

SIXTH COMMITTEE: ORGANIZATION

DRAFT CHARTER

AUSTRALIA: PROPOSED AMENDMENT

Article 91

Paragraph 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.

Paragraph 2

Substitute the following for the existing text:

"Any resolution of the Conference under Paragraph 3 of Article 90 or decision of the Conference under any other Article of this Charter shall, if any substantially interested Member so requests, be referred to the International Court of Justice for an advisory opinion pursuant to the statute of the International Court of Justice as to whether the Conference was legally competent to adopt the resolution or decision".

Comment

The delegation of Australia considers that to afford the Executive Board, in paragraph 1, the power to obtain advisory opinions from the Court is to afford a far-reaching power to bind the Organization on questions which may never have been considered by the body fully representative of all the Members - namely, the Conference. This is the effect of paragraphs 1 and 5 taken in conjunction.

The effect of the change suggested by Australia would be to reserve to the Conference the right of seeking advisory opinions unless the Conference decided, under Article 74, to assign the power to the Executive Board. Thus flexibility would be retained, but the Conference would be able to control the use of this power in the light of experience.

/The suggested

The suggested amendment to paragraph 2 is intended to ensure that the Conference of the Organization, representing all the Members, retains final authority for the determination of facts and the application of the requirements of the Charter to the facts. In the opinion of the delegation of Australia the International Court of Justice is not organized in such a way as to permit it to make decisions on the economic and commercial issues which are likely to be the subject of dispute. It is intended that any substantially interested Members should be able to ask the Court, through the Organization, whether or not the Charter gives the Organization authority to reach a decision on the question at issue.

Article 93

1. Nothing in this Charter shall preclude any Member from concluding or maintaining commercial treaties or maintaining economic relations with non-members provided that such treaties and economic relationships shall be consistent with achievement of the purpose and objectives of the organization and shall in no case cause substantial injury to the interests of Members.
2. As soon as practicable after the coming into force of the Charter, the Organization shall institute a study of the commercial treaties and economic relations between Members and non-Members and arrange for a report to be submitted to the Conference at its second annual session on the results of this study which will include for the consideration of the Conference such draft Article or Articles as may be considered desirable to govern the relations of Members with non-Members.
3. Any draft Articles submitted for the consideration of the Conference in terms of paragraph 2 above shall be dealt with in accordance with Article 95.

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