

SIXTH COMMITTEE: ORGANIZATION

REPORT

PART I

1. The Sixth Committee was charged with the consideration of Chapters I (Purpose and Objectives), VII (The International Trade Organization), VIII (Settlement of Differences - Interpretation) and IX (General Provisions) of the Draft Charter prepared by the Preparatory Committee. The Committee, under the chairmanship of Mr. Erik Colban (Norway) held forty-one meetings.
2. The Committee established seventeen Sub-Committees, the principal ones being those set up to discuss Article 1 (Purpose and Objectives), the proposal of the delegation of Mexico to establish an Economic Development Committee and related matters (this Sub-Committee worked jointly with a Sub-Committee of the Second Committee), Article 75 (Composition of the Executive Board), Article 81 (The Tariff Committee), Chapter VIII (Settlement of Differences - Interpretation), Article 93 (Relations with Non-Members), Article 94 (General Exceptions) and Articles 95, 96, 98, 99 and 100 (Amendments, Review of the Charter, Entry into Force and Registration, Territorial Application and Deposit of Texts respectively). The Sub-Committees, with the exception of the Sub-Committee on Article 81, are the only ones whose reports, apart from the texts recommended, contain any matters of substance. These reports which were approved subject only to drafting amendments are to be found in the following documents:

<u>Sub-Committee</u>	<u>Document</u>
Article 1	E/CONF.2/C.6/98
Joint Sub-Committee of Second and Sixth Committees	E/CONF.2/C.6/72
Article 75	E/CONF.2/C.6/53 and Corr.1
Chapter VIII	E/CONF.2/C.6/83 and Corr.1
Article 93	E/CONF.2/C.6/96
Article 94	E/CONF.2/C.6/93
Articles 95, 96, 98, 99 and 100	E/CONF.2/C.6/48/Rev.1
	E/CONF.2/C.6/80
	E/CONF.2/C.6/82

3. In addition to the Sub-Committees already mentioned, the Sixth Committee  
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established a number of working parties, the principal one being that set up to consider the question of the establishment of an Interim Commission for the Organization. The report of this Working Party is contained in document E/CONF.2/C.6/110. The Sixth Committee has issued a separate report upon this question (document E/CONF.2/C.6/111).

4. The Committee, subject to the reservations hereinafter recorded, recommends to the Conference for adoption the attached texts of Chapters I, VII, VIII and IX together with the interpretative notes which appear immediately after the Articles to which they refer.

5. The Sixth Committee wishes to place on record the following comments, declarations and reservations upon the texts which it presents to the Conference:

#### CHAPTER VII. THE INTERNATIONAL TRADE ORGANIZATION

##### Article 68 (Membership)

The Committee did not discuss the question of which were the "competent authorities" for the purpose of paragraph 5 of Article 68 with respect to any particular territory. The delegation of Czechoslovakia declared that in its viewpoint the competent authority in respect of Germany is the Inter-allied Control Commission in Berlin. The delegation of Poland stated that in its opinion the competent authorities in respect of Germany and Japan are the Inter-allied Control Commission in Berlin and the Far Eastern Commission in Washington respectively. The delegations of Czechoslovakia and Poland reserved their positions upon paragraph 5 of Article 68.

##### Article 69 (Functions)

(a) The Committee in discussing Article 69 was of the opinion that whenever the United Nations create agencies for certain specific purposes, such as, for example, the Fiscal Commission of the Economic and Social Council, the Organization shall make its studies and recommendations in close collaboration with these agencies.

(b) Regarding sub-paragraph (d) the Committee agreed that, although general recommendations are to be made to "the Members", meaning the Members as a whole, nevertheless there are, through the Charter, provisions which envisage recommendations to one or more Members specially, for example as in Chapter VIII. The Committee did not intend to change the effect of such specific provisions.

##### Article 74 (Powers and Duties)

With regard to paragraph 6, the Committee agreed that if a maximum limit upon contributions were established and if the efficiency of the Organization would otherwise be seriously impaired for lack of funds, a Member may agree, /as a purely

as a purely temporary measure, to pay more than the maximum limit in any given year.

Article 75 (Composition of the Executive Board)

(a) The Committee agreed that paragraph 3 of the Annex to Article 75 is intended to cover also the case of certain geographical groups, such as the Arab States, other Middle and Near Eastern States and states in the north of Europe. It is anticipated that any one of such groups may deem it convenient to present a common candidate to represent the particular interests of all the countries of the group.

(b) The Committee agreed that the text of Article 75 implies that each Member of the Executive Board should act for the Organization as a whole and should bear in mind the interests of all the Members.

(c) The delegation of Italy reserved its position on Article 75.

Article 80 (Composition and Procedure)

The delegation of Costa Rica proposed to add the following words at the end of paragraph 1 of Article 80:

"Not more than one person of the same nationality shall form part of any commission."

The Committee agreed that normally not more than one person drawn from any one Member should form part of any commission. It considered that it was not necessary to state this in the text.

Article 83A (Relations with the United Nations)

(a) 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 Committee concluded that the 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 Committee adopted a new Article 83A. Paragraphs 1, 2 and 4 of the text of this article replace paragraph 1 of the former text of Article 84 and sub-paragraph (c) of the former text of Article 94.

(b) Paragraph 3 of Article 83A 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.

The Committee agreed that this provision would cover measures maintained by a Member even though another Member has brought the particular matter before the United Nations so long as the measure was taken directly in connection with the matter. It was also agreed that such a measure,

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as well as the political matter with which it was directly connected, should remain within the jurisdiction of the United Nations and not within that of the Organization. The 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 matter, and nothing in Article 83A 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 Charter of the United Nations if they see fit to do so.

(c) It was the view of the Committee that the word "measure" in paragraph 3 of Article 83A and in the interpretative note to that paragraph refers only to a measure which is taken directly in connection with a political matter brought before the United Nations in accordance with Chapters IV and VI of the Charter of the United Nations and does not refer to any other measure.

(d) The delegation of South Africa reserved its position upon paragraph 3 of Article 83A and the interpretative note to that paragraph pending the receipt of instructions from its government.

#### CHAPTER VIII. SETTLEMENT OF DIFFERENCES - INTERPRETATION

##### Article 88A (Reliance on the Procedures of the Charter)

(a) The Committee examined the question of the relation between paragraph 1 of Article 88A and paragraph 2 of Article 89 in connection with procedures for arbitration as agreed between Members under existing or future bilateral or multilateral treaties. It decided that no clarification is necessary as to whether the procedure established in the Charter or in other treaties should have priority since procedures for arbitration under other treaties would not be inconsistent with the procedures of the Charter.

(b) Pending the result of the consultation which, by resolution of the United Nations Conference on Trade and Employment, the Interim Commission of the International Trade Organization is instructed to carry out with appropriate officials of the International Court of Justice or with the Court itself, regarding possible amendments to Chapter VIII designed to ensure recourse to the International Court of Justice by Members of the Organization which are parties to the Statute of the Court in respect of questions arising from the Charter but not covered by Chapter VIII, the delegation of Mexico maintained the view that paragraph 1 of Article 88A does not impair the rights of Members under the Statute of the International Court of Justice as regards questions arising from the Charter but which are not covered by Chapter VIII of the Charter.

/Article 89

Article 89 (Consultation Between Members)

- (a) The Committee was of the opinion that, in case of widespread unemployment or a serious decline in demand in the territory of another Member, a Member might properly have recourse to Article 89, if the measures adopted by the other Member under the provisions of Article 3 had not produced the effects which they were designed to achieve and thus did not result in such benefits as might reasonably be anticipated.
- (b) The Committee agreed that the word "matter" as used in Article 89 and in the rest of Chapter VIII refers to nullification or impairment of a benefit and not to the failure, inaction, measure or situation referred to in sub-paragraphs 1 (a), (b) or (c) of Article 89.
- (c) The delegation of Belgium reserved its positions upon the words "other than Article 1" in paragraph 1 of Article 89 pending the receipt of instructions from its government.

Article 90 (Reference to the Organization)

- (a) The Committee draws attention to the fact that in both Article 90 and Article 91 the text provides that the nature of the relief to be granted is compensatory and not punitive. The word "appropriate" in the texts should not be read to provide for relief beyond compensation.
- (b) It was agreed that sub-paragraph 2 (v) of Article 90 does not empower the Executive Board or the Conference to require a Member to suspend or withdraw a measure not in conflict with the Charter.

Articles 91 and 92 (Reference to the International Court of Justice and Miscellaneous Provisions, respectively); Annex to Article 95 and Draft Resolution

(a) The Committee agreed to use the phrase "whose interests are thereby prejudiced" in paragraph 2 of Article 91 in order to make it 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 of Justice. 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.

(b) The view of certain delegations was expressed that the provisions of Chapter VIII did not provide for recourse to the International Court of Justice on all questions arising out of the Charter. Those delegations urged that the text be in particular amended so as to provide that Members might refer such questions as could not be decided by the Organization to the International Court. It was made clear, however, that these delegations did not urge that a Member should be allowed to attack the validity of an advisory opinion of the Court obtained through the procedures of Chapter VIII on the points covered by such opinions.

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The views of other delegations were expressed that the procedures of Chapter VIII were plenary and adequate.

In view of the limited time available for further discussion, the Committee agreed that the Interim Commission should examine the question, and the Committee proposes a resolution providing for such examination (see Part II). The Committee also agreed that amendment to the provisions of the Charter in this respect should be relatively easy in the light of the report to be presented by the Interim Commission, and, therefore, suggests an annex to Article 95 providing for amendments in this respect by a simple majority vote of the Conference. It was agreed that the first proviso to the proposed annex to Article 95 covers the questions dealt with in sub-paragraph 2 (c) of Article 36 of the Statute of the International Court of Justice.

(c) The delegations of Colombia, Iraq and Peru reserved their positions upon the first proviso to the Annex to Article 95.

#### CHAPTER IX. GENERAL PROVISIONS

##### Article 93 (Relations with Non-Members)

(a) In the course of the discussion of paragraphs 1 and 2 of the text, the Committee agreed that termination of any existing obligations of Members towards non-Members should be in accordance with the terms of the agreements embodying such obligations.

(b) The Committee understands that, in general, sub-paragraph (a) of paragraph 2 applies to treaties or agreements which, by their terms, preclude the extension to other Members of the benefits provided for in such treaties or agreements. This interpretation does not rule out the possibility that, if a Member were wilfully to accomplish the same result by other means, this sub-paragraph should be held to apply.

(c) The Committee further understands that action by a state trading enterprise of a non-Member which would be non-discriminatory under the terms of Article 30 would also be considered non-discriminatory for the purpose of interpreting the provisions of paragraph 2 (a) of Article 93.

(d) The delegation of Iran suggested the following interpretative note to paragraph 4 of the text:

"In making its recommendations the Executive Board shall have due regard to special conditions and economic circumstances of those Members which are creditor countries or have substantial long-standing trade with such non-Members of which they are neighbours and shall take appropriate account of the consequences of its recommendations upon the interests of such Members."

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The Committee agreed that the text suggested contained considerations which would be among those in the mind of the Executive Board when making its recommendations pursuant to paragraph 4. It also considered that the text of Article 93 as a whole was in accordance with the considerations put forward by the delegation of Iran, which therefore did not insist upon its proposal to have an interpretative note.

(e) The delegations of Argentina, Bolivia, Chile, Peru and Poland reserved their positions on Article 93.

Article 94 (General Exceptions)

(a) The delegation of Italy reserved its position on sub-paragraph 2 (a) of Article 94.

(b) The delegation of Turkey reserved its position upon Article 94 pending the outcome of the discussions on Article 16 and pending the receipt of instructions from its government.

Article 99 (Territorial Application)

(a) The Committee agreed that the provisions of paragraph 1 of Article 99 cannot in any way affect rights and obligations under or pursuant to the General Agreement on Tariffs and Trade.

(b) The delegation of Egypt, desiring to avoid any misunderstanding to which the interpretative note to Article 99 might give rise desired to record the attitude of the Egyptian Government as regard the Sudan. In view of the fact that there are no customs boundaries between Egypt and the Sudan and in view of the fact that Egypt and the Sudan are one and the same territory, customs matters concerning the Sudan are the exclusive concern of the Egyptian Government.

(c) The Committee agreed that no presumption should be drawn from the text of paragraphs 1 and 2 of Article 99 that the dependent territories were autonomous or quasi-autonomous in the conduct of their external commercial relations and of the other matters provided for by the Charter for the purposes of paragraph 3 of Article 68.

(d) The delegation of the United Kingdom said that the Government of the United Kingdom, Great Britain and Northern Ireland would not have thought that the general principle laid down in the interpretative note to Article 99 required any qualification, since it in no way prejudices the question of what is or is not a condominium. In view, however, of the declaration by the delegation of Egypt, the Government of the United Kingdom decided to place on record that, as is well known, it does not accept the thesis of the Egyptian Government in regard to the Anglo-Egyptian Condominium of the Sudan.

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