SIXTH COMMITTEE: ORGANIZATION

DRAFT 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 meetings.

2. The Committee established sixteen Sub-Committees, the principal ones being those set up to discuss 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). These 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:

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3. In addition to the Sub-Committees already mentioned, the Sixth Committee...
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. This Working Party has not yet been able to conclude its work but will report to the Sixth Committee at an early date.

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 I (PURPOSE AND OBJECTIVES)

Article 1
(To be inserted in the light of discussion)

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 and no decision was taken on such a question. However, the delegation of China stated that it considered the competent authority in respect to Japan to be the Far Eastern Commission in Washington.* 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 China, Czechoslovakia and Poland reserved their positions upon paragraph 5 of Article 68 pending the receipt of instructions from their governments.

Article 69 (Functions) **

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

* The delegation of China may submit a text to replace the text of this sentence.
** Two amendments to this Article have yet to be considered. Further comments may, therefore, be necessary.
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 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.

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 83 A (Relations with the United Nations).

(To be inserted in the light of discussion)

CHAPTER VIII. SETTLEMENT OF DIFFERENCES - INTERPRETATION

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

(a) The Committee examined the question of the relation between paragraph 1 of Article 88 A 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) The delegation
(b) The delegation of the United Kingdom reserved its right to raise again a proposal to insert the word "appropriate" before the word "procedure" upon the occasion of the second use of that word in paragraph 1 of Article 88 A.

(c) 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 88 A 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 (Consultation Between Members)

(a) The Committee was of the opinion that a Member might properly have recourse to Article 89 if the measures adopted by another Member under the provisions of Article 3 did not produce 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 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
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. 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 page ). 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 and Peru reserved their positions upon the first proviso to the Annex to Article 95.

(d) The delegations of the United Kingdom and Venezuela reserved their positions regarding the Annex to Article 95.

(e) The delegation of Iraq reserved its position upon the Annex to Article 95 and the draft resolution.

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
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 delegation of Iran suggested the following interpretative note to paragraph 1 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 neighbours and shall take appropriate account of the consequences of its recommendations upon the interests of such Members."

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.

(d) The delegation of Poland reserved its position on Article 93.

Article 94 (General Exceptions)

(To be inserted in the light of discussion).

Article 98 (Entry into Force and Registration)

The delegation of Uruguay reserved its position on paragraph 2 of Article 98 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 delegation of Guatemala proposed that the following explanatory note to Article 99 should be adopted:

"None of the provisions of Article 99 shall be applicable to territories which are the subject of claim or dispute between States of the American Continent and non-American States"
The Committee upheld a ruling of the Chairman that this proposal, being one of a political nature, was outside the competence of the Conference. The delegation of Guatemala entered the following reservation:

"None of the provisions contained in Article 99 shall prejudice the rights of the Republic of Guatemala nor be applied to territories under its sovereignty, even when such territories are the subject of a claim or dispute, or are at present in the possession of another state."

(d) The delegations of Colombia and Uruguay accepted Article 99 subject to the express understanding that the text did not imply any undertaking by Members of the Organization regarding possible territorial disputes between states and that its application could not be admitted as evidence in such disputes.

(e) The delegations of El Salvador and Venezuela reserved their positions on Article 99 declaring that their acceptance of this Article could not prejudge the attitude of their governments regarding territories of the American Continent the subject of disputes.

(f) The delegations of Argentina, Chile and Mexico reserved their positions on Article 99 pending the receipt of instructions from their governments.

PART II

(Texts, interpretative notes and draft resolution to be circulated as an addendum to this document.)