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

VERBATIM REPORT.

THIRTY-EIGHTH MEETING OF COMMISSION "A"
HELD ON THURSDAY, 14 AUGUST 1947 AT 10.30 A.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.
CHAIRMAN: (Interpretation): Gentlemen, we have to examine today Chapter IV of the Draft Charter. This Chapter has been examined by a sub-committee under the Chairmanship of Dr. Coombs. The Report on Chapter IV is contained in Document E/PC/T/162 dated 11 August.

Before calling upon Dr. Coombs to present his Report I call upon the Delegate of the United States.

Mr. Seymour RUBIN (United States): Mr. Chairman, the United States Delegation would just like to make one preliminary remark at the beginning of our work.

We are very much concerned by adhering to the Schedule as last revised by the Secretariat and it would be our suggestion that, in case there should be any difficulty in finishing the task of this and other Commissions within the time limit on the Schedule prepared by the Secretariat, we should all be prepared to have Sunday or evening meetings, should that be necessary. I wanted to make that remark at the outset, just so that, if it should develop at some time during the day that it might be necessary to call an evening meeting, we should be apprised of the suggestion which might be made at a later time by our Delegation.

CHAIRMAN: (Interpretation): I am also concerned about the Schedule drawn up by the Secretariat, and you will recognize that I have always endeavoured to comply with the Schedule, but I think it is unnecessary now to foresee a night meeting; we shall see in the course of the discussion. But I entirely agree that the discussion of Chapter IV should be concluded today.

Dr. H.C. COOMBS (Australia): Mr. Chairman, it is with great pleasure and some relief that I present the Report of the sub-committee on Chapter IV. Their labours were strenuous; I hope the results were proportionate to their labours.
I do not think there is any comment which I need to offer on the Report itself except to draw the attention of the Commission to a suggested amendment to paragraph 2 on page 5. This suggested amendment is set out in Document E/PC/T/162, Corr: No: 1, and is designed solely to clarify the meaning of the words and is, I understand, acceptable to all the Members of the Committee.

The other matter to which I wish to refer is the Report of the Legal Drafting Committee in which they set out a text which has been reviewed by them and has had certain changes made. I would, if I may be permitted, like to congratulate the Legal Drafting Committee on that text. It seems to me to be an admirable one and the changes which they have made have, in almost all cases, been substantial improvements.

One point, however, I feel it necessary to refer to: that is, the proposal which they have made to include in Article 13 certain words in paragraph 1. I think the original text referred to the "development or reconstruction of particular industries" and a note appears in the Report of the sub-Committee to this effect:

"The sub-Committee agreed that the word "industries" appearing in paragraph 1 of Article 13 is used in its widest sense and therefore includes agriculture."
The Drafting Committee have suggested that after the words "particular industries" we should include in the actual text the words "including agriculture". Now this has been the subject of considerable discussion in the Sub-Committee itself, where it was decided not to include such words, despite a request urged very strongly by the Chinese Delegate that they should be included. The reason for that was that it was felt it was preferable to meet the Chinese Delegate's point by leaving this comment in the Report, since a reference to one particular class of industries in this case might lead to some doubt as to whether other classes of industries were also covered.

Generally it was felt that any attempt to specify, in following a phrase so completely general as "development or restriction of particular industries" would tend to limit the generality of the phrase, rather than to clarify it. So, while, of course, it is for the Commission to decide, I thought it necessary to refer to the fact that the Sub-Committee did consider the suggestion which the Drafting Committee has put forward there, and specifically decided not to accept it.

I do not think it is necessary for me to add anything else, Mr. Chairman, and I command the Report on the Draft Text to the Committee.

CHAIRMAN (Interpretation): Gentlemen, as suggested by Dr. Coombs, we shall now take up the discussion of Chapter IV, on the basis of the Report of the Legal Drafting Committee, E/PC/T/167.

Article 9: Importance of Economic Development in Relation to the Purpose of this Charter.
Any remarks?

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, first I would like to state that there is an error in the type in the Report of the Legal Drafting Committee on Chapter IV, and that is "Restrictive Business Practices".

Then, secondly, I would like to have an opinion of the experts on the mysteries of the English language. Why are we using in Article 9 "the Members", then in Article 10 "Members", then in Article 11 "Members", and then in Article (I think) 12 (a), again, "the Members"? There is some substantial difference.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKEE (United Kingdom): I think I would like to venture an opinion, after rushing in where angels fear to tread, on this question.

In Article 9 the Members recognise a collective recognition on the part of all the Members, whereas in Article 10 it is an obligation on each Member within their respective territory to do this and that; and the same with Article 11 - each Member will co-operate with the other Members - so that Article 9 is a collective recognition by all the Members, whereas 10 and 11 are individual Members.

That, I think, is the explanation.

CHAIRMAN (Interpretation): Any further remarks on Article 9?

Adopted.


Article 11: Co-operation for Economic Development.
M. BARADDOU (France) (Interpreted): What was the text adopted for Article 10?

CHAIRMAN (Interpretation): The text adopted was the text submitted by the Legal Drafting Committee and in that case the word in brackets will be deleted; for instance, the Article will read: "Members shall within their respective territories ...."

M. BARADDOU (France) (Interpreted): I would point out, Mr. Chairman, that in this particular Article the word between brackets was a United Kingdom amendment, supported by the French Delegation. I would like to know whether the United Kingdom Delegation now withdraws its amendment.

CHAIRMAN (Interpretation): The text under discussion is a text submitted by the Legal Drafting Committee and the word between brackets should, in the opinion of the Legal Drafting Committee, be deleted and replaced by the word underlined. In this particular instance the Article would read: "Members shall within their respective territories" instead of "jurisdictions."

Does the French Delegation agree to this?

(The French Delegate signified his agreement.)

Article 11.

The Delegate of the Netherlands.

Mr. A. B. SPEEKERBRINK (Netherlands): Mr. Chairman, when of Article 11 I compare Paragraph 1 with Article 10, I see that in Article 10 one speaks of "... progressively to develop, and where necessary to reconstruct..." When it comes to the question of co-operating, in Article 11, we only speak of "... promoting industrial and general economic development." Is there a special reason why "reconstruction" is left out of this paragraph?
CHAIRMAN: Dr. Coombs?

Dr. H. C. Coombs (Australia): My impression is that we had intended to include "reconstruction" in all places where it was relevant, but that we just forgot this one.

CHAIRMAN (Interpretation): Then the word "reconstruction" will be inserted. Do you agree with that, Mr. Speekenbrink?

Mr. SPEEKENBRINK (Netherlands): Yes, Mr. Chairman, I think it will be entirely in conformity with Article 10 if we put it in here.

CHAIRMAN (Interpretation): Is everybody agreed on this amendment?

(Agreed)

Mr. SPEEKENBRINK (Netherlands): How will it read then? Do we simply say: "... promoting industrial and general economic development and reconstruction"?

CHAIRMAN (Interpretation) (after receiving Dr. Coombs's agreement): It will read: "... in promoting industrial and general economic development and reconstruction."

The Delegate of the United States.

Mr. Seymour RUBIN (United States): I think, Mr. Chairman, that perhaps on this particular point the words "or reconstruction" would be more appropriate. It may be a case of industrial development on the one hand or reconstruction on the other.

CHAIRMAN (Interpretation): Dr. Coombs, do you agree?

Dr. COOMBS (Australia): I agree.
CHAIRMAN (Interpretation):* It will therefore read: "or reconstruction."

Are there any further remarks on Paragraph 1?
We will then go on to Paragraph 2.
The Delegate of Belgium.

M. BARADUC (France) (not interpreted).

Baron P. DE GAIFFIER (Belgium) (Interpretation): The French Delegate's remark applies chiefly to the French text. The English words "appropriate advice" have been translated into French by "avis éclairés". I suggest that the word "circonstanciés" should be substituted for "éclairés."

CHAIRMAN (Interpretation): I should prefer the word "circonstanciés", which is nearer to the English text.

The Delegate of the Netherlands.

Mr. SPEEKENBRINK (Netherlands): I wish to make the same remark as before, Mr. Chairman. In the middle we speak only of "... programmes for economic development."

CHAIRMAN (Interpretation): Therefore, in conformity with our discussion, the word "reconstruction" will be inserted.

Does the Delegate of China wish to say anything?

H. E. Mr. TUNSZ KING (China): Mr. Chairman, I wish to join Dr. Coombs in congratulating the Legal Drafting Committee for having introduced so many improvements in the text and, in particular, to this paragraph which, as it originally stood, seemed to be very difficult to understand, especially for the Chinese Delegate, whose command of the English language is
rather limited. But I would like to ask for some further elucidation on Page 3, towards the end of it. The improved texts reads, in this connection: "The Organization shall upon the same conditions, likewise aid Members in procuring appropriate technical assistance." If you compare this text with the original one, it seems to me that some words have been added, that is, the words "upon the same conditions." I would really like to know whether this addition does or does not change the substance of the stipulation in question.
CHAIRMAN: (Interpretation) Who is the Delegate responsible for this wording?

Dr. GUSTAVO GUTIERREZ (Cuba): This is one of those children, Mr. Chairman, for whom it is very hard to find a father. This Article has been the result of long discussions and many compromises. The final text was changed many times and now it has been improved by the Legal and Drafting Committee so as to make it readable. In my opinion the only difference is that it is related to the conditions because it is mentioned in the Article that the Organization shall likewise aid members in procuring appropriate technical assistance on the same conditions set forth before. That is to say that such advice or assistance shall be furnished upon terms to be agreed on and would be given collaboration of the appropriate intergovernmental organizations so as to use to the full extent the special competence of each one of those organizations. That is to say that those conditions will also govern the second sentence and the final one that finishes the Article. Of course, if our Chinese colleague desires more explanation I will explain to him why this was brought in.

Dr. H. E. COOMBS (Australia): It seems to me that the Legal Drafting Committee was concerned in cutting up exceedingly complicated and long sentences into parts so that it would be more readily comprehended and I think that was a very good idea. To do that, however, made it necessary that in some of the short sentences reference should be made to the contents of the previous sentences and that requirement makes the inclusion of the phrase something to that effect "the same conditions" necessary in order that the contents of this particular sentence shall be subject to the general proviso stated in the earlier sentence. I think it does not add anything to the meaning and does seem to be a convenient way of getting over a rather difficult constructional question.
H.E. Mr. WUNSZ KING (China): I wish to thank the Cuban and Australian representatives for their explanations. I am not interested in finding the whereabouts of the father of this child but I would like to point out that so far as I understand the meaning of the original text it seems to me that in aiding the Members to procure appropriate technical assistance, the Organization will give such aid, according to the original text, without any conditions. Now, in the improved text it seems to me that the rendering of aid by the Organization in this connection would be conditional. Therefore, I note some sort of difference and I would like to know whether it is the understanding of the Commission as a whole that it should be conditional or unconditional.

Dr. GUSTAVO GUTIERREZ (Cuba): Mr. Chairman, I do not see that there really exists such a difference because the previous text had always said from the beginning that "subject to any arrangements entered into between the Organization and the Economic and Social Council and other appropriate intergovernmental organizations, the Organization shall ..." etc. and the Organization would help to procure advice and technical assistance.

The new element introduced here was that there should be "collaboration with other appropriate intergovernmental organizations as will use fully the special competence of each of them". As you see, therefore, this does not bring in fact any new conditions. They are the same conditions that were set up at the beginning in a general form and in this case it is specifically mentioned in order to assure that every one of the organizations, for example in this case the I.T.O. on one side and the International Bank on the other, would not be shifting the matter from one to the other but on the contrary when a nation asked for advice or technical assistance then both organizations would get together and do their best to give this advice or assistance.
CHAIRMAN (Interpretation): May I take it that these explanations are likely to satisfy the Chinese Delegate?

H.E. DR. WUNSZ KING (China): I thank you very much, but it seems to me that the very long and involved phrases from the words "within its powers and resources" to the words "as will use fully the special competence of each" apply, so far as the drafting is concerned, only to the word "shall" on the fourth line and do not apply to the words "or assist" in paragraph 2 of page 11 of document E/PC/T/162.

I do not insist upon this point, but still I would like to point out that the word "likewise" at the bottom of page 3 of document E/PC/T/167 should be sufficient to cover the point, and if that is so the words "upon the same conditions" seem to be quite unnecessary.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, as regards the interpretation of the original text which is paragraph 2 on page 11, I think it is entirely clear that the conditions will apply both to the furnishing and the assisting, if you look at the structure of the sentence. It reads, omitting certain words, "the Organization shall, within its powers, . . . etc., furnish . . . and assist . . ." Now, it follows that the words immediately following "shall" -- "within its powers and resources" -- are attached to the word "shall", but the word "shall" is itself attached in the first place to the word "furnish", and in the second place to the word "assist". It is clear from the position that the word "shall" is also attached (a) to the word "furnish" and (b) to the word "assist". Therefore, it is quite clear that the conditions are the same both for furnishing.
and assisting.

As regards the question of whether we should say "upon the same conditions, likewise", it seems that the word "likewise" is not sufficiently clear in itself, and we should keep "upon the same conditions".

CHAIRMAN (Interpretation): Gentlemen, I suggest that we should no longer continue this discussion, which appears to me to be chiefly a discussion of grammar, and, as you well know, this sort of discussion is the longest of all.

I shall therefore ask the Chinese Delegate not to insist and to leave the text as it stands.

H.E. DR. WUNSZ KING (China): Mr. Chairman, I certainly do not claim to know more English than the United Kingdom Delegate, and therefore I do not insist.

CHAIRMAN (Interpretation): Are there any further remarks on Article 11?

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would just like to make a very short remark. The first sentence reads "Subject to any arrangements entered into between the Organization and the Economic and Social Council and other appropriate inter-governmental Organizations". The Economic and Social Council is not an inter-governmental organization, and I think they are very anxious about their prestige, so I suggest that we say "and the Economic and Social Council and appropriate inter-governmental organizations" or that we say "and the Economic and Social Council or appropriate inter-governmental organizations", so as to make a difference between the Council and the inter-governmental organizations.
CHAIRMAN: (Interpretation): I think we can all agree with this remark.

Are there any other observations?

Monsieur Baraduc.

M. BARADUC (France) (Interpretation): May I speak again, Mr. Chairman, on the remark made by the Belgian Delegate regarding the words "appropriate advice". I think that we should not qualify this "advice" in any form whatsoever. The Organization itself will see what kind of advice it will have to give, and, therefore, I suggest the deletion of the word "appropriate".

CHAIRMAN (Interpretation): Are there any further remarks on this? Do we agree to delete the word "appropriate"?

MR. S. RUBIN (United States): Mr. Chairman, it does seem to me that the word "appropriate" is appropriate to this particular paragraph. I do not see that it does any great harm, certainly so far as the English text is concerned. It also seems to me that it lends a certain desirable nuance to the text, a nuance in favour of the Organization giving advice which is designed to accord with the powers and resources of the Organization, and also to accord with the plan of the Member which is submitted to the Organization for its advice. Although I do not have any strong feelings on this point it does seem to me that it would probably be more desirable to retain the word "appropriate".
Dr. H.C. COOMBS (Australia): Mr. Chairman, I do not think it is very important, but there is a certain amount in the French Delegate's point. The history of the word "appropriate" is that it originally appeared in this text as an attempt to meet a point which is now met by the reference to other Organizations. I think the idea attaching to "appropriate" at the time was that the advice should be appropriate to the functions of the Organization and that it should not venture into fields where other Organizations were more competent. I think that was the implication. Whether it is still necessary, in the light of the more precise specification may, perhaps, be doubted; though I think I would agree with the United States Delegate that it does no harm.

CHAIRMAN: The Delegate of France.

M. Pierre BARADUC (France) (Interpretation): The explanation supplied by Dr. Coombs has put into its true light the meaning of the word "appropriate", which I thought had only been inserted in order to make more readable English. I agree now that the word "appropriate" should be kept, and I suggest that it should be translated into French by "qualifié".

CHAIRMAN (Interpretation): Is that agreed? Are there any more remarks on Article 11?

Mr. Seymour RUBIN (United States): Mr. Chairman, just one more question: Is the text of the first few lines amended now by the deletion merely of the word "other"? That was my understanding of the change which was made—that the text should read: "Subject to any arrangements entered into between the Organization and the Economic and Social Council and
appropriate inter-governmental organizations". Is that correct?

CHAIRMAN (Interpretation): I think Mr. Augenthaler suggested two alternatives: "and appropriate" or "or appropriate". My own preference is for "or appropriate".

Dr. Gustavo GUTIERREZ (Cuba): I think it is necessary to say "and", because it concerns the arrangements entered into between the Organization and the Economic and Social Council and the other appropriate inter-governmental organizations.

CHAIRMAN (Interpretation): (to Mr. Rubin): Is that agreed?

Mr. Seymour RUBIN (United States): Yes.

CHAIRMAN (Interpretation): "And" is agreed. Are there any more remarks on Article 11?

Article 12 - paragraph 1.

Dr. A.B. SPEEKENBRINK (Netherlands) and M. BARADUC (France) exchanged remarks in French, not interpreted.

CHAIRMAN (Interpretation): I have not quite understood your remarks.

Dr. A.B. SPEEKENBRINK (Netherlands): We say here "that would prevent other Members from obtaining on equitable terms any such facilities for their economic development". I would say "or reconstruction" after the words "economic development".

Dr. H.C. COOMBS (Australia): I doubt whether it is necessary to repeat the word "reconstruction" every time. We have in various places in this Chapter used "development" as, so to speak, a shorthand expression covering the whole long phrase "industrial and general economic development and reconstruction".
so I doubt whether it is necessary to repeat the word every time. If there is any real concern about it, there is no harm in putting it in, but it does, I think, make the text longer without adding anything to it.

CHAIRMAN: The Delegate of France.

M. P. BARADUC (France) (Interpretation): I rather share the opinion of Mr. Speekenbrink, and I think that the word "reconstruction" should be inserted here.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I believe that the phrase "general economic development" is a very broad one and covers also the concept of reconstruction, and I think it would be redundant to use both "industrial progress" and "general economic development". We might have "industrial progress and development", but not both phrases.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I was going to say more or less what has been expressed by the previous speaker - that if we are going to add the word "reconstruction" every time that we have the words "economic development", we are probably going to ruin the text. "Reconstruction" is included in any kind of development, because the first stage in development is reconstruction. Besides, the idea of general economic development is plain in the whole Chapter in relation to the wide aims of the expansion of the economy of the world - and of trade, employment, and "reconstruction" is a very limited word. I think it would be preferable to insert an explanation that everywhere "economic development" is mentioned, "reconstruction" is included, and not to put those words together every time.
Dr. SPEEKENBRINK (Netherlands): Mr. Chairman, I was thinking along the same lines, and I then thought this point might be covered where we have that additional Article 11 Note - that where in other parts of the Charter we speak of "Economic Development" we also mean "Reconstruction" where appropriate.

CHAIRMAN: We can put that Note at the bottom of Article 9.

Dr. SPEEKENBRINK (Netherlands): I do not think Article 10 deals with Reconstruction.

CHAIRMAN: The words "General Economic Development" appear for the first time in Article 9.

Dr. SPEEKENBRINK (Netherlands): Yes, but in Article 10 we speak of "where necessary to reconstruct"; and I wonder on this point whether it might not be better to put it there - but I leave it with you.

Mr. WEBB (New Zealand): Mr. President, I would just point out that I think the word "reconstruction" should go in Article 10 because Article 26 contains a cross-reference to Article 10, which in some sense makes the word "reconstruction" necessary.

CHAIRMAN: I think we can ask the Secretariat to find the appropriate place for the Note.

Mr. GUTIERREZ (Cuba): In that case I have no objection to where we have already included it.

CHAIRMAN: The Delegate of France.
Mr. BARADUC (France) (Interpretation): I agree with everything that has been said, including the remark made by Mr. Webb, namely, that the words "to reconstruct industrial and other economic resources" should be maintained in Article 10, in view of the cross-reference to be found in Article 26.

CHAIRMAN: Any further remarks on paragraph 1?

The Delegate of France.

Mr. BARADUC (Interpretation): A point of detail, Mr. Chairman. Since London and New York there has been an omission which now should be made good.

I refer to the word "unreasonable" - "unreasonable impediments" and I think that the French text should be amended in conformity with the English Text and that the word "déraisonnables" should be inserted after the word "entraves".

CHAIRMAN: The Delegate of Belgium.

BARON DE GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I was about to make a remark on the same lines, but it seems to me that the word "injustifiées" would be preferable in the French text.

Mr. GUTIERREZ (Cuba): Mr. Chairman, we should then change the word in English to "unjustified". We had long discussions about this, and probably "unreasonable" is only clear in English. When you translate "unreasonable" in any other language, besides French, it does not make sense, because it is very difficult to decide what is meant by "unreasonable". It depends on the person making the judgment. If you say "unjustified" that is rather more adequate. Then it would come together with the French text, otherwise, in my personal opinion, there would be
a very different meaning, and both texts are problems, by themselves. They are not translations one of the other.

CHAIRMAN: The Delegate of Australia.

Dr. COOMBS (Australia): I think that in the light of the discussion of the Committee, it would be very difficult to accept the change in the word "unreasonable" to "unjustified". It was a matter which was discussed before. I am not competent to comment on how you translate "unreasonable" into French, or whether it can be translated, but it certainly would be, in my opinion, unacceptable, in view of the discussion of the Committee, to change "unreasonable" to "unjustified" in English.
CHAIRMAN: The Delegate of Chile.

Mr. Angel FAIYOVELCH (Chile) (Interpretation): The Charter is not drawn up only for the English-speaking people but it will also have to be drafted in French, Spanish and other languages, and the English word "unreasonable" has no exact equivalent in French or in Spanish. The word "unjustified" or "unmotivated" would appear to correspond to the idea which we desire to express here.

I agree with Dr. Gutierrez and the French Delegate that we should find a word which has the exact equivalent in other languages than the English language alone.

CHAIRMAN (Interpretation): Gentlemen, since we are discussing here the French text, and the English text is not in question, I wonder if we could not leave the English text as it stands and adopt for the French text the word "injustifié", which appears to me to be the best equivalent for the English word "unreasonable", because in French a thing may not be justified in the eyes of reason. Therefore I suggest we adopt "injustifié" in the French text and leave the English text as it stands.

The Delegate of France.

M. BARADUC (France) (Interpretation): I think, Mr. Chairman, there is here more than a question of language or translation, but a deep difference in the very concept of the law. The French thought is in agreement with the opinions which have been formed on the concept of Roman Law, but this is a matter which we could discuss for weeks, if not for months, and therefore I suggest, if the Commission agrees, that we adopt the proposal made by the Chairman.
CHAIRMAN: The Delegate of Cuba.

Mr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I wish to state very clearly that the Spanish-speaking countries will take the French text in this connection.

CHAIRMAN: Then that is agreed.

The Delegate for the Lebanon.

Mr. Moussa MOBARAK (Lebanon) (Interpretation): There is an enormous difference, in my opinion, between the word "unreasonable" and the French "injustifié" and it would be necessary to ask the English-speaking Delegates here whether they agree that the exact equivalent of "unreasonable" in French should be "injustifié"; otherwise, in a case of conflict, we may be faced with difficulties if there is a dispute between parties, during which one refers to the English version and the other to the French version.

CHAIRMAN: (Interpretation): I do not think we shall be faced with such a difficulty, because any impediment is both unreasonable and unjustified and I think that everybody will thus be satisfied. I therefore suggest we leave it as it is.

The Delegate of France.

M. BARADUC (France) (Interpretation): In that case, Mr. Chairman, I wonder why we put the two words here: "No Member shall impose unreasonable or unjustified impediments", especially as in Paragraph 2 we find: "No Member shall take unreasonable or unjustifiable action...". This might be the proper solution.
CHAIRMAN (Interpretation): Then the text would read, both in French and in English: "No Member shall impose unreasonable or unjustifiable impediments." Is everybody agreed?

(Agreed).

Are there any further remarks on Paragraph 1?

Baron P. DE GAIFFIER (Belgium) (Interpretation): I wonder whether, in the French text, the word *ressources*, five lines from the bottom of Paragraph 1, could be replaced by "moyens".

CHAIRMAN (Interpretation): That would not affect the English text.

Baron DE GAIFFIER (Interpretation): It is in order to avoid any confusion between the word "ressources" and "natural resources" in the French and I suggest this substitution for the English word "facilities."

CHAIRMAN: (Interpretation): I think we can agree to this amendment. The English text is not affected.

Are there any further remarks on Paragraph 1?

Are there any remarks on Paragraph 2?
Baron P. de GAFFIER (Belgium): Mr. Chairman, I do not remember whether we changed the first line of paragraph 1 of Article 12.

CHAIRMAN: No, we have not changed it. Are there any further remarks on paragraph 2? Adopted, We pass on to paragraph 3.

Mr. Angel FAIVOVICH (Chile): The Legal Drafting Committee deleted the word "jurisdiction" in paragraph 2 and substituted the words "territories" instead of "jurisdiction" but I think that the word "territories" can also be deleted because it is obvious that no State can take any measures outside its own territory and therefore I suggest the deletion of this word.

CHAIRMAN: Are there any remarks on this amendment?

Mr. Seymour RUBIN (United States): We seem to have the phrase "within its territories" occurring in a number of places in the Charter, for example in Article 10 as well as in Article 12 and I wonder whether it would not be better to retain the phrase in this case as well.

Mr. Angel FAIVOVICH (Chile): I think, Mr. Chairman, that if in other Articles of the Charter there are expressions which appear to be unnecessary it would not be justifiable to maintain them here but on the contrary they should be deleted, otherwise the readers of the Charter will think that the authors of the Charter do not know what a State is and that we are apprentices in matters of law.

Mr. Seymour RUBIN (United States): Mr. Chairman, I have no strong feeling on this point. The phrase "within its territories" might be specifically addressed to the question of action within a territory or colony or other legal territory of a Member State and
the words were inserted in order to take care of that possibility.

Mr. R. J. SHACKLE (United Kingdom): I think there is an additional reason for retaining these words because they point to the place in which so to speak the interests of the nationals and other Members are located. It is the consequence of the fact that their nationals are participating in the development, that they have brought—maybe their capital or appliances or maybe all kinds of things, but they are chiefly located on the territory of other Members. I think that those words appear for the same reason in iii, paragraph 2 of Article 12a on page 9 in this print. I think that is the reason—the location of these assets or whatever they may be.

Mr. Angel FAIVOVICH (Chile)(interpretation): Mr. Chairman, I do not insist because this is not a question of substance. However, I should like to state that the reasons given by the delegates of the United States and of the United Kingdom have not convinced me. The Metropolitan territory or the Colonial territories are perfectly defined and described in the International Law. However, I will not press my point.

M. P. BARADUC (France)(interpretation): Mr. Chairman, I apologise but I have also a remark to make regarding the form of this paragraph. The list of the various interests of nationals in technical activities is such that it makes the sentence unbearable in the French text practically and the same applies to the end of the first sentence in paragraph 1. I suggest that before we conclude the examination of this Chapter, that is before this evening, that we should in agreement with the French speaking colleagues prepare a French text which would be more intelligible and at the same time as near as possible to the English text.
The English text would not be changed, and it is only a question of re-writing the French text.

Mr. Chairman, on the word "nationals" it seems to me a question arises, which the sub-committee may or may not have considered.

What happens if the action by which a complaint is introduced affects, let us say, an American national in the Union of South Africa? Does the American national have to go to his government, although the whole of his economic activity is situated in the Union of South Africa? Is not intended to mean people domiciled in the country of the Member making the complaint?

Mr. Chairman, the position as it appears to me is that if there is a United States national in the Union of South Africa, then there is nothing to prevent him going to the appropriate government in South Africa if he has any matter he wishes to discuss. That is, so to speak, a purely informal procedure, but from the moment that this becomes a formal procedure - and all the rights that are set up under this Charter are rights between governments, and that is formal - that American national would need to go to the United States government, and the United States government would then take the matter up formally with the Union Government. There is nothing to prevent an informal procedure, but if it becomes a formal case under the Charter, then it goes to the Government of the National.

I can see the possibility that the complaint by the American citizen is against action taken by the United States of America which affects his interests in the
Union of South Africa. Then, he will have to go to the Government against which he is submitting the complaint to bring the complaint.

MR. S. RUBIN (United States): Mr. Chairman, if I can comment on this without getting into one of the legal discussions which enlivened the sub-committee, it seems to me that we have something here that affects the distinction between the word "national" and the word "citizen".

As I conceive it, at any rate, the question of whether a person is a national of a particular country very largely depends upon the decision of that country. Certainly, the United States may take up the cause of one of its nationals living abroad, either in relation to the country in which he is living or in relation to some action taken by a third country.

However, it is also sometimes at any rate, the case that a country does undertake to represent persons living within its jurisdiction who may or may not be or who are not in this particular case—citizens. In other words, the United States might complain against a country which took action detrimental to the interests of a person living in the United States, domiciled in the United States, but not a citizen in the United States. In that case it might make representations under these clauses to the country that is taking the action.

Therefore, it seems to me that the word "nationals" is the not appropriate word here, and that it does cause any particular difficulties in the cases which have been imagined.

If an American national were living in the Union of South Africa and an action were taken by a third country, the possibility does arise of both the Union of South Africa and the United States making representation. However, at the present time very few difficulties of that sort actually do arise, and it seems to me that by using the word "nationals" in that sense we get into no difficulty.
Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Holloway has made an interesting remark about the word "nationals", and according to his remark he considered that the word referred to what he described as "natural persons"; but paragraph 5 of the same Article states that the term "nationals" as used in Articles 12 and 12A comprises "natural and legal persons". Dr. Holloway's remark would be susceptible of further development if it referred to "legal persons" as well, and I think that it would be to the advantage of Chapter V if it were possible to make this concept clear as regards the nationality of countries, capital and persons.

If this is not likely to make us embark upon a long discussion, I suggest that the definition of nationality should be made with regard to the prevailing interests engaged in various enterprises, rather than with regard to the law under which the company has been incorporated. This was the practice followed by Anglo-Saxon countries during the War, and we could usefully take advantage of it.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I had no intention to intervene in this issue - I intended to intervene only in paragraph 3. I think the main issue I wanted to raise has been already raised here, but this is my point of view. Should the I.T.O. be an organisation for discussion of general politics for trade and employment, or should it be an organisation for dealing with the complaints of individual persons and individual enterprises and so on?

If we followed the latter course, it would mean that the Organization would be a kind of court for private interests, and
I am afraid that instead of having full employment, we would have full employment only for lawyers!

Mr. Chairman - gentlemen - there are certain matters which are outside the scope of international law. Those matters are, for instance, immigration restrictions, the granting of citizenship and so on, and many of those matters are of the greatest political importance. As soon as a matter is regulated by an international treaty, it ceases to be a matter of domestic jurisdiction. Article 2, paragraph 7 of the Charter of the United Nations says: "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, or shall require the Members to submit such matters to settlement under the present Charter". Now, what does that mean? It means that no State shall be required to submit such matters to settlement under the Charter, and that not even recommendations should be made to the State. In justification of the use of the word "essentially", it was argued that if a matter is on the border-line between international concept and domestic jurisdiction, it may be placed outside the authority of the Organization if one can claim that it is essentially within the domestic jurisdiction. Even if under modern conditions what one nation does domestically almost always has at least some external repercussions; and the word "intervene" means that the Organisation shall not exercise any authority, -that it will not even make recommendations of any kind with regard to any matters of this kind. That is why we think that we should do away with the idea that the I.T.O. should be a kind of court for dealing with private interests. It should only be for discussions among States on matters of and general measures taken by those States.
CHAIRMAN (Interpretation): I take it, Mr. Augenthaler, that you simply desire to make a statement, but it is not your intention to submit an Amendment to the text under discussion?

Mr. AUGENTHALER (Czechoslovakia): I have no intention, Mr. Chairman, of presenting any Amendment to alinea 2. I have an Amendment to present to alinea 3, but I thought, as the discussion ran, that I should state it immediately, as it may lead us to some extremely confused situations, for instance, that the United States could be entitled to intervene in favour of some Czechoslovak national living in the United States.

CHAIRMAN: The Delegate of South Africa.

Dr. HOLLOWAY (South Africa): Mr. Chairman, the point I raised was simply this, whether we are quite right to limit the right of a Member acting on behalf of another person than its own national bearing in mind that inside its territory there are a large number of people who are not its own nationals.

If we want to limit the right in that way, then I think when it comes to a natural person you may have the situation that a person interested in getting technical assistance from the USA, for, let us say, the film industry - that person, being an American, may find that the U.S. Government has laid on a restriction which is considered inconsistent with the Charter; but in view of the fact that his case cannot be taken up on his behalf except by the Government of which he is a national, he will have to go to the U.S. Government; and it can be a case against the U.S. Government. If you want to limit it that way, the word "nationals" is enough. Or if you want to go a bit further, say "No, the Government of the country in which he lives should be able on his behalf to take up his case", then a very simple Amendment will meet that. You will then say "on behalf of its nationals or persons domiciled in its territory".

And then the definition of "nationals" would also have to apply to persons; that is to say, they would be natural persons or legal persons.
CHAIRMAN: The Delegate of the United Kingdom.

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, all I can say is based upon my own experience of the United Kingdom treaties. We always base ourselves upon the nationality of a person or a country and my experience of other countries is that they do much the same. I think that so far as there is, so to speak, a generally recognized right to intervene on behalf of persons or countries, that right should be exercised. A government may sometimes think it right to intervene on behalf of a person domiciled in its territory, but it is, in my opinion, an exceptional matter, without any right to do so.

It does seem to me this is a place where it might be a little dangerous to try to extend this field. I have rather the feeling that at this stage it would be well to adhere to the well-known lines of commercial treaties, which base themselves on nationality.

As regards the definition of legal persons, there again it would be unjustifiable for us to concern ourselves with the very detailed questions which underlie that definition. It would be better to take the tests which each country applies and determine what are its legal persons. We should leave it, in any case, to the law of each country concerned rather than attempt to lay down detailed rules here. That is what I would like to suggest.

Dr. HOLLOWAY (South Africa): I will not press the point Mr. Chairman.

CHAIRMAN (Interpretation): Are there any further remarks on Paragraph 2?
We will pass on to Paragraph 3.

The Delegate of Czecho-Slovakia.

H. E. Mr. Z. AUGENTHALER (Czecho-Slovakia); Mr. Chairman, we made a proposal in London, and again here we made an amendment in the sense that we wish to state that the complaints regarding actions should be only by Members on their own behalf and on the question of general programmes, not on behalf of nationals for some private interest, because if we did that, I am afraid we would be creating a kind of new convention.
I suppose that if somebody invests money in some country he is submitted to the codes and jurisdiction of this country. He has his ordinary ways of pressing his claim, and it is not a matter for the International Trade Organisation. That is why we propose that the words "on behalf of any of its nationals" should be deleted.

Dr. A.B., SPEKENBRINK (Netherlands): Mr. Chairman, I have a remark of a more general nature. I have been wondering whether paragraph 3 is necessary at all here or whether there are special reasons why we are including it in this chapter because, as proposed by the Committee on Chapter VIII we have in Article 86 and further, regulated the question of consultations between Members, and the settling of disputes, and I see that in Article 86 we say that "If any Member should consider that any benefit accruing to it directly or indirectly under this Charter is being nullified or impaired, or that the realisation of any objective of the Charter is being impeded, as a result of....." and so on. You get then the normal consultations procedure which, as I said, is also adopted here because in this paragraph we simply say "The Organisation may request Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end". Well that is all included in 86 so I wonder whether we should not for clarification's sake - unless there are special reasons for retaining this paragraph in this Chapter - simply delete it and leave it to the normal way of settling disputes and so on, as provided in Article 86 and further.
Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I apologize for continuing again, but Dr. Augenthaler has raised a very large question, and Dr. Speekenbrink has raised a question not quite so large.

Regarding the large question raised by Dr. Augenthaler, it does seem to me that the suggestion is not revolutionary, because surely it would mean that no treaty could ever contain Establishment Clauses. It is quite a common practice to have Establishment Clauses which define the rights of persons in the country and in the territory of the other party. Well, those treaties are freely entered into, and therefore their stipulations are accepted by parties, no doubt in a limited sense, as a modification of sovereignty, but this is the way of every treaty. I see nothing revolutionary in that at all and there is nothing revolutionary in paragraphs 2 and 3 of this Article. The only difficulty is that we are normally living by that sort of treaty, and it does seem to me that if you have paragraph 2 which includes this, that "no Member will take unreasonable or unjustifiable action injurious to the rights or interests of nationals of other Members", then it must follow from that that, if there is a case where it is considered that a Member has not fulfilled that obligation, there must be some way of taking the matter up with him. That is provided in order that this paragraph should not be a dead letter. Now, if there is a question of taking the matter up with a Member, it can only be, as I said before, through another Member, because all the rights and functions of that kind are rights as between Governments, and therefore I see nothing revolutionary, nothing which is not familiar, in the principle of paragraph 2.

Dr. Speekenbrink has suggested that it is unnecessary to have paragraph 3, because the latter is already covered by the general procedure for the settlement of disputes under Article 86.
ell, I would think that that is arguable, but, on the other
hand, there is a point of clarification for which I think it is
desirable to keep paragraph 3, that is, Article 86 says:

"If any Member should consider that any benefit accruing
"to it directly or indirectly under this Charter is
"being nullified or impaired, or that the realisation
"of any objective of the Charter is being impeded, "by
and Members are governments, and it is obvious that that covers
national governments, unless you say so, and it does seem to
me that the value of paragraph 3 is that it makes it clear that
it is possible for a Member to take action under this on behalf
of all his nationals. It clears up an obscenity and for that
reason I think that it is desirable to retain paragraph 3."
Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, Mr. Shackle spoke especially about "the realisation of any objective of the Charter is being impeded". Article 86 then says: "as a result of (i) the failure of another Member to carry out its obligations under this Charter, or (ii) the application by another Member of any measure, whether or not it conflicts with the provisions of this Charter" and so on, so I think it is a very broad clause.

As I understand the question, it is whether it is right that the Member should act on behalf of any of its nationals. Well, I always had the point of view that as the Charter is an arrangement between Governments, the Government of a country may always act on behalf of its own nationals. They will always be the subject of its complaints, I think.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would just like to give Mr. Shackle an explanation. I am afraid that I cannot agree with his remark. It is true that normal commercial treaties contain clauses of establishment; but those commercial treaties are then ratified by Parliament, and they become only part of the internal jurisdiction of the country.

If someone is not satisfied with the application of this treaty - if it is a private person - he applies to the court of the country, with the complaint that the country is not applying the provisions of this treaty. Then if the question should be one for international arbitration or something of that kind, there must be a special treaty between the two countries, and as far as I know nearly all arbitration treaties say that the arbitration court should decide only on questions of law, but not on private interests. If there is a private interest involved, there must be a special convention among the States.
CHAIRMAN (Interpretation): Mr. Shackle has asked for the floor first.

As the time is getting late I shall call upon Mr. Shackle and the Chinese Delegate, and then we shall adjourn for lunch.

When we meet again in the afternoon, I shall ask Dr. Coombs to express his opinion on the Czechoslovak and Netherlands Amendments, and then we shall take a decision.

Mr. SHACKLE (United Kingdom): I would probably agree with Dr. Augenthaler. The position no doubt varies between different countries. Some countries make a practice of incorporating Treaties in their law – it is the European custom – others do not.

We do not in the United Kingdom, but we nevertheless take care that our law applies without Treaty obligations, and in a case of this kind, under an Establishment Treaty, I entirely agree that a foreign national has to exert his rights by going to the Courts of the country concerned, but if, having done that, he still does not get satisfaction, then his right arises to appeal to his own Government, which in turn takes up the matter with the Government concerned under the Establishment Treaty.

Well now, as regards the question of an Arbitration Convention, we shall here have an automatic one; but it does seem to me that in these complicated legal matters it might be desirable to refer the question to the Legal Drafting Committee, rather than to discuss it in the full Commission. I do not know whether it might be possible to try, at any rate, before these Articles come up in the final Plenary Meetings.

Mr. WUNSZ KING (China): All I want to say is that I share the views of Mr. Shackle, and I really have nothing to add to what he has said so fully and so ably.
I simply want to remind my colleagues that when the original Article 35 was drafted it was meant to apply to Chapter V only and therefore it was thought necessary to have some formula of similar character in Chapter IV, but at later stages Article 35 was taken out of Chapter V and has now become Article 86, which is intended to apply to the whole Charter. Such being the case, it seems to me that the case envisaged in Paragraph 3 of this Article - Article 12 - is fully covered by these provisions in Article 86, and therefore I wish to support Mr. Speckenbrink's proposal to delete this paragraph altogether.

CHAIRMAN (Interpretation): The Meeting is adjourned until 2.30 p.m.

The Meeting adjourned at 1.5 p.m.