ARTICLE 10

All delegates who have presented views orally and in writing to the sub-committee have expressed general approval of the substance of Article 10. Comments have been submitted regarding the several paragraphs as follows:

Paragraph 1

India suggests that a member should be permitted to suspend or divert in transit traffic from the most convenient route if emergent conditions, such as a famine, required reservation of that route for other use.

It would seem that Article 32 (b) and (e) afford ample protection for cases in which transit traffic must be suspended or diverted for humanitarian or security reasons.

The Netherlands and Belgium suggest (paragraph 2, page 5, document C.II/32) that Article 10 include a more complete guaranty of non-discrimination, including references to nationality of persons and vessels and places of origin and exportation, similar to Article 2, paragraph 1, of the Barcelona Statute.

It is believed that this suggestion involves matters of policy which might be proposed in the full Committee II or at the drafting meeting, but should not be considered by the Technical Sub-committee.
Paragraph 2

Belgium and the Netherlands believe that it would be made clear in the definition of "traffic in transit" (a) that goods which are not continuously in customs custody while in transit across the territory of a member shall not be entitled to benefits accorded to in-transit goods, but (b) that Articles which remain in continuous customs custody with an intent that they shall be re-exported shall be considered in transit even though the particular foreign destination has not been determined.

It is believed that (a) is fully covered by paragraph 2, and that (b) may be fully covered by adding to paragraph 6 a sentence such as "Goods which are imported into any member country shall be considered to be in transit if they are exported without having been released from customs custody within that country even though the ultimate destination is not disclosed at the time of importation."

Paragraph 3

The Delegate for South Africa has asked whether "charges" in paragraphs 3 and 4 means rates.

It seems clear to your rapporteurs that this term includes charges of every kind which enter into the expenses of moving goods across the territory of a member in a movement between points within the territory of another member and the territory of any third country. Such charges would include rates for transportation as well as taxes, fees, or other possible charges. Although there may be some matters which could come within both Article 9 and paragraph 4 of Article 10, there is no inconsistency between these provisions.
The practice described by South Africa (C.II/7.9) of giving favourable rates to certain domestic products is probably in violation of the spirit of paragraph 2 or 3 of new Article 9, but it is stated that it does not affect competitive products. The practice of giving favourable rates to certain products of contiguous territories is in violation of paragraph 4 of Article 10.

**Paragraph 4**

The Netherlands and Belgium desire that it be understood that nothing in Article 10 shall be construed to suspend or modify any provisions of certain international agreements relating solely to traffic on inland European waters.

This matter does not require action by the sub-committee.

**Paragraph 5**

Australia considers the reference to "transit" herein to refer to "direct transit".

The Netherlands and Belgium ask (paragraph 4, page 5, document C.II/32) whether Article 10 allows a member to discriminate against transit through its territory if such transit is not on the most direct route between two foreign points.

The United Kingdom agrees with paragraph 5 but believes that it would be difficult to maintain under it any differentiation against non-member countries.

France suggested that paragraph 5 be reserved for special study because it does not deal with freedom of transit, but with the customs treatment of goods in the country in which they are to be delivered from customs custody.

China suggests that there be added at the end of paragraph 5: "Provided that the products which have been in transit can be identified at their destination to the satisfaction of local customs authorities as to their origin or country of export."
The rapporteurs do not believe that they have sufficient information regarding the views of the sub-committee to make any report on paragraph 5.

**Paragraph 6**

The following proposals were adopted by the sub-committee:

(a) Canada - Delete "Persons," at the beginning of paragraph 6 because the Suggested Charter pertains to goods and trade but not to persons.

(b) France - Transfer paragraph 6 to the beginning of Article 10, as this is the proper place for the definition of the subject of the Article.

(c) United Kingdom - Except air traffic from the provisions of Article 10 because such traffic is within the province of PICA0.

A redraft of Article 10 is not submitted since the only changes indicated by the discussion would be:

(a) Delete "Persons," at the beginning of paragraph 6.

(b) Add at the end of paragraph 6 "Goods which are imported into any member country shall be considered to be in transit if they are exported without having been released from customs supervision within that country even though the ultimate destination is not disclosed at the time of importation. The provisions of this Article shall not apply to air traffic in transit."

(c) Transfer paragraph 6 to the beginning of Article 10, redesignate it as paragraph 1, and redesignate paragraphs 1 to 5, inclusive, as paragraphs 2 to 6, inclusive.

The rapporteurs were not in agreement in their understanding of the direction of the sub-committee that the rapporteurs compare the Charter text with the Barcelona Convention, the Delegate for
France understanding that a complete comparison was desired and
the Delegate for the United States understanding that the comparison
was to be limited to Article 1 of the Barcelona Statute and paragraph 6
of the Suggested Charter. In view of this difference in understanding
a comparison of the complete Article 10 with the complete Barcelona
Statute has been made, but the Delegate for the United States wishes
to emphasize that he is not competent to interpret the Barcelona
Statute which may have established meanings of which he is not
informed.
COMPARISON BETWEEN THE STATUTE ANNEXE TO THE BARCELONA CONVENTION, 20 APRIL 1921 AND THE UNITED STATES SUGGESTED CHARTER, ARTICLE 10

General Observations:

There is no mention in this note:

1. Of the Barcelona Convention dispositions relative to persons.

2. Of the difference between terms designating contracting States (non-member states in the Charter).

<table>
<thead>
<tr>
<th>BARCELONA STATUTE</th>
<th>SUGGESTED CHARTER, ARTICLE 10 (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 1 (definition)</td>
<td>par. 6 without change (2)</td>
</tr>
<tr>
<td>Art. 2 par. 1 - first phrase</td>
<td>par. 1 without fundamental change.</td>
</tr>
<tr>
<td>on routes in use convenient (3)</td>
<td>via the routes most convenient (3)</td>
</tr>
<tr>
<td>Art. 2 par. 1 2nd phrase and par. 2</td>
<td>Left out (4)</td>
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</tbody>
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No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provision of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

| Art. 3 par. 1, first phrase, Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). | Par. 2, 2nd phrase Comparable wording |

(1) The title in French should be: "Liberté du Transit" and not "Franchise du Transit".

(2) "Breaking bulk" should be translated by "Rupture de Charge".

(3) The Barcelona wording seems preferable.

(4) The Belgium and Netherlands Delegates request the reinstatement of this particular proposal of the Barcelona Convention (document E/FC/T/C.II/32, Page 4 and 5, paragraph 2).
Art. 3, par. 1. 2nd phrase. Nevertheless on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit.

Art. 3, 3rd phrase. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

Art. 4. The contracting states undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place or departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

Art. 5, par. 1 - No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden, or for foods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants. This is covered by art. 32 (b)
Art. 5, par. 2 - Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods, which are the subject of a monopoly, and also vessels, coaching and goods stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Art. 5, par. 3 - Nothing in this Statute shall affect the measure which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of General Conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Art. 5, par. 4 - Any haulage service established as a monopoly on waterways used for transit must be so organized as not to hinder the transit of vessels.

Art. 6 - This Statute does not of itself impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transhipment takes place, benefit by the advantages granted to that flag.
Art. 7 - The measures of a general, or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

This is covered by Art. 32 (a)

Art. 8 - This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

This is covered by Art. 32 (a)

Art. 9 - This Statute does not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Omitted. Of no interest

Art. 10 - The coming into force of this Statute will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before the 1st May 1921.

In consideration of such agreements being kept in force, Contracting States undertake either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this Statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may, in matters of transit, enter into regional understandings inconsistent with the principles of this Statute.

Left out.
Art. 11. - This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

Art. 12. - In conformity with Articles 23 (a) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Art. 13. - Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations, as the advisory and technical organization of the Members of the League in matters of communications and
transit. In urgent cases, a preliminary opinion may recommend temporary measures intended, in particular, to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

Art. 14. - In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Statute, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary Customs and police supervision.

The State concerned, however, will apply in the cases referred to above a regime which will respect the principles of the present Statute and facilitate transit and communications as far as practicable.

Art. 15. - It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming part or placed under the protection of the same sovereign State, whether or not those territories are individually Members of the League of Nations.