

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON CHAPTER VIII (SETTLEMENT OF DIFFERENCES - INTERPRETATION)

Text of Chapter VIII as Redrafted by the Sub-Committee
up to 18 February 1948

CHAPTER VIII - SETTLEMENT OF DIFFERENCES

Article 88 A

Reliance on the Procedures of the Charter

1. 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 differences arising out of its operation.
2. The Members also undertake, without prejudice to any other international agreement, that they will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter.

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 the matter arising under paragraph 1 to arbitration upon terms to be agreed between them: provided that the
/decision

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 inform the Organization generally of the progress and outcome of any consultation or arbitration undertaken under this Charter.

Article 90

Reference to the Executive Board

1. Any matter arising under Article 89 (1) (a) or (b) which is not satisfactorily settled and any matter 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 matter and shall decide whether any nullification or impairment in fact exists within the terms of Article 89 (1). It shall then take such of the following steps as may be appropriate:

(i) decide that the matter does not call for any action;

(ii) recommend further consultation to the Members concerned;

(iii) refer the matter to arbitration upon such terms as may be agreed between the Executive Board and the Members concerned;

(iv) in any matter 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;

(v) in any matter arising under Article 89 (1) (b) or (c), make such recommendations to Members as will best assist the Members concerned and contribute to a satisfactory 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 affected 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 its investigation, consult with such Members or inter-governmental organizations and upon such matters within the scope of the Charter as it deems appropriate. It may also consult any appropriate commission of the Organization on any matter arising under this Chapter.

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5. The Executive Board may bring any matter, referred to it under this Article, before the Conference at any time during its consideration of the matter.

Article 90 A

Reference to the Conference

1. The Executive Board shall, if requested to do so within thirty days by a Member concerned, refer to the Conference for review any action, decision or recommendation by the Executive Board under paragraph 2 or 3 of Article 90. Unless such review has been asked for by a Member concerned, Members shall be entitled to act in accordance with any action, decision or recommendation of the Executive Board under paragraph 2 or 3 of Article 90. The Conference shall by resolution confirm, modify or reverse such action, decision or recommendation.

2. Where a matter arising under this Chapter 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 affected 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. If the Conference considers that any nullification or impairment found to exist under Article 89 (1) (b) or (c) is sufficiently serious to justify such action, it may authorize a release of a Member or Members to the extent and upon such conditions as will achieve the objects set out in Article 90 (2) (v).

4. When any Member or Members suspend the performance of any obligation or grant of any concession to another Member in accordance with paragraph 3, the latter Member shall then be free not later than sixty days after such action is taken, for after the opinion of the International Court of Justice is given* to give notice of its withdrawal from the Organization. Such withdrawal shall become effective upon the expiration of sixty days from the day on which such notice is received by the Director-General.

Article 91

Reference to the International Court of Justice

1. The Organization may, in accordance with arrangements made pursuant to

* Discussion of the text enclosed in square brackets has not yet been completed.

/paragraph 2.

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 this Charter shall, 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 question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

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 question referred by it to the Court. The resolution or decision in question shall be modified insofar as it does not accord with the opinion of the International Court of Justice.

Article 92

Miscellaneous Provisions

1. 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.

2. 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 1 of Article 92.

/Draft Resolution

Draft 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

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 by the Economic and Social Council of the United Nations for an advisory opinion, shall consult with appropriate officials of the International Court or with the Court itself upon the question whether, having regard to the desirability that with respect to the Organization decisions of the Court should have the nature of a judgment, there might be improvement of such procedures; and

2. that the Interim Commission shall present a report on this question to the first regular session of the Conference of the International Trade Organization.
