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24 July 1947SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.VERBATIM REPORT.THIRTY-THIRD MEETING OF COMMISSION A  
HELD ON THURSDAY, 24 JULY 1947, at 2.30 P.M. IN THE  
PALAIS DES NATIONS, GENEVA.

Mr. Eric COLBAN (Chairman) (Norway)

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CHAIRMAN: The meeting is called to order.

We were discussing yesterday the question of the new paragraph 2 of Article 37, and we had some exchange of views with regard to a point in the proposed text, namely, whether the words "July 1st 1949" should be replaced by a later date.

The United States Delegate proposed 1st January 1951. The Norwegian representative proposed 1st March 1952. After having heard the suggestion of the United States Delegate, supported by the United Kingdom Delegate, the Norwegian Delegate proposed as a solution the intermediate date of 1st July 1951.

Does any Delegate wish to pursue this discussion?

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, the Norwegian Delegation has considered this problem, and we have come to the conclusion that in order to reach unanimous agreement on this subject, we would agree to 1st January 1951 as suggested by the United States.

CHAIRMAN: May I take it that we are all in agreement with adopting that date - 1st January 1951?

Any objection? It is agreed.

We have not, however, considered as yet the rest of the proposed text of paragraph 2 of Article 37. I read it carefully, and it is really a transcript of the former Article 25(2)(a) and I do not think there is any reason for us to try to improve the draft presented by the Secretariat; but I would like to know whether any Delegates have any re-drafting proposal to make.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I have one point I would like to raise. I observe that this has been carried as a new paragraph 2, and in consequence does not

fall within the preambular sentence that comes at the beginning of Article 37 as at present drafted, namely, the words "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade"

Well, I do not see that there is any point in removing this new paragraph from the scope, so to speak, of these qualifying introductory words, and I would like to suggest that this should be incorporated in the general list of exceptions, so that it will fall within the effectiveness of the preamble. I do not think there can be any qualm or objection to those words applying to this new exception. On the contrary, I think it is desirable that they should apply. They merely rule out "arbitrary or unjustifiable discrimination" and "disguised restriction on international trade," and I presume nothing which is intended at the present time under this new "a", "b" and "c" would fall within those condemnations in any circumstances, so I see no reason why they should not just form a part of the Article as now drafted.

CHAIRMAN: There seems to be a feeling that these new items under Article 37 are of a different character from the other items of that Article. Even if, in order to meet the wishes of the United Kingdom representative, the exceptions are included, we shall still need a new sub-paragraph to contain the new clauses.

Mr. J. MELANDER (Norway): I was just going to make the same proposal.

CHAIRMAN: May I ask whether delegates are in agreement with the suggestion to allow the introduction to Article 37 to cover also the points of the new clauses?

Mr. C.E. MORTON (Australia): I would propose that the clauses simply be added, unless there are some very extensive word changes.

Mr. J.M. LEDDY (United States): I think this question could be handled by making sub-paragraphs (a) etc. the final paragraphs of Article 37, and then have a second paragraph: "Measures instituted or maintained ... which are inconsistent...." etc.

CHAIRMAN: Without separating it into two paragraphs?

Mr. J.M. LEDDY (United States): I do not know whether it would be necessary to have two paragraphs; it might be that the final form would be in one paragraph.

CHAIRMAN: I wonder what other delegates feel about that. It would simply mean adding, after the list, three more items taken from the Secretariat draft.

I would add that I myself do not feel very happy about that solution because we must remember that these three new items have an explanatory text attached to them: "Measures instituted....." and that explanation covers only these three new items. I therefore

still feel that a more elegant solution would be to divide the Article into two paragraphs under the same heading.

Mr. P. J. SHACKLE (United Kingdom): That could be achieved by making two parts of the list, part 1 beginning with "(a) Necessary to protect public morals" and the second part of the list beginning "(a) Essential distribution. "

CHAIRMAN: I did not quite catch that.

Mr. R. J. SHACKLE (United Kingdom): My proposal was that the list which now is just one single list would become a list in two parts: Part I beginning "(a) Necessary to protect public morals; " and the second part of the list beginning "(a) Essential distribution." We could then wind up that paragraph with the measures mentioned in Part 2 of the list .

CHAIRMAN: That is exactly what I myself had in view, and the Members of the Sub-Committee on Article 15, at any rate those who are present, will agree to that solution.

As there are no objections I take it that we agree to that arrangement.

And then, in order to have them in formal order, I must ask explicitly whether there is any further objection on the text prepared by the Secretariat of this paragraph (2) of Article 37.

The Delegate of France.

Mr. ROUX (France) (Interpretation): Mr. Chairman, I have a correction to propose to sub-paragraph (b) of this new Text. We read now the Document submitted by the Secretariat - (b), "essential to the maintenance of the legislation on price control," etc. We had a discussion on this question in the Sub-Committee and we suggested that it was not necessary to keep in the words "maintenance of the legislation", and we pointed out the fact that they were not included in the English Text, and it was decided to adopt more simple wording, say, "essential to the price control established in the particular countries".

The Text now before us should now be correct, in accordance with the decision of the Sub-Committee. Thank you, Mr. Chairman.

Mr. BAYER (Czechoslovakia): Should we take it that the Text of paragraph (2) should be the same as it is in the working paper 245 - that means that the General Preamble to Article 37 would not refer at all to this Text?

CHAIRMAN: I can inform the Delegate of Czechoslovakia that at the beginning of our meeting we discussed this question and agreed that the consolidation of Article 37 should apply to this new process as well, and that the previous sub-paragraphs of

Article 37 will be started by a number 1, and these three sub-paragraphs, number 2.

We now pass on to the next number on my agenda. That is a communication from the Sub-Committee on Articles 25 and 27. That communication is incorporated in the proposal by the Czechoslovak Delegation contained in Document W/252, Revision 1.

It is a question of transferring sub-paragraph (f) of Article 25:2 to Article 37. That sub-paragraph (f) is in the New York Text: "Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing, monopoly of trade for a state-trading enterprise operated under Articles 31, 32 or 33." These prohibitions should be excepted from the Article on Quantitative Restrictions.

Now the Sub-Committee on Article 25 proposes that that stipulation be transferred to Article 37, and the Delegate of Czechoslovakia has been kind enough to present a Draft for the new sub-paragraph, (g).

You have already had a discussion on Document 252, Revision 1. Is there any objection to the draft contained in that Document?

The Delegate of the United States.

Mr. LEDDY (United States): The Delegation of Czechoslovakia has proposed two papers, one 252 and the other 252, Revision 1. In 252, the exception reads as follows: "Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V".

In 252, Revision 1, the phrase is: "Necessary to secure compliance with such laws or regulations as those relating to the enforcement of state trading monopolies operated under Articles 31 32 and 33 " (etcetera) "and others which are not inconsistent with the provisions of Chapter V".

I think that the implication of the draft I last read is that anything relating to the enforcement of State-trading monopolies or customs regulations, the protection of patents, etc. - even though those regulations are inconsistent with the provisions of Chapter V - would be permitted and I think that construction is not possible under the draft put forward by Czechoslovakia in W. 252. So we would prefer the first draft put forward by the Czechoslovak Delegation. We think it is more accurate and precise.

CHAIRMAN: The Delegate of Czechoslovakia.

Mr. B.J.BAYER (Czechoslovakia): Mr. Chairman, since it was decided in the Sub-committee on Articles 25 and 27 to transfer this sub-paragraph to Article 37, and since the Sub-committee decided not to draft the text, we looked at the corresponding sub-paragraph of Article 37, that is, sub-paragraph (g), and, as the Delegates have observed, we have used exactly the same text as is contained in sub-paragraph (g).

The difference to which Mr. Leddy is referring, between Documents W.252 and W.252, Revision 1., is that W.252, Revision 1. also refers to Article 33, whereas in the former document we somehow omitted the reference to Article 33. We wanted to use practically the same words as in Article 25, Paragraph 2 (f) by transferring them to Article 37 and we did not enlarge the substance, since the reference to Article 33 was made in Article 25, Paragraph 2 (f) as well.

The second difference between W.252 and W.252, Revision 1. is the somewhat changed order of the words. W.252 begins with: "which are not inconsistent with the provisions of Chapter V." These words are used at the end of the suggested sub-paragraph (g) in W.252, Revision 1.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J.SHACKLE (United Kingdom): Mr. Chairman, as a matter of language and drafting, I, too, would definitely prefer the original version of W.252 to the revised form. The revised form, it seems to me, has several difficulties in it. I would like to draw attention in particular to the words "and others" in the last line but two. It is not at all clear whether "others" refers to laws, monopolies, or regulations, whereas that would not arise under the original draft.

As regards the difference in the wording introducing Article 33, not in the original draft, I would like to suggest that could be easily dealt with by referring, not to particular Articles, but to Section E of this Chapter, which is the State-trading section. At present we do not know whether there will be a separate Article or not. If we refer to Section E of this Chapter, we shall have covered that point by the whole of the contents of the State-trading section, whatever they may be. I would like to suggest, therefore, that we adopt the text of W.252 with that amendment, namely, to delete the words in the fifth line, referring to Articles/<sup>31 and 32</sup> and write in "Section E of this Chapter" instead.

CHAIRMAN: Is this proposal satisfactory to the Czechoslovakian Delegate? It will then incorporate Article 33, if in fact there is an Article 33.

Mr. B.J. BAYER (Czechoslovakia): I am sorry that we produced two drafts. We would have saved some time in the discussion if we had not omitted the reference to Article 33. That was the reason why we put the Revision I. I can agree with the suggestion made by Mr. Shackle to substitute the reference to Articles 31, 32 and 33 by a reference to the particular section, and with regard to the text, I would like to say that we have<sup>had</sup>/no intention of changing the substance. I would still think that we have not achieved any change of substance by changing the order of the words as they are in Revision I. I may specially point out that, if you look at the old sub-paragraph (g), you will find the words "such as" - literally "such as". That means that the enumeration of the examples there, which we preserve in our draft, are only demonstrative. If we use, at the end of our draft, Revision I, and others which are not inconsistent we only say what is said in the old (g), that there are some other measures or provisions which are consistent in the Charter, without being explicitly mentioned in (g) that they are being covered by Article 37.

CHAIRMAN: I am glad that the Czechoslovakian Delegate accepts the re-draft of the United Kingdom, to replace "Articles 31, 32 and 33" with "Section E of that Chapter." As to the rest of the problem of drafting, as the Czechoslovakian Delegate said that no alteration of substance was intended, and the reason why the second draft was submitted simply was to get Article 33 mentioned, I take it that he has no objection to standing by his first original draft. I quite agree that his second draft can be read in such a way that there shall not be any misunderstanding, but on the other hand, it is nevertheless an open question whether people who have not followed the development

may misunderstand this, so I think it is better to stand by the first draft.

Mr. C.E. MORTON (Australia): Mr. Chairman, the original text 37(g) referred to measures necessary to secure compliance with laws or regulations such as those relating to customs enforcement. Eahh of the texts of W/252, original and revised, now refers only to customs regulations. I should suggest that we strike out the words "customs regulations" appearing in the sixth line of the original text (W/252), and add the words in the fourth line "customs enforcement" after "those relating to", making it read: "those relating to customs enforcement, enforcement of state trading monopolies etc." In this way we shall revert to the original text of Article 37(g).

CHAIRMAN: The text will, after the Australian proposal, read "Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, those relating to customs enforcement, enforcement of state trading monopolies operated under Section E of that Chapter, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices". May I take it that Delegates agree to this text?

The Delegate of New Zealand.

MR. J.P.D. JOHNSON (New Zealand): Mr. Chairman, I just want to call attention to one point in connection with the use of the words "State Trading monopolies" in relation to Section E.

As you know, New Zealand has an amendment in connection with article 33 which relates to a system of complete state control of external trade not covered by the term "state monopoly". We hope, of course, that that amendment might be accepted. We would suggest that, in order to cover any procedures that might be approved within this particular Section, the word "procedures" might be used in substitution for the words "state trading monopolies". I do not think the words "state trading monopolies" are necessary in the context.

CHAIRMAN: You have heard the proposal to replace the three words "state trading monopolies" with "procedures" to read "the enforcement of procedures operated under Section E of that Chapter".

The Delegate for the United States.

MR. J.E. LEDDY (United States): The first thing that I think we should remember is that these examples given under sub-paragraph (g) are, in fact, only examples, that is, if any law or regulation is consistent with Chapter V, then any measure which is necessary

for the enforcement of that law is taken care of here.

Now, the sole reason for mentioning state trading monopolies specifically here was that, in the case of a monopoly, the enforcement of that monopoly depends upon a prohibition against private trade, and in order to make it perfectly clear to certain Delegates that that was permitted, state trading monopolies was inserted as one of the examples. I think that we need not make any change in sub-paragraph (g) to accomodate anything which might be done by way of an amendment to Article 33, such as was suggested by Mr. Johnsen. If the contingency should arise, it is a little different and if the amendment proposed to Article 33 should be adopted and the sub-committee dealing with the problem considers that some further amendment is necessary to this Article, then they can come back to it, but I do not think that we should more or less anticipate the adoption of an amendment which has not yet been adopted.

CHAIRMAN: I would like to ask the representative of New Zealand whether he feels very strongly about his suggestion to replace "state trading monopolies" by "procedures"?

MR. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, in the event of our proposal to amend Article 33 being accepted, the wording of this provision would, of course, be inconsistent with that situation; I do not wish to press the matter at this point on the understanding that, in the event of our amendment being adopted, we have the right to come back and suggest the amendment that we have given here.

CHAIRMAN: The Delegate for Australia.

Mr. C.E. MORTON (Australia): Article 31 refers to state trading enterprises, but Articles 32 and 33 refer to state trading monopolies. I think it would meet the point of view of the Delegate of New Zealand if, in the draft, we said "enforcement of state trading monopolies or enterprises".

CHAIRMAN: I would like to get a unanimous decision on this. Would it be any help if I suggested leaving out the word "monopoly" and say "enforcement of State trading operated .....?"

Mr. R.J. SHACKLE (United Kingdom): I think it might be the best plan if we leave the current wording, at any rate for the present. There is a particular reason why I suggest that, namely, that it is only where you have a monopoly of State trading that it is necessary to have prohibitions on importation or exportation in order that they may be enforced. If I understand the New Zealand amendment rightly, it would cover the case where you have a substantial control of import trade already in existence by means of import regulations and controls. Those would be self-contained, so to speak, being a system of import control. They operate themselves, and there is no need as far as I can see to make any further specific provision here for them. It is only in the case where you have State-trading monopoly that you need to have this type of provision.

I also venture to doubt whether the omission of the word "monopoly" by itself would make any difference, because the New Zealand system, if I understand it rightly, is not -at any rate necessarily - one of State trading but one of State control of trade. For those reasons, I feel that until we know what comes out of the New Zealand proposed amendment to Article 33, we had better leave this wording as it stands. If and when we get a decision on Article 33, we (or whatever other body may be appropriate) might look at this wording and see if it requires any amendment, but my impression is that in any event it would not require amendment.

CHAIRMAN: As the Delegate of New Zealand has already

consented to that procedure, I take it that we agree to the text as it now stands?

The Delegate of Czechoslovakia.

Mr. B.J. BAYER (Czechoslovakia): Mr. Chairman, I wanted to explain that when drafting our amendments, both of them, we used the words "state trading monopolies". We did it for the reason that these words were used in the old place. In order to show that we do not want to broaden the substance, we used the same words.

We are, however, aware that these words are not very properly used, since Article 31 does not cover monopolies - Articles 32 and 33 deal with monopolies, whereas Article 31 covers State-trading and private enterprises to which a special or exclusive privilege has been granted. But since these enterprises to which a special or exclusive privilege has been granted involve some restrictions on the part of others and are also on the same level as the monopolies covered in Articles 32 and 33, we think it would be an improvement to drop the word "monopolies" as you suggested, Mr. Chairman.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I venture to think that the word "monopolies" is required in any case. It is only if and when you have a monopoly that you need it protected by a restriction on imports. If by any chance you have a State-trading enterprise which is not a monopoly, it would no doubt simply go into the market and buy and sell alongside private traders, and there would be no occasion to have any restriction in that case at all. If any words should be omitted, it should be the words "State trading", because if you say "monopolies operated under Section E of this Chapter" then you have covered every type of thing which is dealt with in Articles 31 and 32 and Article 33; so if there is to be any dropping of words, it should be the words "State trading" and not "monopolies".

CHAIRMAN: I do not think it wise for us to go on trying to improve upon a text which has already been approved by the interested delegations.

With regard to the remarks of the representative of Czechoslovakia that Article 31 does not deal with monopolies, that is met by the fact that we have omitted mentioning the Articles. We simply refer to Section E. I therefore take it that we can now be unanimous in passing the text as it stands.

Mr. J.P.D. JOHNSEN (New Zealand): I think there is some validity in the argument put forward by the delegate of Czechoslovakia. If you look at Article 31 it refers to the granting of privileges to enterprises which import, but Article 32 provides "If any Member, other than a Member subject to the provisions of Article 33, establishes, maintains or authorises, formally or in fact, an effective monopoly of the importation or exportation of any product". It need not therefore be a State trading monopoly; it may be a monopoly authorised by a State to some enterprise, and in that sense I think the suggestion made by the delegate of the United Kingdom that the words "State trading" might be omitted would meet the point.

CHAIRMAN: To me it is a matter of indifference whether you keep the words "State trading" in or not because the reference to Section E, Chapter V is a reference to the clauses dealing with State trading, so the wording "State trading" in the text is superfluous.

We have not very much time to spare on this discussion and if we can come to an agreement on the omission of the words "State trading" I do not think we should lose anything at all.

Mr. B.J. BAYER (Czechoslovakia): While I entirely agree with you, Mr. Chairman, in view of the discussion I think it might be better if we simply said generally "measures necessary to the enforcement of operations under Section E."

CHAIRMAN: I am afraid that that would be a little too general. If you do not mind, I think we could agree on leaving out the words "State trading", and keep "monopolies", on the understanding that we can come back to it after we have seen the fate reserved to Article 33.

May I take it we are now agreed?

(Agreed)

CHAIRMAN: We will now pass on. I still have three questions. The first is to remind you of an intervention of Dr. Coombs about a week ago in which he touched upon two of the sub-paragraphs of Article 37. The first one was that relating to fissionable materials. He said that he quite realised that that was a question mainly concerned with security and defence but that, after all, it also has a commercial aspect. He did not make any formal proposal but only drew the attention of our Commission to this commercial aspect of the problem of fissionable materials. Although he did not make any firm proposal, he mentioned the possibility of submitting the question to such international body as could be considered particularly competent to deal with it.

My own view is that the only such body I know of will be the Atomic Commission on the Security Council, but that Commission is exclusively dealing with the problem from the point of view of disarmament, and I do not think that the Members of that Commission will be in any better situation than ourselves for appreciating the commercial aspect of trade in fissionable materials; so I do not know whether we can do much more than simply note the opinion expressed by Dr. Coombs in our Report, and say that we do not see any solution to it. But before doing that we must ask the Representative of Australia whether he wishes to add anything to what Dr. Coombs said.

Mr. MORTON (Australia): Mr. Chairman, the Australian Delegation wishes to make a provisional reservation against the inclusion of (c) in Article 37.

CHAIRMAN: In the second point raised by Dr. Coombs, point (j), "Relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption", Dr. Coombs said there were cases where the rate of domestic consumption is extremely conservative for technical reasons, apart from the imposition of any restriction, and it might be difficult to prevent natural riches being exhausted, if dealt with always in the light of restrictions on the domestic production. That question also was reserved for further consideration here.

Mr. MORTON (Australia): We have no formal reservation to make.

CHAIRMAN: Thank you.

Then we pass on to a Document I have received this morning

from the Netherlands Delegation, and I take it it has been distributed...

Dr. SPEEKENBRINK (Netherlands) (Interpolation): Just before you start, I would ask for some further clarification on (e). I see, "In time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member". I have, I may say, read that phrase many times, and still I cannot get the real meaning of it.

What do we mean - "emergency in international relations"? Is that "immediate", through a war? - or what is the "emergency in international relations"?

The second point that is troubling me here is, what are the "essential security interests" of a Member? I find that kind of exception very difficult to understand, and therefore possibly a very big loophole in the whole Charter.

I might say that in a time of emergency, we have no Peace Treaties signed, and I consider that it is essential for me to bring as much food to the country as possible, so that I must do everything to develop my agriculture, notwithstanding all the provisions of this Charter. It might be a little bit far fetched, but as it stands here it really is worrying me. I cannot get the meaning of it.

CHAIRMAN: The Delegate of the United States.

Mr. J.M.LEDDY (United States): I suppose I ought to try to answer that, because I think the provision goes back to the original draft put forward by us and has not been changed since.

We gave a good deal of thought to the question of the security exception which we thought should be included in the Charter. We recognized that there was a great danger of having too wide an exception and we could not put it into the Charter, simply by saying: "by any Member of measures relating to a Member's security interests," because that would permit anything under the sun. Therefore we thought it well to draft provisions which would take care of really essential security interests and, at the same time, so far as we could, to limit the exceptions and to adopt that protection for maintaining industries under every conceivable circumstance.

With regard to sub-paragraph (e), the limitation, I think, is primarily in the time: first, "in time of war." I think no one would question the need of a Member, or the right of a Member, to take action relating to its security interests and to determine for itself - which I think we cannot deny - what its security interests are.

As to the second provision, "or other emergency in international relations," we had in mind particularly the situation which existed before the last war, before our own participation in the last war, which was not until the end of 1941. War had been going on for two years in Europe and, as the time of our own participation approached, we were required, for our own protection, to take many measures which would have been prohibited by the Charter. Our exports and imports were under rigid control. They were under rigid control because of the war then going on.

I think there must be some latitude here for security measures. It is really a question of a balance. We have got to have some exceptions. We cannot make it too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose.

We have given considerable thought to it and this is the best we could produce to preserve that proper balance.

CHAIRMAN: Does that give satisfaction to the Delegate of the Netherlands?

Dr. A.B.SPEEKENBRINK (Netherlands): Well, Mr. Chairman, I certainly could not improve the text myself. I only wanted to point out certain dangers. Otherwise I agree with it.

CHAIRMAN: In defence of the text, we might remember that it is a paragraph of the Charter of the ITO and when the ITO is in operation I think the atmosphere inside the ITO will be the only efficient guarantee against abuses of the kind to which the Netherlands Delegate has drawn our attention.

We may now pass on to the new proposal of the Netherlands Delegation on Article 37. I would mention that it was only distributed this morning, but, as this is probably our last meeting, I hope Delegates will be willing to consider it upon its merits. I will call upon the Netherlands Delegate kindly to introduce his amendment.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, in subparagraph (g) we mention especially the protection of patents, trade marks and copyrights, and we think that there is also a good case for the protection of a grower of certain plants who is specialising in methods of improving the quality and has had to have, for some time, protection. I think that is the best explanation I can give to you, and I should also like to draw your attention to the fact that the FAO should study this problem.

CHAIRMAN: You have the paper of the Netherlands Delegation in your hands. I would like to know whether any delegate has any opinion to express on this?

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, it does seem to me that this new proposal raises rather new and rather wide issues. It seems to me that, in any case, it would need expert consideration - consideration by agricultural experts, possibly also by patent experts. I am bound to say that, on the face of it, it seems to me that it would be rather difficult to accept unless, and until, the proposal of the FAO for a patent is accepted. In the absence of some check of that kind, how could one be sure that there really was anything special about a particular breed of plant? It does seem to me that it would apply in connection with expert restrictions which would be extremely difficult to keep a check on. On the other hand, if any proposal in the nature of a patent does materialise, then the matter would probably be covered under the existing (g). If it was not fully covered under that, we should know what the FAO proposal would involve. In the present position of affairs, it seems to me difficult to commit ourselves to a proposal of this kind. I feel sure that we should need some expert study to express any definite opinion about it.

Mr. A.B. SPEEKENBRINK (Netherlands): I can quite follow Mr. Shaakle's objections, because it is a difficult subject<sup>and</sup> that we only introduced<sup>it</sup> today. We did it because we thought that it would not be right, if we are thinking on these lines, to bring something new in<sup>to</sup> the World Conference which we have not discussed here. If that right is opened to us, we are quite prepared to make a further study, or that the FAO should make a further study, but I would not like, as I said, to bring anything new into the World Conference without proper notice here.

Mr. J. MELANDER (Norway): Mr. Chairman, we do not see any general objection to that proposal in principle. There may be some technical aspects which would have to be considered, but, if there is really a case here, I think we should not exclude the possibility of introducing this exception. I think the principle itself seems to be reasonable, and I think one ought to consider it, but as the Netherlands

Delegate has already pointed out, this perhaps ought to be considered in the light of some further studies by the FAO. I think we all ought to accept that.

CHAIRMAN: I understand that the Netherlands Delegate is perfectly agreeable to having his initiative noted in our report.

Mr. C.E. MORTON (Australia): Mr. Chairman, I think we ought to consider that, if a grower of a bulb or a flower is protected, the grower who improves animals for commercial use by selection or other scientific methods, has similar rights. The United Kingdom, France, New Zealand and even Australia are very proud of their blood stock of certain kinds. I think any right given to the grower of a new bulb or plant would be equally within the province of the breeder of stock, of a <sup>particular</sup> variety. If the two propositions could be linked together, we might see some virtue in it.

MR. J.M. LEDDY (United States): We might well add that, regarding restrictions on exportation, we could put it under provisions for patents and so have all three branches of protection on the same basis.

CHAIRMAN: Well, I consider this discussion is closed.

I would, on my own behalf, like to mention that this proposal, of course, must be seen in the light of what our Preparatory Committee has already dealt with in regard to our mutual duty to place adequate supplies of capital funds, advanced technology, trained workers, managerial skill etc., at everybody's disposal.

I have to state two things still. One is just to state that in our text of technical Articles we have some few expressions that are not always used in the same manner. We have, for instance, "study" and "investigation". We decided in one place to replace "investigation" by "study" - I take it that we agree to the same in other places where that occurs. Likewise, we have from the sub-committee a paper (I think it is on Article 17) where the sub-committee strikes out "is authorised to" and replaces it by "may", and at the bottom of the same text the same sub-committee uses the expression "is authorised to", but I take it that the Legal Drafting Committee will go through all that and we need not worry about it.

The Delegate for Canada.

MR. G.B. URQUHART (Canada): Mr. Chairman, there is one small item of unfinished business that appears on page 3 of document T/103 which states that the Canadian Delegate associates himself with the proposal of the Delegate for Chile, that/ "and also vessels and other means of transport" be deleted from Article 16. In view of the fact that it does not appear very likely that we will get any degree of support for that

proposal, and in view of the expressed desire to get unanimous agreement on as many articles as possible, I think that we no longer wish to be associated with that proposal.

CHAIRMAN: Thank you.

The Delegate of France.

M. L. ROUX (France ) (Interpretation): Just one remark, Mr. Chairman, in connection with paragraph (g) of Article 37. I see in the English text, on the basis of the Czechoslovakian proposal, the expression "copyrights" is included, while the French text in this place says "rights of reproduction". I should like to remind you that the equivalent of the term "copyrights" in French is "droits d'auteur et de reproduction" instead of "droits de reproduction". That is a point to which we have already drawn the attention of the Commission in document W/44 submitted in May.

CHAIRMAN: Now, I come to my last question. We have been asked by the sub-committee dealing with Chapter VIII to draft - or a draft is suggested - a proposal for an article including, in one of the last parts of the Charter, the four points of Article 37 which we had previously decided should be transferred to one of the last Articles. We have the text here of the United States proposal in document W/236 on page 13. This contains a proposed Article 94 "General Exceptions", and there we find in (a), (b), (c) and (d) the different items of the previous Article 37 - so far, so good. There is to my mind no alteration to suggest in the text of these sub-paragraphs, but the question arises as to what shall be the Introduction to these sub-paragraphs in the new Article. The United States Delegation has submitted on the 4th July the following text: "Nothing in this Charter shall be construed to require any Member to furnish any information the disclosure of which it considers contrary to its essential security interests, or to prevent any Member from taking any action which it may consider to be necessary to such interests", and so on.

Now, we have on several occasions noted that by transferring these items from Article 37 to the end of the Charter we take them away from the sanction clauses of Chapter V - we take them away from Articles 34 and 35 - and before we approve this suggestion for the introduction, we must make our up minds whether we are in agreement that these clauses should not provide for any possibility of redress.

The Delegate of the United States.

Mr. J.M. LEDDY (United States): I would like to say something about this Article: first, the reference to the furnishing of information - this was drawn from the Restrictive Business Practices Chapter, and under this provision here it will be possible to eliminate that exception in Chapter VI. Also, it should be possible to eliminate the specific exceptions in Chapters VI and VII relating to some of the other types of action under (a) (b) (c) and (d).

Secondly, you will note that the words in sub-paragraph (a) "or their source materials" have been added in the text here. I believe it was left this way, that the words should read "Relating to fissionable materials" and then there was a note in the Report that that included source materials. We suggest it might as well be put in the text.

Finally, I think that the place of an Article in the Charter has nothing to do with whether or not it comes under Article 35. Article 35 is very broad in its terms, and I think probably covers any action by any Member under any provision of the Charter. It is true that an action taken by a Member under Article 94 could not be challenged in the sense that it could not be claimed that the Member was violating the Charter; but if

that action, even though not in conflict with the terms of Article 94, should affect another Member, I should think that that Member would have the right to seek redress of some kind under Article 35 as it now stands. In other words, there is no exception from the application of Article 35 to this or any other Article.

CHAIRMAN: The Delegate of Australia.

Mr. C.E. MORTON (Australia): Mr. Chairman, the fissionable materials seem to be bobbing up like King Charles' head, rather to my embarrassment, from time to time. Article 94 is so wide in its coverage - it says "or to prevent any Member from taking any action which it may consider to be necessary to such interests" - that I am very glad to have the assurance of the United States Delegate that in his opinion, at any rate, a Member's rights under Article 35 (2) are not in any way impinged upon. Could we have a paragraph in Article 94 to make it clear, or some wording in Article 94 that says that a Member's rights under Article 35(2) will not be impinged upon? You only want to give one of these "kerbside" opinions, is that it?

CHAIRMAN: We have only been asked by the Sub-Committee dealing with Chapter VIII whether we have any remarks to make on this, and I do not think we can do better than say that the drafting of paragraphs (a), (b), (c), (d) and (e) is in conformity with what we have decided. The only thing is that paragraph (a) related only to fissionable materials, and in our explanatory note we stated that that comprised also materials from which they are derived; but, for the rest, we have no observation to make on this sub-paragraph of the new Article 94.

As to the beginning of Article 94, I think we could just simply leave it to the Sub-Committee dealing with Chapter VIII.

Mr. J.M. LEDDY (United States): The Sub-Committee on Chapter VIII referred this to Commission A after consideration because they felt it was not within their competence to deal with. They are dealing solely with the question of organisation, whereas, we are dealing with substance.

CHAIRMAN: In the light of the declaration of the United States representative confirming the applicability of Article 35, has any delegate any objection to the text in this proposed new Article 94?

Mr. C.E. MORTON (Australia): The Australian delegation would have no objection to the text provided a note is inserted in the Report of this Commission saying that it is our unanimous opinion that the text of Article 94 does not conflict with the Members' rights under paragraph (2) of Article 35.

Mr. J.M. LEDDY (United States): I do not object to that, but it raises some questions of interpretation. In my view, Article 35, in its terms, covers everything in the Charter. It says that if any Member adopts any "measure, whether or not it conflicts

with the terms of this Charter". If we put in a note of this kind in respect of Article 94 I think it may raise doubts elsewhere in the Charter. Therefore I would rather not see that kind of note. I think we should have a clear and explicit note on Article 35 saying that no Member shall bring any complaint in respect of Article 94 in order to get out of Article 34. I would rather have it left that way because it is perfectly clear from the text that Article 35 does apply to Article 34.

Dr. A. J. SPEEKENBRINK (Netherlands): If there is any doubt left about the applicability of Articles 35 and 34, should it not be for the Drafting Committee to solve the problem?

CHAIRMAN: I think that the simplest thing is for us to say to the sub-Committee on Chapter VIII that we have considered this proposed text of Article 94 and as far as we are concerned we have no objection to it, because we read it in conjunction with paragraph 2 of Article 35. I know that in the Sub-Committee on Chapter VIII they have redrafted Article 35, and it simply means that we draw their attention to the fact that they should not read it in such a way as not to make it applicable to the whole of the Charter in the newer text.

Mr. J. M. LEDDY (United States): I think that the Sub-Committee on paragraph 2 of Article 35 is a separate sub-Committee and not the Sub-Committee on Chapter VIII.

There is a separate Sub-Committee on Articles 34, 35, and 38. It is paragraph 2 of Article 35 that I am talking about.

Mr. C. E. MORTON (Australia): There is a good deal of weight in the statement of the United States delegate and I am therefore prepared to withdraw our reservation.

CHAIRMAN: Then I am in agreement with the Sub-Committee on Chapter VIII, that we have considered and approved this Draft of the new Article 94.

Mr. SHACKLE (United Kingdom): Mr. Chairman, a tiny verbal point in (a) "Relating to fissionable materials or their source materials". I understand the Commission said "the materials from which they are derived", so perhaps it would be better as adopted by the Commission, which will be "source of materials".

CHAIRMAN: Any further comments?

The Delegate of the United States.

Mr. LEDDY (United States): You mentioned the other day that there should be an opportunity at some stage for reconsideration of some of the points on which reservations have been made as early as possible.

Would it be possible for Commission "A" to have some sort of a special meeting, to take up all those things at some future time, as I understand we cannot do that at the Preparatory Committee - Commission "A" is supposed to be answerable to the Preparatory Commission for this purpose; so if it planned to have another meeting perhaps we could go over a number of points that are still open.

CHAIRMAN: Well, it certainly is my view that we must have another - as late as possible, but not too late.

The Meeting is adjourned.

The Meeting rose at 5.5 p.m.