GENERAL OBSERVATIONS ON RESTRICTIVE BUSINESS PRACTICES

Mr. GONZALEZ (Chile) stated that, in pre-war years, when world production of certain commodities had resulted in surpluses which constituted a danger to the stability of world economy, Chile had taken part in international cartel agreements. These cartels had worked satisfactorily and had stabilized markets at low prices. He feared that inter-governmental agreements providing for participation of consuming countries could be successful only after a long period of over-production, when surpluses had become excessively burdensome. Before such agreements could become effective, a crisis of over-production might affect certain commodities, with all the attendant difficulties to the internal economy of the country concerned and to its foreign trade.

Mr. GONZALEZ suggested that certain amendments should be made in Chapter V of the United States Draft Charter. Article 40, Exceptions to Provisions of Chapter V, might be amended to include agreements concerning transportation, communication and other services provided they conform to the standards set by the ITO.
MR. DAO (China) explained that China endorsed the articles of the suggested Charter which concerned restrictive business practices; because she was aware of the injurious effects which cartel arrangements had exerted upon a number of her imports.

He pointed out that as restrictive business practices generally originated in the more highly industrialized countries, the responsibility for remedial measures lay principally with those countries. The necessity for national legislation to prevent monopoly or restraint of trade by private commercial enterprises would depend upon whether such practices existed in the given countries. In the process of industrialization, however, it might be necessary for the Chinese Government to regulate the export of certain commodities in the general interest of economic development. These probably would not be included in the category of restrictive business practices as outlined in the American proposals. China would, in general, favour an agreement which would mitigate the undesirable effects of restrictive trade practices.

MR. GUERRA (Cuba) stated that although Cuba had had little experience with cartel activity, his country had been affected in three ways by cartels and other restrictive business practices. First, they had imposed limitations on her basic exports, mainly tobacco. Secondly, they had increased the cost of her imports. Thirdly, in the sphere of shipping, restrictive arrangements had contributed to the prevention of the formation of a Cuban merchant marine.

He interpreted the American proposals as establishing rules and machinery for dealing with each specific case as put forward on the basis of a particular complaint. He felt that the American proposals should be made more stringent. The statement of the Canadian Delegate might be used as a basis for the formulation of satisfactory concrete measures.
Mr. SOBOL (Czechoslovakia) explained that Czechoslovakia had taken legal action as early as 1923 to control the activities of cartels. The legislation in question required nationals participating in domestic and international cartels to register such cartels with the government and to furnish information on their activities. By virtue of this law the State could intervene directly in cartel activities and could abolish cartels which jeopardized the public interest. Czechoslovakia had regulated the activities of cartels by domestic legislation, and was now ready to participate in international institutions which would give the same guarantee.

Mr. LECUYER (France) stated that it was not surprising that difference of opinion existed, as regards the virtues of industrial agreements. Obviously, a highly industrialized country would view them in a different light from a small, less industrialized area. It was imperative, however, to terminate those abuses which had been perpetrated in all countries by private concerns, both individually and in combination. The French delegation had no hesitation in condemning those practices which could be termed disloyal. He noted in this connection, however, that the Draft Charter included not only cartel activity but also restrictive action by combines, trusts, and business arrangements of all kinds.

The French delegation, he continued, had noticed that the original United States Proposals had been directed towards practices that might be condemned factually, whereas the Charter presumed that certain practices were restrictive unless proven otherwise. The French Penal Law which should permit France to terminate such abuses was not strong. He hoped, however, that the suggestions made by the Canadian delegation would enable international code of uniform treatment to be established. The French delegation would accept the American text as a basis of discussion but felt that the existence of agreements in themselves should not be condemned. Attention should be given to their aims, before deciding whether their practices were restrictive.
MR. MULHERKAR (India) pointed out that the Indian delegation was in general agreement with the objective of curbing unfair and restrictive business practices which were pursued by certain cartels and trusts. It might be necessary, however, for underdeveloped countries to secure technological assistance by individual arrangements with foreign manufacturers, and, insofar as these arrangements did not conflict with the objectives of the ITO they should not be defined as unfair or restrictive practices. In the interests of domestic industries it might also be necessary for nationals or governments of such countries to enter into standing arrangements for the restriction of exports of raw materials. He thought that such practices would not be interpreted as unfair or restrictive.

The development of certain services was essential to the expansion of international trade. He urged, therefore, that the prohibitions of Chapter V of the Draft Charter be extended to include restrictive activities followed by "railway transportation, aviation, shipping and telecommunications services, banking, and insurance."

MR. HUKIM (Lebanon) stated that he was in full agreement with the proposals of the United States Government and would welcome a strengthening of the provisions contained in the proposed Charter for the regulation control, and, where necessary, elimination of restrictive business practices. Private restrictive practices attempted to maintain monopoly profits and, unless regulated, were detrimental to consumers, especially to the less developed countries which consumed these products. In undeveloped nations private organizations had tended to hamper production and limit the sale of industrial products. This in turn had restricted the development of industry. These private organizations were so powerful that small countries had little protection against them. The inherent dangers were political as well as economic.
International co-operation for control of such private arrangements might achieve limited results. It would, however, have a greater chance of success than action by individual Governments.

MR. LAURENCE (New Zealand) explained that his country had had little experience in analyzing the activities of commercial enterprises which operated in the international sphere. It was, however, in agreement with proposals which would have the effect of removing undesirable business practices from international trade. It would be difficult to set out in the Charter criteria for defining restrictive business practices; the present provisions of the Draft Charter might have to be altered in this respect. The proposed international organization would facilitate the taking of action against certain cartel activities by diffusing a wider knowledge of restrictive business practices, and formulating specifications for a satisfactory code of conduct.

He considered it satisfactory that the powers of the Draft-Charter were directed against practices rather than organizations, and would accept the terms of the United States Charter as the basis for the committee's work.

MR. LEENDERTZ (Netherlands) stated that his delegation agreed that abuses which arose from cartel practices should be suppressed; but this did not signify that cartels were objectionable in principle. He considered that by international co-operation the advantages of the cartel system could be retained and the disadvantages removed.

In certain instances cartels had been beneficial, had resulted in the stability of prices, constant employment, and the prevention of over-production. The work of cartels had permitted research, the sharing of patents, and various other benefits. At the present time, when many countries were hard-hit, it would be unwise to throw away a well-treated means of preventing unfavourable developments. Cartels should not be forbidden on principle but allowed under certain rules. Their practices should be supervised, and complaints should be examined.
The supervision of cartels was no new matter for the Netherlands. Commencing in the 30's legislation had been introduced which provided for registration and supervision of cartels, and the Netherlands Government had appointed observers to report on their activities. In the Netherlands East Indies this legislation had caused the creation of several cartels. This experience showed his Government was fully prepared to co-operate with the Organization to supervise cartels. This he thought it was necessary for all states to do so.

Parallel legislation in various countries would build up an international jurisprudence, which would enable the creation of an organization based on experience of the various countries. From the beginning this organization would be in a position to advise and assist inter alia in solving differences which might arise. In those cases where differences were irreconcilable, reference might be made to the International Court of Justice.

Mr. MELANDER (Norway) stated that the chapter of the suggested Charter with which the Committee was dealing contained some provisions of which he was doubtful. He agreed that the Charter would have to make provisions dealing with restrictive business practices of an international character. Government acceptance of rules on general commercial policy would be rendered ineffective, if commercial enterprises operating through cartels could share markets, allocate quotas etc.

However the provisions of the Draft Charter seemed to take it for granted that practically any kind of restrictive combination for agreement in international trade would have the effect of hampering the expansion of world trade and production. He agreed that certain forms of restrictive combination had proved and would prove on the contrary beneficial to the expansion of international trade.
In 1926 Norway had passed a law which declared illegal only such cartels or combinations as were unduly restrictive. This system had worked well in Norway. The task of the international organization should be only to prevent international arrangements which were unduly restrictive and limited the purpose of the Organization.

He agreed that all international combinations should be registered with the organization, which would then be in a better position to consider complaints.

Subject to these reservations, the Norwegian delegation thought the proposals submitted by the United States Government were well suited to serve as a basis for the discussion of the Committee. Later Norway would make further comments and submit amendments to the suggested Charter.

Mr. MAUDE (South Africa) stated that it was necessary to write into the Charter control of controls. However it was impossible to lay down that all cartels were necessarily black and the Committee should direct its attention to cartels which were unduly restrictive.

No legislation had so far been introduced in South Africa by which the suggestions made in the Draft Charter could be implemented but the Government was considering making investigations. Pending these investigations, possibly no legislation could be introduced.

Mr. HOLMES (United Kingdom) said that the United Kingdom's views had been expressed in a Chapter in the Proposals put forward by the United States in December of last year. There was also a joint statement by the two Governments, who were in full agreement on all the important points contained in the Proposals and had accepted them as a basis of international discussion.

There would be little purpose in removing governmental barriers to the flow of trade, if privately negotiated arrangements between industries in different countries were allowed to take their place. There must, therefore, be some procedure for dealing with restrictive business practices when they operated contrary to the aims of the International
Trade Organization. To the extent that such practices interfered with those aims they must be condemned.

A consultative procedure within the proposed international trade organization was therefore necessary in order to study particular cases and determine their economic and commercial effects. Consultative procedure rather than judicial procedure applying a legal code was what was required. If any particular practice was found to produce invariably ill effects, the organization would then be in a position to propose the general prohibition of this practice.

There were some difficulties connected with this problem. The problem of restrictive business practices was an internal one for each country, as well as an international one for the organization; and in the past different countries had adopted different attitudes. In some countries cartels had been allowed, and laws for compulsory cartelization had been passed, while in others all restraints of trade of any kind had been prohibited. The United Kingdom neither encouraged or condemned cartels. The Committee in considering the subject would have to bear in mind variations in the legal background against which the problem appears.

The CHAIRMAN stated that before giving a summary report of all the ideas which had been expressed at the meeting, he would like a little time for reflection. He was at the entire disposal of those delegates who might wish to speak to him on particular points which were important to them, and he proposed to get into contact with certain of the delegates. After these conversations he would consult with the Secretary in order to lay down the proceedings for the next stage of their work.

He would be grateful if delegates would send to the Secretary any remarks or suggestions on the text which they would have to prepare later.

The Meeting rose at 12.35 p.m.