

SIXTH COMMITTEE: ORGANIZATION

REPORT OF WORKING PARTY 4 OF SUB-COMMITTEE G  
ARTICLES 91 AND 92

1. Working Party 4 has agreed, after several extensive meeting, on the following text of Articles 91 and 92, and of a proposed resolution. Several of the changes suggested, as for example changes suggested in Article 91, paragraph 1 and Article 92, paragraph 2, have been made in view of agreement already reached in Sub-Committee G.
2. The Working Party has agreed upon the use of the word "prejudiced" rather than the words "substantially interested" in paragraph 2, Article 91, as reflecting the view of the Sub-Committee. This change is intended to make clear that a real interest of a Member must be adversely affected before that Member can compel recourse of the Organization to the International Court. A remote, theoretical or unsubstantial interest of a Member in the decision in question would not be sufficient to give a Member rights under Article 91.
3. The Working Party agreed to call the attention of Sub-Committee G to the desirability of placing paragraph 3 of Article 92, as redrafted, at the beginning of Chapter VIII as a separate Article, with the suggestion that this question should be referred to the Central Drafting Committee, if deemed necessary. It was suggested that if this were to be drafted as a separate Article it would be desirable to make the two sentences of this paragraph into separate sections.
4. It was agreed in the Working Party that the question of recourse by a state which is a Member of the ITO to the International Court after the conclusion of the procedures under Chapter VIII might be raised in the Sub-Committee. It was also agreed that the draft resolution was presented on a tentative basis and that delegations represented in the Working Party might raise questions with respect to its appropriateness.
5. Other changes in the draft have been made in accordance with discussion either in Sub-Committee G or in the Working Party.

/Proposed text

Proposed Text

ARTICLE 91

REFERENCE TO THE INTERNATIONAL COURT OF JUSTICE

1. The Conference or the Executive Board Organization may, in accordance with arrangements made pursuant to paragraph 2 of Article 96 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of the activities of the Organization.
2. Any resolution or decision of the Conference under paragraph 3, Article 90 or decision of the Conference under any other Article of this Charter shall, be subject to review by the International Court of Justice through the means of a request by the Organization for an advisory opinion pursuant to the Statute of the International Court of Justice. The request for review of such resolution or decision shall be made by the Organization, in appropriate form, on the instance of any substantially interested Member, upon the instance of any Member whose interests are thereby prejudiced be subject to review by the International Court of Justice through the means of a request, in appropriate form, for an advisory opinion pursuant to the Statute of the Court.
3. The request for an advisory opinion shall be accompanied by a statement to be furnished by the Organization in consultation with the Members substantially interested, in accordance with the Statute of the International Court of Justice, of the facts underlying the question upon which the opinion of the Court is requested. The Organization shall supply to the Court such further information as the Court may require
4. Pending the delivery of the opinion of the International Court of Justice, the resolution or decision of the Conference shall have full force and effect; Provided that the Conference shall suspend the operation of any such resolution or decision pending the delivery of the opinion where in the view of the Conference damage difficult to repair would otherwise be caused to a Member concerned.\*
5. The Organization shall consider itself as bound by the opinion of the International Court of Justice on any the question/s referred by it to the Court to it shall be binding upon the Organization. The resolution or decision in question shall be modified insofar as it does not accord with the opinion of the International Court of Justice.

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\* Text not altered; inserted for convenience.

ARTICLE 92  
MISCELLANEOUS PROVISIONS

1. (Not within the terms of reference of Sub-Committee G).
2. Nothing in this Chapter shall be construed to exclude other procedures provided for in this Charter for consultation and settlement of differences arising out of its operation. The Organization may regard consultation or investigation undertaken under other provisions of the Charter as fulfilling, either in whole or in part, any similar procedural requirement in this Chapter.
3. The Members undertake, in relation to other Members or the Organization, that they will not have recourse to any procedure other than the procedure envisaged in this Charter for complaints and the settlement of difficulties arising out of its operation<sup>[1]</sup>. <sup>[nor,]</sup> The Members also undertake, without prejudice to any other international agreement, that they will not have recourse to unilateral [sanctions] economic measures of any kind [on the ground that there has been a violation of this Charter, in advance of a complaint to the Organization and a final decision of the Organization establishing such a violation] contrary to the provisions of this Charter.
4. The Conference and the Executive Board shall establish such rules of procedure as may be necessary to carry out the provisions of this Chapter. The rules of the Conference shall include provisions concerning the maintenance in force or suspension of any rulings of the Executive Board pending review by the Conference under paragraph 3 of Article 90.\*

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\* Text not altered; inserted for convenience.

PROPOSED RESOLUTION

The United Nations Conference on Trade and Employment, having given serious consideration to the relation of the International Trade Organization and the International Court of Justice; and

having provided, in Chapter VIII of the Charter, procedures for review of legal questions arising out of decisions of the Organization by the International Court; and

having considered the problem arising out of the possibility of conflict between the obligations of Members under the Statute of the International Court of Justice and those provisions of the Charter to the effect that Members will have recourse to the International Court only through the procedures established for the obtaining of an advisory opinion pursuant to the Charter and to Article 65 of the Statute of the International Court;

THEREFORE RESOLVES and AGREES:

1. that the Interim Commission of the International Trade Organization, through such means as may be appropriate, including if necessary a request for an advisory opinion by the appropriate organ of the United Nations, shall consult with appropriate officials of the International Court or with the Court itself, upon the questions of:

(a) whether any conflict exists between the reciprocal obligations of Members under the Charter and their obligations under the Statute of the International Court of Justice; and

(b) whether there may be improvement of the procedures established by the Charter for obtaining an opinion of the International Court, in accordance with the provisions of Chapter VIII of the Charter and the Statute of the Court; and

2. that the Interim Commission shall present a report on these questions to the first conference of the International Trade Organization.

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