

JOINT SUB-COMMITTEE OF COMMITTEES II AND VI

OPINION OF LEGAL ADVISER OF SECRETARIAT REGARDING PARAGRAPH 3
OF NEW ARTICLE 12A PROPOSED BY COLOMBIA

(Page 28 of E/CONF.2/C.2/9)

1. I understand that the delegate for Colombia wishes the contents of the paragraph he has proposed as paragraph 3 of Article 12A* to have general application to the exercise by the Organization of its powers under the Charter.
2. I do not think that the principle of the proposal of the delegate for Colombia or of the suggested alternative** is contained in any wording at present in the Charter, and this is probably because the Members of the Preparatory Committee considered that the Organization could be assumed to exercise its powers reasonably and equitably.
3. It would seem to me that the appropriate place in the Charter in which to state the principle in question would be Chapter IX (General Provisions). The alternative to this would be to write it in the many provisions to which it will apply but this would be clumsy. Neither by including it in Chapter VIII, nor by including it in Chapter III e.g. in Articles 10 or 11, as have been suggested, would the object of general application to the Charter be achieved as each of these parts of the Charter refers only to certain specific powers of the Organization.
4. The Sixth Committee has before it a proposal of a similar nature presented by the delegation of Italy reading as follows:

"In the exercise of its functions the Organization shall avoid that a Member could suffer, in any manner, an unfair injury."

* The Organization shall take into account in the exercise of its powers, whether or not a member country whose interests may be specially affected in any decision the Organization may be called upon to give, has obtained reasonable co-operation from other Members or existing inter-governmental organizations."

** "In the exercise of its functions the Organization shall give consideration to the degree of assistance extended to a Member by other Members, by the Economic and Social Council of the United Nations and by appropriate inter-governmental organizations".

/The delegation

The delegation of Italy has proposed this paragraph as a new Article 71 but has also moved an amendment similar in substance to Article 81 (The Tariff Committee). The Sixth Committee has deferred consideration of these proposals to a later stage.

5. In view of the remarks I have made, it is suggested that the most appropriate body to deal with the proposal of the delegate for Colombia would be the Sixth Committee.
