

SIXTH COMMITTEE: ORGANIZATION

REPORT OF WORKING PARTY 3 OF SUB-COMMITTEE G

The following text for Articles 89 and 90 of Chapter VIII is submitted by the Working Party. The discussion of Article 90 led to necessary consequential changes in Article 89, which were considered within the terms of reference of the Working Party. It was not considered helpful to prepare a text showing deletions from or additions to the Geneva text.

CHAPTER VIII - SETTLEMENT OF DIFFERENCES - INTERPRETATION

ARTICLE 89 - Consultation and Arbitration

1. If any Member considers that any benefit accruing to it directly or indirectly, implicitly or explicitly, under any of the provisions of this Charter other than Article 1, is being nullified or impaired as a result of
  - (a) a breach by a Member of an obligation under this Charter by action or failure to act; or
  - (b) the application by a Member of a measure not conflicting with the provisions of this Charter; or
  - (c) 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 such other Member or Members as it considers to be concerned, and the Members receiving them shall give sympathetic consideration thereto.
2. The Members concerned may submit any question arising under paragraph 1 to arbitration upon terms to be agreed between them: provided that the decision of the arbitrator shall not be binding for any purpose upon the Organization or upon any Members other than those participating in the arbitration.
3. The Members concerned shall keep the Organization informed at all stages of the process of any consultation or arbitration under this Charter.

ARTICLE 90 - Reference to the Executive Board

1. Any question arising under Article 89 (1) which is not satisfactorily settled and any question which arises under Article 89 (1) (c) may be referred by any Member concerned to the Executive Board.
2. The Executive Board shall promptly investigate the question and shall decide whether any nullification or impairment in fact exists within the terms of Article 89 (1). It shall then either

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- (i) decide that the matter does not call for any action; or
  - (ii) recommend further consultation to the Members concerned; or
  - (iii) refer the matter to arbitration upon such terms as may be agreed between the Executive Board and the Members concerned; or
  - (iv) in any case arising under Article 89 (1) (a) request the Member concerned to take or discontinue such action as may be necessary for the Member to conform to the provisions of the Charter; or
  - (v) in any case arising under Article 89 (1) (b) or (c), propose such measures to Members as will best assist the Members concerned and contribute to a general adjustment.
3. If the Executive Board considers that action under Article 90 (2) (iv) is not likely to be effective in time to prevent serious injury, and that any nullification or impairment found to exist under Article 89 (1) (a) is sufficiently serious to justify such action, it may recommend the release of a Member or Members from obligations or the grant of concessions to any other Member or Members under or pursuant to the Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired.
4. The Executive Board may, in the course of this investigation, consult with such Members or intergovernmental organizations and upon such matters within the scope of the Charter as it deems appropriate.
5. The Executive Board may bring any question, referred to it under this Article, before the Conference at any time during its consideration of the case.

ARTICLE 90-A - Reference to the Conference

1. Any Member concerned may, within 30 days, ask for a review by the Conference of any action or decision by the Executive Board under paragraph 2 or 3 of Article 90. The Conference shall by resolution confirm, modify or reserve such action or decision.
2. Where a question of nullification or impairment has been brought before the Conference by the Executive Board, the Conference shall follow the same procedure as that set out in Article 90 (2) for the Executive Board.
3. If the Conference considers that any nullification or impairment found to exist under Article 89 (1) (a) is sufficiently serious to justify such action, it may authorize the release of a Member or Members from obligations or the grant of concessions to any other Member or Members under or pursuant to the Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired. The Conference, when proposing measures arising under Article 90 (2) (v) or reviewing action by the Executive Board under that sub-paragraph, may authorize a similar release of a Member or Members, to the  
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extent and upon such conditions as will achieve the objects set out in that sub-paragraph.

4. When any Member or Members suspend the performance of any obligation or grant of any concession to another Member in accordance with paragraph 2, the latter Member shall then be free not later than 60 days after such action is taken, to give notice of its withdrawal from the Organization. Such withdrawal shall become effective upon the expiration of 60 days from the day on which such notice is received by the Director-General.

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