

SIXTH COMMITTEE: ORGANIZATION

REPORT OF SUB-COMMITTEE I (ARTICLE 94)

Terms of Reference and Composition

1. At its nineteenth meeting, the Sixth Committee established a sub-committee to examine all amendments relating to the subject matter of Article 94. Representatives of the following delegations comprised the membership of the Sub-Committee: Australia, Costa Rica, Czechoslovakia, Guatemala, Iraq, India, Pakistan, the Union of South Africa, the United Kingdom and the United States of America. At its first meeting the Sub-Committee unanimously elected Mr. TINOCO (Costa Rica) as Chairman. At the seventh meeting, in view of the absence of Mr. TINOCO from the Conference, Mr. J. GOMEZ-ROBLES (Guatemala) was elected unanimously to serve in his place as Chairman.

Activities of the Sub-Committee

2. The Sub-Committee examined the various proposals set forth in connection with Article 94 in E/CONF.2/C.6/12 (with the exception of the amendment proposed by the delegation of Egypt which was withdrawn prior to the establishment of the Sub-Committee), together with the proposals in Addenda 8 and 9 to that document. The representative of Costa Rica withdrew the amendment which his delegation had proposed in view of the discussion of other provisions in the Charter relating to that proposal.

3. The Sub-Committee held nine meetings. The large measure of agreement reached on the texts appended to this report, relating to such complex and difficult questions, reflects the thoroughness of the formal and informal discussions among members of the Sub-Committee and the capable guidance by the Chairman. The comments and reservations made by members of the Sub-Committee, collectively or individually, regarding these texts are indicated below.

Article 94 (see Attachment 1 with Annex)

4. No change has been made in the text of paragraph 1(a) as given in the Geneva draft.

5. The preamble of sub-paragraph (b) has been modified to make it clear that the action referred to might be taken by a single Member or by that Member acting with other states. The Sub-Committee has also modified slightly this preamble, as well as the following sub-paragraphs, in order to

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indicate more clearly that the sub-paragraphs refer to "action" and not to "essential security interests".

6. Apart from the slight drafting change mentioned above, which required the substitution of "relates" for "relating", the text of sub-paragraph (i) in the Geneva draft has not been changed.

7. Sub-paragraph (ii) has been changed to refer explicitly both to the military establishment of the Member and of any other country rather than merely to "a military establishment".

8. Apart from the drafting modifications consequential upon the changes made in the preamble, sub-paragraph (iii) remains unchanged.

9. Paragraph 1 (c) has already been recommended to the Fifth and Sixth Committees by a joint sub-committee (E/CONF.2/C.5/14 and E/CONF.2/C.6/45).

The Fifth Committee has approved this text subject to the recommendation of the joint sub-committee that the present sub-committee should consider the possible inclusion of the word "solely" before "for the purpose of ..."

The present Sub-Committee has considered this matter and has concurred in the present language of paragraph 1 (c), without the addition of the word "solely". The Sub-Committee understands that as now drafted the exception granted in this paragraph is granted solely for the purpose of permitting a Member country to provide for its national security requirements.

10. In the course of its consideration of the special circumstances of India and Pakistan as newly created independent states, the Sub-Committee sought the advice of the appropriate Sub-Committee of the Third Committee concerning the proper location in the Charter of a provision on this subject. In the light of the advice received, the present Sub-Committee agrees that this special situation should be dealt with in connection with Article 94. In view of the fact that the situation referred to is of temporary duration, the Sub-Committee is of the opinion that the detailed provision should appear as an annex to the Charter rather than in the text proper of a particular article. Paragraph 1 (d) is designed to make this provision, although contained in an annex, an integral part of the Charter.

11. In the preparation of paragraph 2, the Sub-Committee established a working party to consider the exceptions relating to "peace treaties" and "special regimes". The report of this working party is contained in E/CONF.2/C.6/W.4. The Sub-Committee has not considered it desirable to cover in this general provision the peace treaties or permanent settlements prior to the Second World War, particularly in the absence of authoritative information concerning the provisions and present validity of such earlier treaties or settlements. The representative of Iraq entered a provisional reservation concerning paragraph 2 (a) pending final decisions on the texts

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of Articles 15 and 16. The representative of Turkey, who was not a member of the Sub-Committee, indicated that his Delegation also reserved its position pending the outcome of the discussions on Article 16. In drafting paragraph 2 (b) the Sub-Committee has been guided by the terminology of paragraph 4 of Article 68 as approved by the Sixth Committee (E/CNCF.2/C.6/88). 12. The Sub-Committee communicated to the appropriate Sub-Committee of the Third Committee a suggestion that an exception might be made in Article 43 concerning action "necessary to the enforcement of police or other laws relating to public safety" or "necessary for the maintenance of public order or safety". The Third Committee has now approved the inclusion in Article 43, as paragraph 1 (a) (ii), of measures "necessary to the enforcement of laws and regulations relating to public safety" (E/CNCF.2/C.8/5/Rev.1).

New Article 83A (see attachment 2 with interpretative note)

13. On examining several of the proposals submitted by delegations relating to action taken in connection with political matters or with the essential interests of Members, the Sub-Committee concluded that provision regarding such action should be made in connection with an article on "Relations with the United Nations" since the question of the proper allocation of responsibility as between the Organization and the United Nations was involved. Accordingly, the Sub-Committee recommends the inclusion in the Charter of the article contained in Attachment 2, together with the accompanying interpretative note.

14. It will be noted that paragraphs 1, 2 and 4 of the new text are intended to replace paragraph 1 of Article 84, and paragraph (c) of Article 94 in the Geneva draft.

15. Paragraph 3 of the proposed new article, which like paragraph 4 is independent in its operation, is designed to deal with any measure which is directly in connection with a political matter brought before the United Nations in a manner which will avoid conflict of responsibility between the United Nations and the Organization with respect to political matters. In the course of the discussion on this paragraph the Sub-Committee agreed that this provision would cover measures maintained by a Member even though another Member had brought the particular matter before the United Nations, so long as the measure was taken directly in connection with the matter. It was agreed also that under this provision the Member maintaining the measure could, so far as this Charter is concerned, continue that measure so long as it felt that the circumstances were unchanged from that Member's point of view. The Sub-Committee held that the important thing was to maintain the jurisdiction of the United Nations over political matters and over economic measures of this sort taken directly in connection with such a political

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matter and nothing in this Article could be held to prejudice the freedom of action of the United Nations to settle such matters and to take steps to deal with such economic measures in accordance with the provisions of the United Nations Charter if they saw fit to do so. The Sub-Committee points out that in the event of the adoption of the new article changes in paragraph 2(c) of the draft terms of reference of the Interim Commission may, in the light of its provisions, be required. (E/CONF.2/C.6/W.117). The representative of the Union of South Africa dissented from this paragraph of the report.

16. The representative of India indicated that his delegation accepted the text subject to such amendments as it may think fit to propose in the Committee. His delegation would wish to maintain for the time being its original amendment to Article 94.

17. The representative of Iraq indicated that he was in agreement with the text of the new article subject to confirmation by his government.

18. The representative of the Union of South Africa stated that different members of the Sub-Committee had appealed to him to try to reach a compromise. He had promised to do so and had accordingly successively proposed three amendments to the United Kingdom amendment which has been accepted as paragraph 3 of the proposed text. He had not received any support in his attempts to arrive at a compromise, nor had any other member tried to suggest a compromise text. He accordingly felt that he had redeemed his promise and reserved full right to discuss the question, if necessary, in all its bearings in Committee VI. He asked that his amendments be recorded in the report of the Sub-Committee. These amendments read as follows:

A. The following text to be substituted for paragraph 3 of the Sub-Committee's text:

"3. Members recognize that the Organization should not attempt to take any action which would involve passing judgement, in whole or in part, on essentially political issues. If a complaint is referred to the Organization on a matter which is on the agenda of the United Nations, the Organization shall refer such complaint to the United Nations."

B. Alternatively, the following changes might be made in the present text of paragraph 3:

delete: "and shall not be subject to the provisions of this Charter"

substitute: "and not within the scope of the Organization;  
Provided that this paragraph shall not be construed as

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permitting unilateral use of sanctions".

C. Or, finally, the words "brought before" in paragraph 3 might be replaced by "which appears on the agenda of the appropriate organ of . . ."

ATTACHMENT 1

TEXT PROPOSED BY SUB-COMMITTEE I OF COMMITTEE VI

Article 94

General Exceptions

1. Nothing in this Charter shall be construed:
  - (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent a Member from taking, either singly or with other states, any action which it considers necessary for the protection of its essential security interests, where such action:
    - (i) relates to fissionable materials or the materials from which they are derived;
    - (ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment of the Member or of any other country;
    - (iii) is taken in time of war or other emergency in international relations; or
  - (c) to prevent a Member from entering into or carrying out any inter-governmental agreement, or other agreement on behalf of a government for the purpose specified in this exception, made by or for a military establishment for the purpose of meeting essential requirements of the national security of one or more of the participating countries; or
  - (d) to prevent action taken in accordance with the terms of Annex 00 to the Charter.
2. Nothing in this Charter shall override:
  - (a) any of the provisions of peace treaties or permanent settlements resulting from the Second World War which are or shall be in force and which are or shall be registered with the United Nations, or
  - (b) any of the provisions of instruments creating Trust Territories or any other special regimes established by the United Nations.

ANNEX OO

SPECIAL PROVISIONS REGARDING INDIA AND PAKISTAN

Since there are special circumstances arising out of the establishment of India and Pakistan as independent states, and since they have long constituted an economic unit, the provisions of the Charter shall not prevent the two countries from entering into special agreements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis. Measures adopted by India and Pakistan in order to carry out definitive agreements in respect of their mutual trade, once they have been agreed upon, may depart from particular provisions of this Charter; Provided that such measures are in general consistent with the purpose and objectives of the Charter.

/ATTACHMENT 2-

ATTACHMENT 2

TEXT PROPOSED BY SUB-COMMITTEE I OF COMMITTEE VI

New Article (83A)

Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement to be approved by the Conference.
2. Any such agreement shall, subject to the provisions of this Charter, provide for effective co-operation and the avoidance of unnecessary duplication in the activities of the respective organization, and for co-operation in furthering the restoration and maintenance of international peace and security.
3. In order to avoid conflict of responsibility between the United Nations and the Organization with respect to political matters, any measure which is directly in connection with a political matter brought before the United Nations in accordance with the Chapter IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations, and shall not be subject to the provisions of this Charter.
4. No action, taken by a member in pursuance of its obligations under the United Nations Charter for the restoration and maintenance of international peace and security, shall be deemed to conflict with the provisions of this Charter.

Interpretative Note

- (a) If any Member raises the question whether a measure taken under paragraph 3 of this Article is in fact directly in connection with a political matter brought before the United Nations in accordance with the terms of Chapter IV or Chapter VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the International Trade Organization, but if political issues beyond the competence of the Organization are involved the question shall be deemed to fall within the scope of the United Nations.
- (b) If a Member which has no direct political concern in the matter brought before the United Nations finds that a measure taken under paragraph 3 of this Article nullifies or impairs any benefit accruing to it directly or indirectly in the absence of such measures, it shall seek redress only by recourse to the procedures laid down in Chapter VIII of the Charter of the International Trade Organization.