Discussion on Draft of Chapter V submitted by the Rapporteur of Committee III and the Advisers Appointed by the Committee

The CHAIRMAN hoped that general agreement would be reached, and that the draft would be unanimously accepted. The agreement of Members did not engage the Governments they represented.

Mr. WILCOX (United States) said that the present draft was a generally acceptable synthesis of Members' opinions, although he regretted it was not as strong as he had desired. It was none the less a practicable approach to the problem, and he hoped Members would agree with him in accepting it.

Mr. HOLMES (United Kingdom) declared his acceptance of the draft. There had been a mistake. The present draft had been incorrectly copied from some earlier version, whereas the intention had been to include the text of document E/FC/T/C.III/12 with minor alterations.

Mr. LECUYER (France) regretted that the draft erred on the side of ineffectiveness. It had however contrived to avoid conflict with existing legislation. It had this to be said for it that it provided a precise reference to existing legislation regarding restrictive business practices. It also facilitated intervention by the ITO. He supported the draft as it stood.

Mr. McGREGOR (Canada), speaking as Rapporteur, explained that the draft was a synthesis of view-points. He thanked those Members who had made concessions.
He then went through the draft (E/PC/T/C.III/11,2) in detail pointing out items amended, deleted and inserted in comparison with the previous tentative revision (E/PC/T/C.III/12).

Mr. NAUDE (South Africa) asked why paragraph 1(c) of Article 40 of the Draft Charter had been eliminated.

The CHAIKIAN replied that the item in question, dealing with "servit..." had been deemed outside the scope of Committee III.

Mr. ARENDT (Belgium-Luxembourg) accepted the draft in principle with certain reservations. He asked the Rapporteur why the words "or are likely to have" had been omitted in Article 35 paragraph 2.

Mr. McGREGOR (Canada) replied that the words quoted had been omitted by typographical error.

Mr. LEENDERTZ (Netherlands) expressed his general approval of the draft subject to reservations concerning "and public commercial enterprises" in paragraph 2(a) of Article 34 and the words "or are likely to have" in paragraph 2 of Article 35. Experts would need to be consulted concerning the "rights under patents, trade marks or copyrights" in paragraph 3(f) of Article 34. He suggested that the International Court of Justice might be the body to implement the provisions of the latter part of paragraph 1(b) of Article 37, but this was a point that would be raised later.

The CHAIRMAN asked Mr. LEENDERTZ whether he’d desired his suggestion to be included in the report or whether he wished it to be discussed at a later meeting of the Preparatory Committee.

Mr. LEENDERTZ (Netherlands) preferred the second alternative.

Mr. WILCOX (United States) considered the question of "state monopolies" largely academic. In the context the expression did not signify monopoly within the individual state but a state-owned monopoly of world trade, of which no example at the moment existed. The question had arisen as to whether to include agreements between state-owned enterprise in different countries in the present draft or in Article 26. The present draft was more appropriate for dealing with this problem, as it applied to any conspiracy between commercial enterprises whether public, private or m...
The phrase "or are likely to have" was a necessary inclusion, because it envisaged the possibility of lodging a complaint at the inception of a cartel. If the phrase were deleted, no complaint could be lodged until harmful effects had been experienced.

Mr. McGregor (Canada) agreed with Mr. Wilcox's last point. Members had the opportunity of taking preventative, rather than remedial, action. In his capacity of Rapporteur he suggested that the word "conventions" in Article 36 paragraph 1 should be amended to read "Charter".

Mr. Hulherkar (India) affirmed that Chapter V would be meaningless, so far as he was concerned, if the problem of "services" were excluded and he reserved the position of India on this point.

Regarding paragraph 4 of Article 35, he asked whether a Member could submit information on his own initiative or only by specific request from the ITO.

Mr. McGregor (Canada) replied that Members were able to submit information on their own initiative.

Mr. Torres (Cuba) agreed with the draft in principle, but made a reservation regarding the treatment of "services".

Mr. Monteiro de Barros (Brazil) likewise agreed with the draft in principle. He suggested that cartels should be publicly registered with the ITO. He made reservations concerning "commercial enterprises" in Article 34 paragraph 2(a) and (b) and also concerning the problem of "services".

The Chairman felt that it was legally impossible to demand the registration of cartels on an international level, since no registration existed on a national basis. He suggested that Mr. Monteiro de Barros submit his ideas regarding a possible registration system.

Mr. Naudé (South Africa) stated that he might prefer the inclusion of shipping services in Chapter V.

Mr. Gonzalez (Chile) expressed his agreement with the draft, with the reservation that he was not altogether satisfied with the omission of services.
Mr. ELSTAD (Norway) had no general objections to the draft although he would like to have had a paragraph included concerning the registration of the enterprises specified in Article 34, paragraph 2 (a) and (b).

Mr. FLETCHER (Australia) considered the draft an improved and workable document, but felt that it was impossible to give a considered opinion on all its practical implications in a short time.

Mr. HU (China) stated that he was in agreement with the draft.

Mr. HAKIM (Lebanon) also accepted the draft, although he would have desired stronger provisions regarding the control of cartels.

Mr. SOKOL (Czechoslovakia) accepted the draft in principle.

Mr. LAURENCE (New Zealand) accepted the draft as an improvement of the United States text but made certain reservations.

The CHAIRMAN, summing up, said that all Delegates except Mr. MILNER had accepted the revised draft of Chapter V. He had observed in the course of debate that certain problems were common to Committee III and other Committees and therefore suggested that a Sub-Committee should be established for liaison purposes.

Mr. THILTGES (Belgium-Luxembourg) proposed as Members of the Sub-Committee:

- Mr. Wilcox (United States)
- Mr. Holmes (United Kingdom)
- Mr. Gonzalez (Chile)
- Mr. Hau (China).

Mr. LECUYER (France) proposed Mr. THILTGES (Belgium-Luxembourg) as a fifth Member.

This was agreed.

The meeting rose at 5.50 p.m.