

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.AMENDMENT PROPOSED BY THE AUSTRALIAN DELEGATIONARTICLE 35 - paragraph 2

2(a) If any Member should consider that any other Member is applying any measure, whether or not it conflicts with the terms of this Charter, or that any situation exists, which has the effect of nullifying or impairing any object of this Charter, the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter/.

any benefit accorded to it directly or indirectly by this Charter is being nullified or impaired, or that the promotion by it of any of the Purposes of this Charter is being impeded, as the result of -

- (i) the application by another Member of any measure, whether or not it conflicts with the provisions of this Charter; or
- (ii) the failure of another Member to carry out its obligations under this Charter; or
- (iii) the existence of any other situation.

the Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other Member or Members which it considers to be concerned. Any Member thus approached shall give sympathetic consideration to the representations or proposals made to it.

If no such adjustment can be effected, the matter may be referred to the Organisation, which shall, after investigation, and if necessary after consultation with the Economic and Social Council of the United Nations and any appropriate inter-governmental organisations, make appropriate recommendations to the Members concerned./

If no satisfactory adjustment is effected between the Members concerned within a reasonable time, or if the difficulty is of the type described in (iii) of this sub-paragraph, the matter may be referred to the Organisation.

(b) The Organisation shall promptly investigate any matter so referred to it, and after consultation if necessary with Members, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organisations, shall make appropriate recommendations to the Members concerned.

The Organisation, if it considers the case/

(c) If the Organisation considers that the circumstances are serious enough to justify such action, it may authorise a Member or Members to suspend the application to /any/ such other Member or Members of such /specified/ obligations or concessions under this Chapter as the Organisation determines to be /may be/ appropriate in the circumstances.

If the application to any Member of any /If s. . obligation/s/ or concession/s/is /are/in fact suspended that /any affected/ Member shall then be free, not later than sixty days after such action is taken to advise the Director-General in writing of its intention to withdraw from the Organisation and such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the /Organisation/ Director-General.

#### COMMENT

The main purposes sought in this re-drafting are:-

- (1) to replace the phrase "nullifying or impairing any object of this Charter" by words that more clearly express the intention and are less ambiguous, it being felt that reliance upon the phrase "object of this Charter", as at present, leaves too much to inference;
- (2) to set out more clearly the circumstances in which a Member may make a complaint and seek to be released from obligations undertaken or concessions granted by it;
- (3) to provide for the fact that in some cases a complaining Member's difficulties might not be due to any act or failure of another Member to whom complaint could appropriately be made, while retaining the provision that when another Member is clearly involved, consultation and conciliation between the Members should be attempted before the matter is referred to the Organisation;
- (4) to ensure that the drafting of the Article covers the types of cases described in paragraphs 4(b) and 4(c) on page 11, and 3(1) on page 15 of the London Report.
- (5) to retain the idea that it is the Organisation which determines, in the circumstances, the obligations from which one or more Members may be released, and which Members should be released;
- (6) to clarify the procedure under which a Member may withdraw from the Organisation in the circumstances set out in this Article, and to use similar language to Article 89.

4th June 1947