub-Committee, I am happy to report that the sub-Committee prepared the drafts of texts of articles 31 and 32 and prepared some explanatory notes to accompany the texts, and in that respect the sub-Committee reached unanimous conclusions. There are no reservations, and the reservations which were mentioned in the Report of the Drafting Committee of New York have all been withdrawn and consequently we present a unanimous report.

Besides preparing the texts of articles 31 and 32, the sub-Committee prepared a number of explanatory notes which you will find in the report: a number of these notes are marked with an asterisk, as you will notice, and the relevant notes marked with an asterisk are considered by some Members of the sub-Committee - several Members of the sub-Committee in some cases - as being necessary as an official explanation or an official interpretation of the texts to which they refer.

The question of how these special notes are to be dealt with finally, I believe, has been left for further discussion by the Heads of Delegations, but as far as the sub-Committee was concerned, these notes are necessary as an official explanation of the text in order to clear away reservations and doubts.
The sub-Committee also considered the question regarding Article 33. The sub-Committee, after considering this matter, decided to recommend the deletion of Article 33 from the Charter. In drafting the text of Article 32 the sub-Committee endeavoured to try to cover the case also of countries whose foreign trade is conducted entirely by State monopolies. The sub-Committee, however, felt that, since there was no country present at the Preparatory Committee with such a system of trading, it could not finally dispose of this question, and, therefore, suggested that the Preparatory Committee recommend to the World Conference that the World Conference should examine whether Article 32 itself provided an adequate basis for a country with a complete State controlled monopoly to participate in the rights and obligations of the Charter. But for the present purposes the sub-Committee does recommend the deletion of Article 33 with this note to the World Conference.

Now, Mr. Chairman, I do not think there is any necessity for my taking up the time of the Committee any further, and the sub-Committee has set out in its Report the changes which it has made from the New York Draft and I do not think there is any need for me to repeat what is already said in the Report.

Thank you, Mr. Chairman.
CHAIRMAN: Gentlemen, first of all I would like to thank Mr. Deutsh for his explanation. I think that as regards Article 33 we will not have to deal with it today as tomorrow there is a meeting of a special committee set up to deal with Article 33 which has to examine an amendment presented by the New Zealand Delegation. Therefore we will restrict our study today to Articles 31 and 32.

We will therefore start now with the examination of these two articles. We will start with Article 31. As we did yesterday we shall examine these articles paragraph by paragraph.

Article 31, paragraph I, sub-paragraph (a). Does any delegate wish to speak on this sub-paragraph?

M. Pierre FORTHONME (Belgium): Mr. Chairman, I would like to know whether we are going to take into consideration the French text and the improvements which can be made to that French text.

CHAIRMAN: Certainly.

M. BARADUC (France): I agree with the suggestion made by the Belgian representative.

CHAIRMAN: Mr. Wyndham White points out that as this text is going to be taken over and examined by the Legal and Drafting Committee the observation on the form of the Articles could be presented to that Committee and if I remember rightly there is a Belgian representative sitting on that Committee. This would enable us to restrict and confine our discussion to the substance of the Article.

Are there any substantial remarks on paragraph 1, sub-paragraph (a)? The remarks, of course, can refer both to the text itself and to the explanatory notes.
M. PIERRE FORTOMME (Belgium) (Interpretation): The question I would like to ask refers both to the note on page 3 of the document and note 3 on page 4 of the same document. I would like to know the exact meaning of the notes, and especially "privileges granted for the exploitation of national natural resources;" and in note 3 the last words "this procedure should not be considered as granting exclusive privileges.

Does that mean that these enterprises should be exempted from the provisions of Article 31 because they are private enterprises or that they could apply discriminatory policy due to the fact of their character? I would like to know the exact meaning and exact explanation of these notes.
CHAIRMAN (Interpretation): For myself, I do not understand the exact meaning of the words in Note 2:— "It was the understanding of the Sub-Committee that governmental measures imposed to ensure standards of quality and efficiency in the execution of external trade....etc". (This refers to the French text).

MR. J.J. DEUTSCH (Canada): Mr. Chairman, I cannot comment on the French text because I do not know enough French, but if I may confine myself to the point which was raised in the sub-committee which gave rise to this Note:—

I believe the matter you referred to, Mr. Chairman, arose out of a point raised by the Delegate of Czechoslovakia. I understand that in some countries certain limitations are placed upon export enterprises so as to ensure that the products which are exported come up to a certain quality or are in accord with certain standards. These regulations are not imposed for the purpose of restricting exports in any way, but in order to ensure that they shall meet certain qualities and standards, and in that connection certain types of enterprises are prevented from export, perhaps small enterprises, enterprises that cannot come up to the standard and cannot produce the quality of article which the country wishes to export. Those pygmy enterprises may not be allowed to export, but there is no general restriction placed upon the export of firms which are able to come up to the standard the country wishes to maintain, the sole consideration being the quality and standard of the export.

Now, in that case, if the regulations are imposed in that way, that may involve that certain enterprises are given the whole right
to export and other enterprises are not allowed to export. The question then arises as to whether those exports have been granted privileges within this Article. The fact that they are given the sole right of export may give rise to the question of whether they have been granted exclusive privileges in the sense of this Article, and it was the intention of the sub-committee that they should not be regarded as having received exclusive privileges, because they have been given the right of export in order to maintain a certain quality and standard. That is the case that arose on the first point.

The second point, regarding the exploitation of natural resources, it is customary in most countries to grant rights to exploit natural resources, and in many cases enterprises are given exclusive rights to exploit a certain portion of the natural resources.

If I may use the example of my own country, our paper and pulp companies are given by the State the right to exploit certain qualities of paper. It is necessary in the operation of that type of enterprise that they should have the exclusive right to exploit a certain particular territory as it is just impossible to have five or six people exploiting the same bit of natural resource and they are granted an exclusive privilege for the exploitation. In a case of that kind and in many cases those are private enterprises. Now, the granting of such a right, the sub-committee felt, was not to grant an exclusive privilege in the sense of this Article, and this Note was put in to make that point clear.

M. P. FORTOMME (Belgium) (Interpretation): Mr. Chairman, I am satisfied with the explanation just given to us by Mr. Deutsch, but as I stated, the French text can be improved. The Draft does cover the case of the exploitation of natural resources, but it does not include also the case of a general monopoly of exploitation which has been given to one enterprise or to one body. Such is the case of coal.

Therefore, I think that this paragraph here ought to be amended, or at least the drafting ought to be modified, so that these cases would be covered also by this paragraph.
Mr. J.J. DEUTSCH (Canada): Mr Chairman, I am in the hands of the Commission on this point. I think the draft could be made as to exclude the establishment of monopolies, or, rather, not to exclude them but if there are monopolies, to bring them within the purview of this Article. That is a matter of substance, and I am in the hands of the Commission on that question.

Mr. John W. EVANS (United States): Mr. Chairman, I just want to remark that my interpretation of the note is the interpretation which Mr. Forthomme would like to make particularly clear in his proposed draft.

I had been my understanding that the granting of a right to exploit in itself would not constitute a special privilege; but that if that extended to the point where it became the sole right to exploit, the Article would apply. I thought it would apply in the present wording, but if there is any doubt about it, I would like to support Mr. Forthomme's suggestion for a clarification of the wording.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am wondering whether sub-paragraph (c) of paragraph 1 of this Article is not relevant in this text. That says, subject to certain qualifications: "... Members shall not prevent any enterprise (whether or not an enterprise described in sub-paragraph (a)) within their respective jurisdictions from acting in accordance with the principles of sub-paragraphs
(a) and (b) of this paragraph."

That suggests that the distinction is not so much between whether the privileges are such as to constitute a monopoly or not, as whether, in fact, the States exercises a direction over the business policy of these enterprises.

It seems to me that (c) is intended to convey that if, in fact, the State does not exercise a positive direction over the commercial policy of these enterprises, or, indeed, an enterprise which is not covered by (a), nevertheless it is not to take action to prevent them from following commercial principles.

You have the two possible cases: the case where the State directs the business policy, and the case where the business policy is left to the concern itself, and (c) says that in the second class, where the business policy is left to the concern itself, the State shall not step in so as to prevent it from following commercial principles, which, presumably, it would follow in any case.

I am wondering whether that distinction might render it unnecessary to draw any further distinctions on the lines that have been suggested by Mr. Forthomme and the United States Delegate - namely, the distinction according to whether there is such a big single monopoly set up or not. I have the feeling that it may be unnecessary, in view of sub-paragraph (c)

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman, I am quite prepared to follow the reasoning of the United Kingdom Delegate. In fact, I believe that the text of the Article is self-explanatory and that no supplementary explanation is needed here; but if we do have
some notes they should not create confusion but serve a clarifying purpose. Therefore, I would be in favour of either deleting this note and the following one, or drafting them in a more explicit way.

CHAIRMAN (Interpretation): Gentlemen, as we agree on the substance of this Article, and there are only formal differences on the note itself, I would suggest that we follow the procedure which I mentioned a few minutes ago, that is, refer this question to the Legal Drafting Committee.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to support the argument of Mr. Forthomme, after the explanation of Mr. Shackle. I think we should indicate in this note that these enterprises mentioned in note 2 should otherwise be free in their commercial management.
Mr. F. IVOVICH (Chile) (Interpretation): Mr. Chairman,
Mr. Forthomme has referred himself in his comments to Notes 2 and 3. I want to refer particularly to Note 3, which is of great importance for the Chilean Delegation. It helps to clarify a situation to which we attach some importance, because it covers the case of one of our enterprises established to market and produce salt and iodine products, and in which our Government has a share; and as a compensation this Corporation was granted privileges which are not extensive, and when we accepted Note 3 we intended that this Note should cover the case of that particular Corporation, and that, therefore, the provisions of Articles 31 and 32 would not apply to that Corporation.

CHAIRMAN: The Delegate of Belgium.

Mr. FORTHOMME (Belgium): (Interpretation): Mr. Chairman, I fully appreciate that it is very difficult to draft these two Notes in an appropriate way, and that the matter should be referred to the Legal Drafting Committee; but before this work is shared with the Legal Drafting Committee I would like the Commission to reach a decision of principle on those two Notes.

Personally, I believe that Article 31 is sufficient to cover the cases to which Notes 2 and 3 refer and that therefore the Notes are superfluous here; but if the feeling of the Commission is that the Notes should be retained, I would like the Commission to send instructions to the Legal Drafting Committee so that it should know what to do about those Notes. As far as Note 2 is concerned, the second part of it should be drafted in such a way as to make clear that the privileges enabling the exploitation under normal commercial conditions of natural resources under Article 31 are not such as to create a monopoly or a semi-monopoly; and as far as Note 3 is concerned,
if the participation of the Government only takes the aspect of a participation in the returns, and not in any exemption of taxes, if such exemption does not result in a monopoly, this enterprise should not be covered by Article 31.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): I gather that Mr. Farthomme expressed general agreement with the interpretations I placed on the Article itself, namely, that the distinction intended to be drawn is as between cases where the Government protects the business policy of an enterprise, and where it does not do so.

If that is right, it seems to me possible both these needs might be made to harmonise with that interpretation, if we made a small addition.

In the case of the first Note, that would consist in adding to the last line but one, after the words, "natural resources", something like this, "but which do not involve control by the Government of the business policy of the enterprises in question". That would be the addition to the first Note; and there would be an analogous addition to the second Note, which would run something like this: "The profits of the enterprise" (in the fourth line)...and there the addition would be something like this: "but does not exercise control over the business policy of the enterprise".

I think that if we make those additions, that will harmonise these Notes with what I conceive to be the intention of the Article.
CHAIRMAN: The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGENTHALER (Czechoslovakia) (Interpretation): Mr. Chairman, I have no objection to these additions, but I notice that the interpreters translated the word "control" in English by the word "contrôlé" in French, when the exact meaning here ought to be the word "gestion."

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman, I agree with the suggestion made by the United Kingdom Delegate. As far as the amendment of the Delegate of Czechoslovakia is concerned, I think it would be difficult to translate "control" here by "gestion" and probably the word would be "contrôlé", which is rather wider. "Gestion" would be something which would imply administration by the Government, but, generally speaking, this word "control" is very difficult to translate and we often have to use either both words or one of them.

CHAIRMAN: The Delegate of the United States.

Mr. John W. WAMS (United States): Mr. Chairman, in view of Mr. Forthomme's agreement with Mr. Shackle's addition, I do not like to draw this discussion out, but I should like to call attention to the fact that this addition to the text does not seem to me to be quite in harmony with the structure of Article 31 as now drafted, whilst I do think it would considerably help the Note.

As I understand the structure of Article 31 now, if, because of special privileges granted by a Government, an enterprise has a monopolistic position or a position which enables it to ignore the operation of competitive forces, in
those circumstances the Member itself might influence the administration of the enterprise in such a way as to cause it to act in a way contrary to the general principle of non-discrimination as amongst other Members. In those circumstances, instead of there simply being an obligation on the part of a Member not to interfere with that organization and not to prevent it from carrying out the principles of the Article as is provided in sub-paragraph (c) and, as a positive obligation, see that it does carry out the principles of sub-paragraphs (a) and (b), it seems to me that this Note implies that in all cases where the enterprise has a total monopoly, let us say, of the commodity in question in the country concerned, there is no positive obligation on the part of the Member concerned, merely the negative obligation to keep its hands off.

The opportunity of another Member to complain if it thought its interests were being injured would be limited by its ability to show that the Member, in fact, was controlling the business policies of the enterprise. That was one of the things, when examining this note, we tried hardest to get away from, by placing the positive obligation on the part of the Member where the enterprise was in a position to carry out policies which were not commercial policies, as a result of the privilege granted.

Therefore I should think that, in view of the discussion which has taken place on this Note, it would be much better if this Commission could indicate to the Legal Drafting Committee that it is not its intention in this Note to make an exception for any case where there is, in fact, a monopoly of the commodity concerned, but that the sole intention is to indicate that the mere granting of the privilege to exploit a particular resource is not, in itself, necessarily a privilege as the term is used in the Article.
Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think there is no need for us to give detailed instructions to the Drafting Committee for the following reason. It seems to me that there are two classes of cases here in question. The first case is where a monopoly practises discrimination on its own initiative. The second case is where it practises discrimination through being influenced in an indirect way by the Government which made the monopoly. Well, the result in the first case where the monopoly discriminates on its own initiative - that is already cared for under the Discriminatory Practices Chapter because in the Article which corresponds to 39 - I am not quite sure of the number - the Article brought the case of public monopoly on all fours with private monopoly, and the whole of the Restrictive Practices Chapter is therefore designed to catch discriminatory practices by a monopoly. My impression is that the intention of the Committee is that discriminatory practices by private monopoly should be dealt with in that way under Discriminatory Practices Chapter.

As regards the second case where some kind of practices influence is used by the Government to make a monopoly discriminate where it would not otherwise do so, that surely is covered by sub-paragraph (c) of paragraph 1 of this Article: ".... shall not prevent any enterprise .... in accordance with the principles of sub-paragraphs (a) and (b) of this paragraph."

Surely "prevent" includes any form of indirect backstairs influence so I think it does seem to me in line with this Article/does in its turn draw a distinction between the single monopoly which has its special privileges or the case where State privileges are granted to a number of concerns like the Forestry Concession. It seems to harmonise with my view of the Article
Mr. A.P. van der Post (South Africa): Mr. Chairman, as representative of a country which makes extensive use of standards of quality and efficiency in so-called export regulations, I have been at a loss to understand the intention of note 2, particularly as far as the first part of the Article is concerned. After listening to Mr. Deutsh's explanation, and listening to the discussion here, I think, at any rate, so as to cover our particular case, that note 2 would be rerafted. In our case the standards of quality and efficiency are not exercised by an organisation with absolute monopolistic rights for the purpose of exercising them. We prescribe under certain special Acts of Parliament a standard of quality and efficiency in export products such as maize, fruit, wool, hides, skins, and so forth, but they do not result necessarily in a monopoly. We have one or two organisations which we might say have a monopoly on export, but they have a monopoly under a very different provision than the Acts under which the standards of quality and efficiency are prescribed for exports and after listening to Mr. Deutsh I think that the wording of that part of the Article, or perhaps the whole of the Article, along the following lines might make it more clear to ourselves and to countries similar to us when we may have these types of provisions. This note merely says that governmental measures to ensure quality and shall not efficiency constitute exclusive or special privileges. I have not been able to see the necessity for that in terms of a provision of Article 1, and I have not been able to apply that in our particular case. But this would seem to me more or less to meet that case: a monopolistic right granted to an enterprise by the Government to ensure the application of governmental standards of quality and efficiency shall not constitute special privileges or exclusive 

privileges. That might be extended also/instead of "or
"privileges granted for the exploitation" we would put it "the monopolistic rights granted to an enterprise by the Government to ensure the application of governmental standards of quality and efficiency and to exploit national natural resources, did not constitute exclusive or special privileges."

Mr. WEBB (New Zealand): Mr. Chairman, as a member of the Subcommittee which participates in the drafting of these articles I would urge that this Commission does not turn itself into a Drafting Committee because the matter is complicated and we may end by producing a result which is perhaps rather different from what we think we have produced. As there is no doubt as to what we mean by these notes, possibly we could settle the matter by leaving, say, Mr. Evans and Mr. Forthomme to draft either the text for the Legal Drafting Committee or to suggest to the Legal Drafting Committee the sense that we want to convey by these notes. It seems to me that would present an easy way round this difficulty.
Mr. J.J. DEUTSCH (Canada): Mr. Chairman, I wish to speak as the Canadian Delegate. I agree with what Mr. Webb has said, that we should not try to make ourselves into a Drafting Committee, but the last two speakers raised some questions of substance to which I wish to refer.

Mr. Evans stated that there should be a positive obligation upon Members to ensure that monopolies, whether or not Governments play any role in the formation of business policies of these monopolies, do act in a certain manner. I cannot agree with that interpretation. It seems to me that the word "monopoly" exists, and where the Government does not interfere with its business operations, that case does not arise under Articles 31 and 32 - that is a case for Restrictive Business Practices, and if there is any positive obligation of the Government to ensure that that monopoly should act in a certain way, that positive obligation should arise out of the obligations pursuant to the Restrictive Business Practices Chapter and not to Articles 31 and 32.

I would agree, therefore, very much with Mr. Shackle's view that what we have to ensure against here is the interference of Governments - the positive interference of Governments - in the business policies of the monopolies, and require Governments not to interfere in a way which would result in an operation contrary to the provisions of these Articles, but there is no positive obligation of the Government to require the monopoly to act in a certain way, not under these Articles - that arises in the Restrictive Business Practices section.

The other point is Mr. van der Post's suggestion with regard to redrafting. He suggested something on the lines
of where monopolistic rights were granted. It seems to me that it is not a question here of monopolistic rights being granted under this Note. That does not arise here at all. Certain privileges are granted both with respect to ensuring standards of quality and with respect to natural resources, but those privileges here are not intended to be monopolistic rights.

Now this question about the assurance of standards of quality may arise with respect to enterprises under other parts of the Charter, and I believe that the case that Mr. van der Post had in mind is dealt with in other sections of the Charter where provisions are made for the imposition of regulations to ensure quality and standards, particularly in Article 25. There is a specific exception made in Article 25 to the extent necessary to allow Members to impose regulations designed to ensure certain standards of marketing, and it seems to me that that situation is taken care of elsewhere.

CHAIRMAN: Mr. Shackle.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, in view of the explanations which have just been given by the Chairman of the sub-Committee, I wonder if it might not suffice, as a reference to the Legal Drafting Committee, if we simply transmit to them the verbatim record of this discussion. It seems to me that if we do that, they will have all the points fully in front of them, and certain suggested amendments, and it will then become unnecessary to set some of our Members the difficult and time-consuming task of drawing up a special reference for the Legal Drafting Committee. I venture to think that a simple reference to them of the verbatim record of this discussion should meet the case.
Mr. E. WYNDHAM-WHITE (Executive Secretary): Mr. Chairman, if that decision is taken by the Preparatory Committee, I would like clear guidance for the Secretariat and the Legal Drafting Committee. Am I to understand the decision to be that there shall be incorporated in the text the substance of notes 2 and 3, in the light of this discussion: the reason for the insertion of those notes being to avoid the necessity for a formal reservation on the part of one or more Delegations, and the text as drafted by the Legal Drafting Committee should be included in the text of these Articles submitted for approval at the Plenary Session?

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I have heard no suggestion in the course of this discussion that any amendment or change should be introduced as part of the Article. I think the task that we are at present asked to undertake is to get these notes right in the light of the discussion.

Mr. E. WYNDHAM-WHITE (Executive Secretary): Perhaps using the word "text" was misleading. When I said "incorporated in the text" I meant the note should be included at the foot of the text which is set out here.

CHAIRMAN: The Delegate of the United States.

Mr. John W. EVANS (United States): Mr. Chairman, I would just like to mention that the Sub-Committee were asked to put asterisks by those notes to which any Delegation felt it attached so much importance that they must be included as notes for the official text, and that that was not the case with Note 3, but was so in the case of Note 2.
Mr. E. WYTHE-WHITE (Executive Secretary): That is exactly why I raised the question - because I take it the decision now is to incorporate not only notes marked with the asterisk but the other notes as well.

CHAIRMAN (Interpretation): I would now like to ask a question of the Chairman of the Sub-Committee. There are two different kinds of notes - the note marked with an asterisk and the other note. It is obvious that the notes marked with an asterisk will have to be incorporated in the text of the Charter, but what will be the fate of the other notes?

Mr. J.J. DEUTSCH (Canada): The fate of the other notes, Mr. Chairman, is that they are simply part of the Sub-Committee's Report. Notes marked with an asterisk some Delegations feel should be included as an official explanation of the text: only those marked with an asterisk are in that category.

CHAIRMAN (Interpretation): Gentlemen, do you agree to refer to the Legal Drafting Committee the verbatim report of this meeting, and do you agree that the Legal Drafting Committee should apply itself to drafting and modifying the text of these notes in the way which we have just suggested?

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I am in agreement with your suggestion, only I am wondering if there will be an opportunity to have the notes again in our Commission before they are discussed at a Plenary meeting, because if, for instance, the Members of the Commission do not agree with the draft of the Legal Drafting Committee, and it should be discussed at the Plenary meetings - well, I do not know what may happen then!
Mr. E. WYNDHAM WHITE (Executive Secretary): Mr. Chairman, I think that perhaps the most speedy procedure would be to circulate the text prepared by the Legal Drafting Committee, in order to get the views of Delegations before it is included in the Report submitted to the Plenary Session.

CHAIRMAN (Interpretation): I would like to add that if any Delegate wishes to present any observation on the revised text of the Legal Drafting Committee, we would do our best to hold meetings before the convening of the Plenary Session, so that we could reach unanimous agreement before these texts are presented to the Plenary meeting.

M. ROYER (France) (Interpretation): Mr. Chairman, may I make a practical suggestion? When the Legal Drafting Committee have to take up the draft of this Article, they will be faced by technical problems, and as you know, the Legal Drafting Committee is not composed of technical experts. Therefore, to follow the precedent which was applied in other cases, may I ask that a representative of the Technical Sub-Committee should attend our meetings when we consider this matter at the Legal Drafting Committee?

CHAIRMAN (Interpretation): Gentlemen, I think we can all agree to that suggestion.

We can now proceed with our examination. Are there any other remarks on paragraph 1, sub-paragraph (a) or on the explanatory notes attached to this sub-paragraph?

Then we can now pass on to sub-paragraph (b). We shall now discuss that sub-paragraph and the notes which are appended to it.
Mr. SHACKLE (United Kingdom): On reading Note 7 a small point struck me concerning the order of words in the paragraph of the Text. It is really I think a matter for the Legal Drafting Committee, but I thought I would mention it in order to draw their attention to it. It is this. In Note 7, the Sub-Committee deleted certain words in the New York text: "any differential customs treatment maintained consistently with the on the understanding that the remaining part of the sentence, 'having due regard to the other provisions of this Charter' covers also differential customs treatment maintained consistently with the other provisions of the Charter". And the Note goes on to suggest that the opinion of the Legal Drafting Committee should be obtained.

Well now, I think that if the point of view in that Note is really to be read as it stands, the words "having due regard to the other provisions of the Charter", as now agreed at the very end ought to be transposed to a point higher up. I think that should come in the second line of the paragraph, after the words "should require that". The reason why I think that transposition ought to be made is because where the words now occur at the end of the paragraph they only deal with that part of the paragraph concerned with purchase and sale, whereas, in fact, if the view expressed in Note 7 is correct, they must also qualify the first part of the paragraph; and in order to do that I think it is necessary to transpose them to a place higher up. In bringing that to the notice of the Legal Drafting Committee I would suggest a few words at the end of Note 7. The words would be something like this, at the end of the last sentence: "The opinion of the Legal Drafting Committee as to whether this interpretation was correct is requested" (and I think we had better have something
like this) "and their opinion as to whether they would justify this interpretation that the words 'having due regard to the other provisions of this Charter' should be transposed to an earlier place in the sentence".

I suggest we might leave the matter to the Legal Drafting Committee, calling their attention to the substitution in the Note.

CHAIRMAN: The delegate of Chile.

Mr. F. IVOVICH (Chile) (Interpretation): Mr. Chairman, the Chilean Delegation presented certain observations on this text both in New York and in London. These observations were to the point that the right was granted to sell products at a different price for commercial considerations.

The Committee in New York agreed to that interpretation and said that it might be applied in the case of article 31. Therefore, the Chilean Delegation agree to the Text, and agree to the remarks presented in this connection by the Representative of the United Kingdom.

CHAIRMAN: The delegate of Belgium.

Mr. FORTHOMME (Belgium) (Interpretation): Mr. Chairman, I have a point to raise regarding Note 5. Personally I think the Note is superfluous, and the Text is sufficient in itself. I think the purpose of Note 5 could very well be reached by adding in the Text of sub-paragraph (b), after "transportation," the words "financing" and "financement" in French.

CHAIRMAN: May I have Mr. Deutsch's views on this point.
Mr. DEUTSCH (Canada): This point, Mr. Chairman, was raised by the Delegate of China, and the Note was drafted in order to allow him to move a Reservation.

Now it is purely a question of whether the Delegate of China would be satisfied with the suggestion made by Mr. Forthomme. The adding of the word "financing" in the Text might raise some other questions of substance. I remember the commission wished to consider that point, but the Note itself was drafted for the benefit of the Delegate of China.
CHAIRMAN: The Delegate of China.

H.E. Mr. WUNSZ KING (China): The Chinese Delegation would like to have this Note maintained, because we attach the greatest importance to it.

CHAIRMAN (Interpretation): Are there any other observations on sub-paragraph (b)?

The Delegate for France.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to ask the Legal Drafting Committee to study rather closely the French text, which is not a very happy one at the present time.

CHAIRMAN (Interpretation): As Mr. Royer is a member of that Committee, it will be very easy for him to make the study.

Mr. R. J. SHICKLE (United Kingdom): Mr. Chairman, there is just one small observation I have to make before we leave that paragraph. As regards the transpositions which I suggested, I think it is probably unnecessary for me to suggest any addition to the Note which I proposed. I think it would be sufficient if we just called the attention of the Legal Drafting Committee to the Minutes for the record of what I said.

CHAIRMAN (Interpretation): We now come to sub-paragraph (c).

The Delegate of Belgium.

M. FORTHOMME (Belgium) (Interpretation: I believe that Note 8 is necessary, and that the words which appear in it - "Subject to the provisions of the Charter" - are necessary.

(Interpretation)

CHAIRMAN: In that case this Note will be referred to the Legal Drafting Committee with the following indication: "that
one Delegate (namely, the Belgian Delegate) thought that the words 'subject to the provisions of the Charter' should be included."

Mr. SHACKLE (United Kingdom): Mr. Chairman, may we please say: "Two Delegates."

M. E. Mr. Z. AUGENTHALER (Czechoslovakia): Three, please!

CHAIRMAN (Interpretation): We shall therefore state that a certain number of Delegates thought these words necessary.

We now pass on to Paragraph 2.

M. FORTHOMME (Belgium): (Not interpreted).

CHAIRMAN (Interpretation): You are right. We still have to examine a certain number of Notes which refer to the whole of Paragraph 1. Are there any observations on these Notes?

M. FORTHOMME (Belgium) (Interpretation): Mr. Chairman, we fully agree with the interpretation given in Note 9, but we would like an asterisk to be added to it and the Note to have the same effect as all other Notes with an asterisk.

CHAIRMAN: The Delegate of Canada.

Mr. J. J. DEUTSCH (Canada): I do not think the sub-committee would have minded putting an asterisk beside this Note. We felt that the text was clear. The position of a Marketing Board was covered, but to make it more explicit I think we could add an asterisk.

CHAIRMAN: There is another Note with an asterisk: that is Note 10.
Mr. Angel FIJOVICE (Chile) (Interpretation): This is the Note to which I referred just now when I spoke on Article 31, sub-paragraph (b), and stated that this Note should be maintained.

CHAIRMAN: The Delegate of Belgium.

M. FORTHOMME (Belgium) (Interpretation): As far as Note 10 is concerned, I believe that the present drafting is dangerous, because it opens the door to certain interpretations and it would be establishing differences of prices on a wrong basis. I would prefer the following text: "The Preparatory Committee agreed that the wording of Paragraph 1 (b) of Article 31 does not preclude the customary variations of prices between one market and another market."
Mr. ANGEL FAVOVIICH (Chile) (Interpretation): Mr. Chairman, the text of Note 10 corresponds to the text which appears on page 27 of the English draft of the New York report, and in note 10 the Sub-Committee refers itself to the text adopted in New York. Therefore it would not be possible for us to accept a modification on the lines suggested by the Belgian delegate. Nevertheless, if the Legal Drafting Committee were to give the interpretation of this new text which has just been suggested, we might be able to look at this matter once again.

Mr. PIERRE FORTHOMME (Belgium) (Interpretation): Mr. Chairman, may I request that this draft should be reconsidered because although it came from New York it was drafted by the Drafting Committee, and therefore it is not final. Of course, one cannot require that the same prices be applied on all markets, but I think the present text opens the door to wrong interpretation and misuse and I therefore ask that it be reconsidered and redrafted.

M. ROYER (France): (Interpretation): Mr. Chairman, I would have no objection to seeing this text revised by the Legal Drafting Committee, but on this side of the table we find the text perfectly clear as it stands now, and the proposal which was just made by Mr. Forthomme introduces a subjective element and therefore if the Commission was able to agree to the text as it stands now it would seem better to us.

Mr. R.J. SHACKLE (United Kingdom): I do think that as Mr. Royer says the note is definitely clearer as it stands now, and it does seem to me that the word "customary" introduces a subjective conception.
CHAIRMAN (Interpretation): Maybe Mr. Forthomme would be able to tell us what inconveniences he sees in the formula as it stands now.

Mr. PIERRE FORTHOMME (Belgium): (Interpretation): Mr. Chairman, we have seen in recent times how conditions were established as regards supply and demand problems so as to create in artificial conditions differences in markets, that when the aim was to boost prices in certain markets discrimination was established between markets. In fact, I think that the text which we have now before us permits such measures to be taken and our text would avoid the misuse which was enabled under the present note, and although it permits differences in prices it forbids the exploitation of the customer, and certain privileged situations to be established to the detriment of the consumer.

Mr. R.J. SHACKLE (United Kingdom): Is not there a case which falls under Chapter VI on Treatment of Commercial Practices?

CHAIRMAN: (Interpretation): Mr. Forthomme, I think that the practices to which you refer are not covered here, because if we look at the Prémisso we read that "provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets," and therefore this Prémisso would prevent any form of aggression to take place.

M. ANGEL FAIVOVICH (Chile) (Interpretation): Just now I accepted that this text be referred to the Legal Drafting Committee for clarification, but after listening to the explanation given by Mr. Forthomme I must confess that there was a slight confusion, and therefore the text of Article 10 seems to me to be perfectly clear and I would ask Mr. Forthomme not to press his point and not to submit his proposal.
M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman,
I am sorry but I have to press my point.

(Interpretation):

CHAIRMAN: As I think that there is a majority of
Delegations which wish to maintain this Note, it will always
be possible for the Belgian Delegate to present a reservation.

M. Pierre FORTHOMME (Belgium) (Interpretation): Therefore,
I am compelled to reserve our position.

CHAIRMAN (Interpretation): Paragraph 2.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, with regard
to Paragraph 2, the New Zealand Delegation would ask that an
asterisk be attached to Note 11 which, I think, it would be
agreed, is somewhat essential for clarification of the text.

M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman,
I would like to ask for a clarification of the meaning of Note 11.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, during the
discussion on this text we were concerned with, for instance,
the case of Government imports which were used for purposes
which did not result in the sale of goods in the ordinary
commercial sense. For instance, a Government might purchase
goods which resulted in the supply of some social service to
the community and in some sense the service might be "sold",
that is, there would be a charge for it, but it was not considered
that such practices should come within this particular article.
It was also, I think, intended to cover the case of, say, a
Government importing hydro-electric machinery. There was some
discussion, for instance, on the question of machinery used for
the purpose of supplying electric power.
M. Pierre FORTHOMME (Belgium): Well, I am very glad of the explanation because, as I understand it, what was aimed at was that imports by Governments for the production of services for the community should not fall under the application of Paragraph 1 of Article 31. That is what is meant. In the case of your hydro-electric machinery imported by a Government for the production of electricity, your intention is that it should not be covered by Article 31, Paragraph 1.

Dr. J. E. HOLLOWAY (South Africa): I do not know that the point is made very clear by the Note, Mr. Chairman.

The service which our Government renders is to make use of certain insecticides to kill tsetse-flies, which destroy a large number of animals, but the same insecticides also kill house-flies, and other people also make insecticides for killing house-flies. Now, the Government evidently is not bound by Section 1 in introducing the material to make, let us say, D.D.T for killing tsetse-flies, but is subject to that for making the same D.D.T. for killing house-flies.

I think that the Note requires something a little more definite.

CHAIRMAN: The Delegate of the United States.

Mr. J. W. EVANS (United States): Mr. Chairman, I think that this discussion has perhaps unduly complicated the intent of the entire Paragraph 2. It should be recalled that in the New York Draft there was a total exception to the terms of Article 31 with respect to Government purchases of commodities for its own use. That raised the question in New York and in the sub-Committee here as to whether a Government might, by importing goods and processing or manufacturing the goods themselves and then reselling in commercial markets, in effect, frustrate the purposes of the exceptions which should be limited to the normal uses of the Government itself, and the phrase which gives rise to the Note
It has to do only with further clarifications of the exceptions, but the basic exception has been there all along, that is, the exception by the government for its own use.

Unless we finally reconsider the basic question as to whether governments are, when importing anything to be used in the governmental establishment, to be subject to the provisions of Article 31, I think that probably this debate is unnecessary. Now, there never was any real logic in excluding goods imported for governmental use, except for the fact that most governments wished to retain the privilege that they have always had. Under the circumstances, it seems to me that the Note itself is quite clear and that it does not alter the intent of the Article as drafted, or as previously drafted, and I should like to support Mr. Webb's request that it be given status in the final report.
Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I agree with what the United States representative has just said. It seems to me that it is perfectly clear. In fact, I should have thought the position was clear even without the note, because surely everyone knows that service is not goods, and goods are not service; but I see no objection whatever to putting an asterisk to it.

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium): Mr. Chairman, I would just like to say that when I asked Mr. Webb what this note meant, it was not at all a rhetorical question, meaning I had an idea as to what it meant - on the contrary, I honestly did not know what it meant. Maybe the Delegation are all suffering from brain fag as the result of too much Charter, but we read this thing over and over again and we just could not understand it.

Now, I do entirely agree with the principle as expressed by Mr. Webb, and I am quite willing to see this note have an asterisk; but I do submit that though the people who were in the Sub-Committee and argued the whole thing over find this very concise terminology perfectly illuminating, there are people who have not taken part in the discussions who spent a good deal of a morning trying to understand what it meant, and perhaps, as I say, by brain fag, could not understand. Therefore, I think that if the Delegate of New Zealand attaches importance to this note, we might take a look at it with a view to perhaps expanding it a little and making it clearer, because in compiling this paragraph 2 we have a succession of notes which remind me of that famous deal between Mr. Knott and Mr. Shott, which was very difficult to understand and which was explained in the local newspaper!
CHAIRMAN (Interpretation): I think, gentlemen, that we can now terminate the discussion on paragraph 2 and on Article 31 as a whole.

H.E. Mr. WUNSZ KENG (China): The Chinese Delegation has no more notes to offer, but I am reminded by the technical Delegate of the Chinese Delegation who attended the meetings of the sub-Committee and took part in the discussions there, that he had made one or two observations in regard to this paragraph of Article 31, and I would like now to repeat and re-affirm what he had said in the Sub-Committee meetings so that the observations will appear in the records of this Commission;

You will certainly notice that in this paragraph there are the words "for use in the production of goods for sale", and these words, if I understand correctly, also appear in one of the relevant paragraphs of Article 15 to which the Chinese Delegation has strongly objected and has since maintained its objection; but so far as this paragraph is concerned, we seem to note some sort of difference between the two texts.

In the case of Article 15, we find that it is a question of national treatment, and here in the case of a system of state-trading such as is envisaged in this article, there is no question of national treatment. Therefore, I am happy to say that while we maintain the objection to this expression in the case of Article 15, we do not have any objection to using these words in this connection.

CHAIRMAN: The Delegate of New Zealand.

Mr. L C. WEBB (New Zealand): Mr. Chairman, with regard to Article 31, I have not succeeded as yet in clearing the text with my Government. It is a long distance to New Zealand, and the telegraphic traffic at the moment is rather heavy, so I am afraid I must just formally reserve myself until my Government clears the text, and the same remark will also apply to Article 32.
Mr. EVANS (United States): Mr. Chairman, I should like to add one word to that point made by the Delegate of China. I am glad he mentioned the point, because I think it would be desirable to register the fact that the Sub-Committee considered the possibility of making the words in paragraph 2 correspond with the wording in Article 15, and decided, as the Delegate of China has said, that it should not necessarily correspond, because the nature of the subject matter was different, and I think that the Legal Drafting Committee should have that fact before them when they consider the point.

CHAIRMAN (Interpretation): Article 32, paragraph 1. Does any Delegate wish to speak on Article 32, para. 1? No observations? We therefore pass on to paragraph 2. Are there any comments on paragraph 2? Therefore we pass on to paragraph 3. The Delegate of the Netherlands.

Mr. BOGAARDT (Netherlands): Mr. Chairman, I think I can agree to this paragraph subject to the maintenance of Note 14.

CHAIRMAN: Paragraph 4. The Delegate of the United Kingdom.

Mr. SHICKLE (United Kingdom): I have a small amendment to suggest to the last line of paragraph 4. The Amendment is to replace the words "the countries parties to the negotiation." by the words "the Member countries substantially interested." The reason why I suggest that change is this: That it is, I think, an underlying hypothesis of the Tariff negotiations that they will result in bindings of a multilateral character - not merely bindings in favour of particular countries with particular
concessions in the negotiations, but also in favour of the other Members. It follows therefore that, if that is the hypothesis, it would not be right for concessions to follow afterwards as a result of re-negotiation merely between the original two Members who negotiated that particular binding.

It would be necessary to bring in the Members substantially interested, and there is a direct precedent for that in Article 13 - I am referring to the New York Text, but in this particular the New York Text, I think, is the same as the Report by the Sub-Committee on Chapter IV.

If you look at Article 13 2 (b) on page 6 of the New York Report, you will see, in the middle of the paragraph, the words "the Organization shall sponsor and assist in negotiations between the applicant Member and the other Member or Members which would be substantially affected, with a view to obtaining substantial agreement". The reason for the insertion of those words is, I think, precisely the reason I have put forward just now; and for that reason it seems to me it should be "the Member countries affected", instead of "the countries parties to the negotiation".

CHAIRMAN: The Delegate of Czechoslovakia.

Mr. AUGENTHILLER (Czechoslovakia): Mr. Chairman, we are in favour of the Text as it stands here. We are not in favour of any change, because we think that if some country was interested in some commodity, it could state and declare it during the present discussions.

CHAIRMAN: The Delegate of the United Kingdom.
CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, my attention has been called to the fact that at the end of Paragraph 2 of the Article we have the words: "Any Member entering into negotiations under sub-paragraph (b) of this paragraph shall afford to other interested Members an opportunity for consultation in respect of the proposed arrangements." That, of course, contains exactly the idea which I am seeking to introduce by my amendment here. That being so, I do not quite understand the motive for the Czechoslovak Delegate's suggestion.

CHAIRMAN: The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGUSZTALIIE (Czechoslovakia): Mr. Chairman, if it is the interpretation I have given here of this Article, I would like, with the Delegate of New Zealand, to make reservations for the whole of Articles 31 and 32.

Mr. J. J. DEUTSCH (Canada): Mr. Chairman, speaking as the Canadian Delegate, I wish to speak in favour of maintaining the present text.

CHAIRMAN: The Delegate of the Netherlands.

Mr. C. H. BOGAARDT (Netherlands): I wish to support the point of view of the Delegate of Canada.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I would only say that it seems to me that if we leave this text as it stands it alters the basis underlying the conception of the tariff negotiations. If I understand it correctly, it is a definite understanding that these tariff reductions we are negotiating are going to be multilaterally bound. If that expression means anything at all, it means those multilaterally-bound rates
cannot be treated separately; the other people who are substantially interested have got to be brought in. It may be that the Commission does not want to adhere to the conception of multilateral binding. If it does not, we should hear about it.

CHAIRMAN: The Delegate of the United States.

Mr. John W. EVANS (United States): Mr. Chairman, I confess I do not quite understand the interpretation which Mr. Shackle, I think, is placing on this wording, or at least his understanding of what would happen in practice. As I understood this wording, although it refers to where a maximum duty has been negotiated, in actual practice the provisions which would be made for allowing for adjustment in the case of wide fluctuations would actually be made in the negotiations themselves, and sub-paragraph (b) of Paragraph 3 provides that other Members having an interest in the commodity should be given an opportunity to consult with respect to their proposed arrangements. So that it seems to me the other interested Members will be adequately represented in the application of this flexibility and there is nothing that really departs from the principles which have been followed in the tariff negotiations.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): With reference to what the United States Delegate has just said, I would like to call attention to the fact that the last four lines of Paragraph 2 do not cover this case; they refer to sub-paragraph (b) of this paragraph. The case of negotiating a tariff is covered under sub-paragraph (a) of Paragraph 2, so we shall not have had the other interested Members given their opportunity of consultation in respect of the tariff negotiations, which would be under
sub-paragraph (a) and not sub-paragraph (b).

It would be possible to deal with my point in a different way; that is, by deleting the words "sub-paragraph (b) of" in the last four lines of Paragraph 2, so that the last lines of Paragraph 2 would read: "Any Member entering into negotiations under this paragraph shall afford to other interested Members an opportunity for consultation in respect of the proposed arrangements." If that were done, everything would be straight. So long as you keep the words "sub-paragraph (b) of" in that passage, my point arises as regards tariff negotiations, because the other interested Members will not have been brought in, and you will not have reached agreement on what is a reasonable adjustment to allow for a variation in world prices. So that you either make my original change, which is to read in the last line of Paragraph 4: "the Member countries substantially affected," or else you alter the last lines of Paragraph 2 so as to read: "Any Member entering into negotiations under this paragraph shall afford to other interested Members an opportunity for consultation" and so on. I do think that in either case we have got to give the other Members their opportunity.

I should prefer my original amendment for this reason; that it does preserve more closely the parallel with the ordinary tariff negotiations. I think it is desirable to preserve that analogy in the case of these negotiations, then the other equally substantial interests get the benefit. I think my original amendment is better; that is to say, to amend the last line of Paragraph 4 rather than to amend the end of Paragraph 2.
CHAIRMAN: (Interpretation): May I have Mr. Deutsch's opinion on the alternative proposal which was just put forward by Mr. Shackle.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, this proposal was not specifically discussed in the Sub-Committee. I do think, however, that Mr. Shackle's proposal constitutes a change in substance from what has been agreed to in the Sub-Committee; the reason being that I think Mr. Evans mentioned that at the time of the negotiation of the import duties as it is now called, the method for effecting an adjustment to allow for price fluctuation will be determined in those initial negotiations. Now, if a member has negotiated the maximum import duties with those adjustments, then presumably, the matter is settled, or if there is no other question arising in the future—if the manner in which the adjustment is to be made is specified in the negotiations initially, then the thing proceeds automatically. There is no need in that case to consult other members when the adjustments are made. If this adjustment has not been spelled out, the method of this adjustment at the time of the negotiation, then it means perhaps that such an adjustment could not be spelled out at the time and the Member will naturally take into account when he enters into the negotiation that he may have to, if he wants to, make use of this proviso and will have to get the agreement of five or six of the parties. The tendency will be for the Member not to bring his action because he knows that when the time comes he has to get the agreement of five or six Members, and that will be difficult. In that case the tendency will be not to bind himself. It seems to me that will lead to less binding. Looking at it purely from the standpoint of personal interest in the export side of this question, I think it is advisable, even as the Canadian delegate, not to adopt Mr. Shackle's proposal because I think it will lead in fact in the end to a smaller reduction in international trade barriers.
than if we would not have it at all. It is always difficult to admit items in which a domestic price stabilisation schedule is involved, and the more impediment you put in the way the less bindings you are likely to get, and therefore I do not want to support Mr. Shackle’s amendment because I think it will lead to a smaller reduction in tariff values. I do suggest it is a matter of substance which was not discussed in the Sub-Committee.

Mr. R.J. SHACKLE (United Kingdom): As the Committee does not seem to agree with this amendment, I will not press it further. At the same time I notice no disagreement in the Commission with the view that the method of adjustment should be agreed in the original negotiation. If we do agree on that proposition, then I would be satisfied if that goes clearly into the record. It should become known that the point is that the method of adjustment should be agreed in the original negotiation. When we are agreed on that we might have a note saying so.

(Interpretation):
CHAIRMAN: I suppose that the Commission will agree on the last suggestion made by Mr. Shackle.

Mr. R.J. SHACKLE (United Kingdom): Thank you, Mr. Chairman.


Gentlemen, we shall interrupt our work for five minutes, and in five minutes we shall resume our work on Article 36.
CHAIRMAN (Interpretation): Gentlemen, in spite of what I said at the opening of this meeting, we shall take up the discussion on Article 33, which is to be suppressed. I was misinformed, and therefore we shall now examine Note 19. I think that all Delegates have taken cognizance of this Note, and that therefore they do not require any explanation on the Note.

The Delegate of New Zealand.

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, we would be quite happy with the text of Note 19 as it stands at the moment, on the understanding that that is completely without prejudice to the New Zealand amendment to Article 33.

Note 19 refers to the position of a country having a complete monopoly of its external trade, and we are quite happy that that subject be dealt with in the way suggested in Note 19. But I just wish to make it clear to other Members of the Commission that the deletion of Article 33 in no way affected our position as regards our amendment to Article 33, because that matter is, as you said at the beginning of the meeting, still to be further discussed by the Sub-Committee dealing with that matter tomorrow.

CHAIRMAN (Interpretation): I think that I can reassure the New Zealand Delegate that the adoption of Note 19 will, of course, be without prejudice to the amendment presented by the New Zealand Delegation.

Does anyone wish to speak on Note 19? Then Note 19 is adopted. We now turn to Article 36, which appears in Document E/PC/T/157. The Sub-Committee which dealt with Article 36 was presided over by M. Baraduc, and I now give the floor to M. Baraduc.
Mr. BARAUDUC (France) (Interpretation): Mr. Chairman,
I do not think it will be very useful for me to give here a
long explanation on the work done by the Sub-Committee on
Article 36, as the Text of it is well-known now by all the
Delegates here.

The composition of the Sub-Committee included
Representatives of Brazil, Czechoslovakia, France, the
Netherlands, the United Kingdom and the United States of America.
Furthermore, the Representatives of the following countries,
Canada, China and New Zealand attended our meetings and gave us
the most precious help in our work.

There is also the Representative of the International
Monetary Fund who attended our meetings and collaborated with us.

In a Meeting of the Preparatory Committee, this Committee
decided to set up a Special Committee on Article 36 and left it
to that Committee to discuss and examine freely (as freely as
it wanted) Article 36 and make the recommendations which this
Sub-Committee would find useful to make and in the form in
which it chose to make them.

In leaving the greatest possible freedom to the Sub-
Committee, I do not suppose that the Committee hoped that this
Sub-Committee would arrive at a solution of the delicate problem
which was referred to it; and we did not reach agreement on
one Text in our Sub-Committee, nor, must I confess, did we seem
from the start to be able to reach agreement on one Text. So
we are not submitting to this Commission one text, but three
alternative Drafts, which bear no authors' names, and if I may
use this comparison, they are as three illegitimate children
which we are bringing and depositing before the Sub-Committee,
three illegitimate children with unknown fathers, and I do not hope here that anyone will recognize these three illegitimate children as their own legitimate child.

The Committee abstained from discussing the merits of the three alternatives which we are now submitting to the Commission, and I think that the Commission will follow the same wise procedure as we followed ourselves. In considering these three alternatives, we considered them in relation to other Articles of the Charter, and also other Conventions, or other Agreements or Treaties. It appeared essential to the Sub-Committee to recommend to the Commission not to choose any of these three Texts, nor to pass a judgment on the merits of these three alternative Texts, but to forward these three alternatives to the World Conference.

If, in the World Conference, no unanimous agreement can be reached on any of these three alternatives, then the World Conference may have to approach such Body of the United Nations as it may think fit, to have an opinion on one of these three Drafts, or on the Draft which might be adopted by the majority of the Delegations in Havana, to know whether this Draft was inconsistent with the obligations undertaken by the Members of United Nations under the Charter of the United Nations. This is the whole of the work which we have achieved. Now I would like to go into some details of our work.

As I said, we examined these three Texts in relation to other provisions of the Charter, and we examined them in particular in the light of Articles 14 and 24, as regards Preferential Arrangements, and we also examined the possible effect of these three Drafts on the Reduction of Tariffs, on Subventions, and also on Commodity Agreements, and may I say that at the request of one of the Delegate, we also examined these three Texts as being one possible element regarding a Non-Member State in relation to its export to a Member State.
We also examined Article 36 in relation to other Conventions, Agreements and Treaties, and the Delegations sitting on the Sub-committee thought it highly desirable that no obstacle should be put in the path of agreements between Member States and non-Member States, so long as these agreements were not inconsistent with provisions of the Charter, or some provisions underlying the forthcoming Organization.

As regards political agreements, the sub-committee was embarrassed and found some difficulty in determining the category in which such agreements should be placed and providing for such exceptions here. I think that the work of our sub-committee will enable the discussion here on Article 36, and also the discussion which will take place at the World Conference, to be facilitated, and each alternative will bring elements into this discussion. I do not think — and this is at least the point of view of the French Delegation — that we can go beyond that stage.

Of course, as Chairman of the Sub-committee, I am ready to answer any questions which I might be asked.

CHAIRMAN (Interpretation): I thank Mr. Baraduc for his explanation. May I just add a few words.

The three texts which you have now before you present three different points of view, which may be the only possible points of view on this question. As M. Baraduc stated, we are not here to choose between these texts and if we agree to the draft of these texts we shall forward these texts to the Plenary Meeting. Nevertheless, I would like to draw your attention to Paragraph 9 of the Report of the Sub-committee, which reads as follows: "In versions 'B' and 'C' of the draft Article a paragraph has been included to cover the special cases of the Peace Treaties and the Specialized, or similar, Agencies, if the Local Drafting
Committee considers that those cases would not be clearly excepted in the absence of such an explicit exception. A similar provision would seem to be unnecessary in version "A" to accomplish the same purpose."

The Legal Drafting Committee has not had the material time to make known what its opinion is on this question, but we are happy to know that Mr. Fawcett is here amongst us this afternoon and therefore I will give the floor to him as soon as I have finished these remarks.

If we agree to forward the texts to the Plenary Meeting, with amendments which might be brought to them, these texts will be inserted as Article 36 in brackets, with a footnote added, which will be Paragraph 5 of the Report of the Sub-committee.

As regards Paragraphs 6 and 7 and the following paragraphs of this Report, they will be included and be taken up as general documentation of the Preparatory Committee, which will be sent to the Members attending the World Conference.

I will now give the floor to Mr. Fawcett.

Mr. J.E.S. FAWCETT (United Kingdom): Mr. Chairman, the Legal Drafting Committee did not put in any formal report about this, because they thought it would save time if they sent one of their members along to explain their view.

The conclusion they reached on version "B" was that the words in Paragraph 6, down as far as "United Nations" were not necessary, on the ground that the last resort, if a Member were required to terminate an agreement with a non-Member under Paragraphs 2 to 4 of the Article, it had a choice either of withdrawing from the ITO or of withdrawing from the other organization; therefore it could not be said to be required by this Article to withdraw from one or the other. Therefore, nothing in this Article could be interpreted as requiring it to withdraw from the other organization. Thus we thought those
words were not necessary.

As regards the Peace Treaties, we also thought that the provision was not necessary as regards the existing Peace Treaties, since Paragraph 1 of Article 56 relates to future advantages; Members shall not seek advantages as from the entry into force of the Charter, and therefore that would not apply to Peace Treaties which would presumably be already in force; and that, as regards Paragraph 2, the Peace Treaties are not commercial agreements. As regards future Peace Treaties with Germany or Japan, the position may not be so clear. Therefore, for the sake of caution, it might be better to put in the second part of Paragraph 6 of version "B" covering Peace Treaties.

As regards version "C", the same reasoning would apply to the Peace Treaties.

As regards the first part of the paragraph relating to withdrawal from other inter-governmental organizations, we felt that Paragraph 5 of version "C" was drafted in very wide terms indeed; any international obligation must be terminated if it would prevent a Member from giving full effect to the provisions of the Charter. That is so wide in scope and, although it is difficult to see how exactly obligations under the Convention of another Specialized Agency would, in fact, conflict, it is possible that that might happen. Therefore we thought, on version "C", the whole of Paragraph 6 should go in. But we would venture to suggest that the difficulty might be overcome, or the need of Paragraph 6 as regards Specialized Agencies might be avoided, if Paragraph 5 were drafted rather more precisely, perhaps limiting the types of obligations which must be terminated to commercial obligations.
CHAIRMAN (Interpretation): Does anyone wish to speak on the whole of this question?

Mr. JOHN W. EVANS (United States): Mr. Chairman, I think it would probably not be desirable to attempt to continue any more discussion than can be helped on the drafting of any one of these alternatives. I should like to suggest that the Commission accept the suggestions of the Legal Drafting Committee with respect to part of paragraph 6, version B, and all of paragraph 6, version C.

M. T. MONTEIRO DE BARROS (Brazil) (Interpretation): Mr. Chairman, as a member of the Legal Drafting Committee, I would like to support the remarks made by Mr. Fawcett and I adhere to everything he stated. Now as the representative of the Brazilian delegation I would like to adhere to the statement made by the United States representative.

CHAIRMAN (Interpretation): Gentlemen, do you agree with the proposal which was just made by the United States delegate and which was seconded by the Brazilian delegate?

Therefore, the three alternatives will be submitted to the Plenary Commission in the way that I have previously mentioned.

Mr. R.J. SHACKLE (United Kingdom): I would prefer, Mr. Chairman, if we had now an opportunity to discuss the different paragraphs of the Report which accompany the three alternatives, and I will have a few remarks to make on them.

Well, Mr. Chairman, there is only one point that I have to raise, and I would apologise for raising it because we were on this sub-Committee and this was an after-thought, a piece of esprit d'escailler. It relates to the last sentence of paragraph 5, which reads: "The Sub-Committee suggests that the World Conference may wish to seek expert opinion as to whether, under these circumstances,
any of the drafts would be in conflict with the obligations of Members of the United Nations." Well, now, it seems to us on second thoughts that if it was a question of having expert opinion there is really only one way in which that expert opinion could be obtained, and that would be by seeking an advisory opinion from the International Court of Justice. But it does seem to us that that would be extremely elaborate and a very cumbersome procedure. In the first place this Preparatory Committee has not, as we understand it, got a status to ask an advisory opinion of the Court. The only body that can do that is the Economic and Social Council on our behalf, and even if the Economic and Social Council did have the matter up with the International Court, there would be the question of preparing a reference and formulating the question on which we want the Court's opinion. All that would be an elaborate process, and, moreover, the time factor might not fit. It might well be that the Economic and Social Council will not have enough time to formulate this reference to the International Court and when the opinion of the International Court is obtained there might not be enough time to present it to the World Conference. It seems to us that we are being given a steam roller to crack a nut. We would like to suggest that this is rather a matter which each country Member of the United Nations which goes to the Conference should think out/in advance for itself. I would presume that and Members countries signatories of the Charter of the United Nations would give some thought to the obligations involved in that, and it seems to us that in this particular matter countries might consult their experts on these questions, and we would not suggest to the World Conference that they do anything like referring the matter to the International Court of Justice, so what it comes to is that I should like to suggest that we refer the last sentence of paragraph 5 to read like this: "The Sub-Committee suggests that countries, Members of the United Nations proposing to attend the World Conference, should give consideration to these questions." That takes the place of "the World Conference may wish to seek expert opinion...." and so on. That is the suggestion I wanted to make.
CHAIRMAN (Interpretation): Gentlemen, I would like to have Mr. Baraduo's opinion on this question.

M. F. BARADOU (France) (Interpretation): Mr. Chairman, I am sorry to say that I cannot agree with Mr. Shackle's point of view. In fact, the sentence which appears here reflects the discussion which took place in the Sub-Committee, and if this sentence were to be suppressed there might be serious objections on the part of certain delegations, and even the attitude of certain governments, towards the World Conference might change.

Well, Mr. Chairman, what is the question? Article 36 might have serious repercussions on the political plane. Therefore, certain governments coming to the World Conference might be troubled if the text of Article 36 were to be finally adopted after a majority decision, but if these governments know that the text to be adopted by the majority is, nevertheless, likely to be referred to a body of the United Nations as, for example, the Economic and Social Council, or any other body of the United Nations, then these governments will know that the reservations which they may have made as Members having voted in the minority on that point at the World Conference will be taken into consideration by these examining bodies, and in the end they will be able, therefore, to adhere to an eventual solution, and this is the purpose which is served by the sentence which we have included here. The sentence, as I have stated, reproduces and reflects the discussions which took place in the Sub-Committee, and I would be very happy if other Members could let us know what they think of this text.

CHAIRMAN (Interpretation): Gentlemen, who wishes now to speak on Mr. Shackle's amendment?
DR. A.B. SPEKENBRINK (Netherlands): Mr. Chairman, I would like to support Mr. Baraduo's remarks entirely, and I do that with recent experience in my mind. Therefore, I am also entirely in favour of the possibility of having the advice of the International Court of Justice. Thank you.

CHAIRMAN (Interpretation): Who wishes to speak on this matter?

Mr. K. J. SHACKLE (United Kingdom): Mr. Chairman, I have just one thing to say, that is, that if it is really the intention to obtain thoroughly expert opinion, then I think it must be the International Court of Justice. I do not think that the Economic and Social Council has the necessary juridical standing to give an expert opinion, and I think we must reconcile ourselves to the fact that it will be necessary to seek advisory opinion of the International Court of Justice. If that is to be done, the procedure and timing for making that reference will have to be thought out very carefully, and that will no doubt be done.

I do not necessarily object, if that is the wish of the Commission, but I would point out that it will require some careful thought as to how it will be done.

CHAIRMAN: Mr. Evans.

Mr. John W. EVANS (United States): Mr. Chairman, our feeling is that the World Conference is a body capable of arriving at its own decisions, and for that reason it probably is not necessary to suggest any procedure to the World Conference.
Under the circumstances, and for that reason, the suggested wording of Mr. Shackle would have been perfectly satisfactory to us.

On the other hand, it is a subject which is delicate, and rather strong feelings are held. For that reason, we feel that the somewhat neutral reading of this paragraph as drafted in the Report is probably the most satisfactory that can be arrived at, and I suggest that it be retained.
CHAIRMAN (Interpretation): Gentlemen, I suppose, therefore, under the present circumstances, everyone agrees to maintain the text as it now stands?

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I have one more question to ask, and that is this: I have seen in all these three drafts that a Member can, of course, decide not to accept the decision of the Organization with regard to relations with non-Members. However, I find everywhere that in that case the Member may withdraw from the Organization, and I understand from that that when it comes to the Organization not approving the action of a certain Member, the only possibility open to the Organization is as laid down in Article 35(2) - withdrawing and withholding concessions in respect of the non-willing Member of the Organization.

I think it is a very important point, and I wonder whether it would not be a good thing for us to point that out to the World Conference - that it is the Member who can decide, and the Organization can only apply certain measures provided for under Article 35(2). I do not know whether there is a special reason why that has been left out of the Report.

CHAIRMAN: The Delegate of France.

M. BARADUC (France) (Interpretation): Mr. Chairman, as Chairman of the Sub-Committee, I would have no objection to such a reference in the Report as has been suggested by Mr. Speekenbrink. We could state that as regards the powers of the Organization, these are established under Article 35.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think
that possibly this difficulty may be assisted by an amendment of paragraph 5 of Version "B". Paragraph 5 of Version "B" has two alternatives: "...a Member either shall inform the Organization of its acceptance of the decision, ......or, if it is unwilling to accept the decision of the Organization, may give notice in writing... of its withdrawal".

Now, we feel on consideration that the "may" in the second alternative is illogical. There ought to be two clear alternatives. Either the Member shall accept or it shall withdraw. There should not be any doubt as to what happens if it does not accept the decision of the Organization. If we substitute the word "shall" for the word "may" in the second alternative, then it will be accepted in advance by the countries that adhere to this Charter, and in this situation they will withdraw, so that I think the question of whether sanctions and withdrawal of concessions should be applied to them should, in all probability, not arise, because there is a prior acceptance of the obligation to withdraw in those circumstances. It seems to us that the changing of "may" to "shall" would result in a clearer and more logical provision, and for that reason I suggest that the change be made.

CHAIRMAN (Interpretation): I shall ask M. Baraduc's opinion once again.

M. BARADUC (France) (Interpretation): Mr. Chairman, I wonder whether, if we discussed this question, it would not be breaking the rule which is a self-imposed one - that is, that the authors of the three texts here should remain unknown, and whether if we started discussing one of these alternatives, the author of one of the alternatives would then recognize his child.
Dr. A.B. SPEEKENBRINK (Netherlands): That was the reason I only asked to mention the Sub-Committee Report.

CHAIRMAN (Interpretation): I think that it is, in fact, extremely difficult to amend the text itself of the draft here; but I believe that, nevertheless, we may be able to give satisfaction to Mr. Speekenbrink in the way which he himself suggested, and to which I suppose the Commission will agree. Are there any other observations? The meeting is adjourned.

(The meeting rose at 6.40 p.m.)