

SIXTH COMMITTEE: ORGANIZATION

TEXT OF CHAPTER VIII (SETTLEMENT OF DIFFERENCES) AS ADOPTED BY
THE SIXTH COMMITTEE AND OF ANNEX TO ARTICLE 95 AND
DRAFT RESOLUTION ARISING OUT OF CHAPTER VIII
PROPOSED BY THE SIXTH COMMITTEE

CHAPTER VIII. SETTLEMENT OF DIFFERENCES

Article 88A

Reliance on the Procedures of the Charter

1. The Members undertake, in relation to other Members of 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 operations.
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

Competition 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 agreed between them; Provided that the decision of the /arbitrator

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 discussion, 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) and (v) 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, subject to the provisions of paragraph 1 of Article 90A, release the 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 organization 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.

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 90A

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 the 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 similarly 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, or 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

Article 91

Reference to the International Court of Justice

1. The 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 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 Charter 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 discussion, consultation or investigation undertaken under any 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.

/Proposed

Proposed Annex to Article 95

Any amendment to Chapter VIII of this Charter which may be recommended by the Interim Commission after consultation with the International Court of Justice and which relates to review by the International Court of matters arising out of the Charter but not already covered in Chapter VIII shall become effective upon receiving approval of the Conference at its first regular session by affirmative vote of a simple majority of the Members;

Provided; that such amendment shall not provide for review by the International Court of any economic or financial fact as established by or through the Organization; and provided further that such amendment shall not affect the obligation of Members to accept the advisory opinion of the International Court as binding on the Organization upon the points covered by such opinion; and provided further that, if such amendment involves an alteration in the obligations of Members, any Member which does not wish to accept it may withdraw from the Organization upon the expiry of sixty days from the day on which written notice of such withdrawal is received by the Director-General.

DRAFT RESOLUTION

THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

HAVING considered the relation of the International Trade Organization and the International Court; and

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

RESOLVES that the Interim Commission of the International Trade Organization, through such means as may be appropriate, shall consult with appropriate officials of the International Court or with the Court itself, and after such consultation report to the first regular session of the Conference of the International Trade Organization upon the questions of:

- (a) whether such procedures need to be changed to ensure that decisions of the Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment; and
- (b) whether an amendment should be presented to the Conference pursuant to and in accordance with provisions of the annex to Article 95 of the Charter.