1. The Sub-Committee, composed of the representatives of Australia, Canada, Colombia, Denmark, France, India, Iraq, Italy, Mexico, Netherlands, Poland, South Africa, Switzerland, United Kingdom, United States and Uruguay, was established by the Sixth Committee to discuss Chapter VIII (Settlement of Differences - Interpretation) of the Draft Charter prepared by the Preparatory Committee (with the exception of paragraph 1 of Article 92) and the amendments presented thereto and in the light of discussion to submit a new text of the Chapter to the Sixth Committee. The Chairman of the Sub-Committee was Mr. Couillard (Canada).

2. The Sub-Committee, having taken note of the recommendation of the Preparatory Committee that Chapter VIII should be fully reconsidered at Havana, made a thorough examination of all the provisions of the Chapter which fell within its terms of reference holding, in all, twenty-two meetings as well as establishing four working parties. As a result of its discussion the text of the Chapter has been expanded and clarified. The word "Interpretation" has been deleted from the title of the Chapter in view of the new text of Article 100 already adopted by the Sixth Committee.

3. The Sub-Committee considered that paragraph 3 of the original text of Article 92 should receive special emphasis. It therefore recommends that this paragraph, as reworded, should be taken out of Article 92 and made into a new article entitled "Reliance on the Procedures of the Charter" and placed at the commencement of Chapter VIII.

4. The Sub-Committee gave consideration to a doubt expressed by the delegation of Mexico whether this provision did not conflict with the obligations of Members which had deposited the declarations referred to in paragraph 2 of Article 36 of the Statute of the International Court of Justice. In the light of its discussion, and particularly in the light of instructions received by various delegations from their governments, the Sub-Committee inserted the words "in relation to other Members or the Organization" so as to ensure that no conflict could be thought to exist.

5. (a) The scope of the original text of Article 89 has been narrowed by the deletion from the opening words of that Article of the reference.
to impeding the attainment of the objectives stated in Article 1.

(b) The Sub-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.

(c) The Sub-Committee agreed that the word "matter" as used in 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) and (c) of Article 89.

(d) Article 89 has been redrafted so as to make it clear that under that article resort may be had to arbitration, upon agreed terms, the results of which do not bind the Organization or any Member other than the parties to the arbitration.

6. The Sub-Committee examined the question of the relation between the texts of 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. The Sub-Committee 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 procedure of the Charter.

7. The Sub-Committee found it desirable to break down the original Article (Reference to the Organization) into two articles, the first dealing with reference to the Executive Board, the second with reference to the Conference. In the former article the courses available to the Executive Board after a matter has been brought to its attention have been set out. In both of these articles the text provides that the nature of the relief to be granted is compensatory and not punitive. The word "appropriate" in the text should not be read to provide for relief beyond compensation.

8. While examining Article 90 the Sub-Committee noticed that Article 78, which is concerned with the powers and duties of the Executive Board, gives the Board power to make recommendations only to the Conference or to inter-governmental organizations and not to Members. To bring this article into conformity with Chapter VIII some amendment to it or to some other article of the Charter might be necessary.

9. The Sub-Committee agreed that sub-paragraph 2 (v) of Article 90 does not empower the Executive Board or the Conference to propose the suspension or withdrawal of a measure not in conflict with the Charter.

10. The Sub-Committee agreed to use the phrase "whose interests are thereby prejudiced"
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.

11. In view of the deletion of the second sentence of paragraph 2 of Article 92 it was agreed that the attention of the Sixth Committee should be called to the desirability of amending other provisions of the Charter so as to give the Conference the authority to make such rules as are referred to in that paragraph, except in relation to matters arising under Chapter VIII.

12. The view of certain delegations was expressed that the provisions of Chapter VIII do 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.

13. Under these circumstances, and in view of the difficulties of this subject and the limited time available for discussion; the Sub-Committee agreed that the Interim Commission should examine the question, and the Sub-Committee proposes a resolution providing for such examination (see page 9). The Sub-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. The Sub-Committee 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.

14. In the course of its work the Sub-Committee considered the relationship between Chapter VIII and other parts of the Charter and the Chairman of the Sub-Committee presented an interim report on this subject to the Sixth Committee on 3 February 1948 (see document E/CONF.2/C.6/49/Rev.1). Since that date the matter has been dealt with by the Sixth Committee (see document E/CONF.2/C.6/63). 

15. The following reservations to this report have been entered:

(a) The delegation of Colombia reserved its position regarding the first proviso to the proposed annex to Article 95.

(b) The delegations of India and Mexico indicated their general acceptance of the proposed annex to Article 95 and of the draft resolution, subject to confirmation
to confirmation by their governments.

(d) The delegations of Iraq and United Kingdom reserved their position on the proposed annex to Article 95 and on the draft resolution pending the receipt of instructions.

16. The Sub-Committee recommends to the Sixth Committee the following text of Chapter VIII and of the annex to Article 95:

CHAPTER VIII - SETTLEMENT OF DIFFERENCES

INTERPRETATION

Article 88 A

Reliance on the Procedures of the Charter

1. The Members undertake, in relation to other Members or 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 operation.

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

Consultation between Members 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, or that the attainment of any of the objectives set forth in Article 1 is being impeded as a result of

(a) the failure of another Member to carry out its obligation under this Charter, a breach by a Member of an obligation under this Charter by action or failure to act; or

(b) the application by another Member of a measure whether or not it conflicts 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. Any Member thus approached, and the Members receiving them shall give sympathetic consideration to the representations or proposals made to it thereto. In any such case, the Members concerned shall keep the Director General informed generally of any discussions undertaken.

/2. The Members
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 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 consultation or arbitration undertaken under this Charter.

Article 90

Reference to the Organization

1. If the matter is not satisfactorily adjusted within a reasonable time or if it falls within Article 89 (c), it may be referred to the Executive Board or, with the approval of the Executive Board, directly to the Conference. The Executive Board or the Conference, as the case may be, shall promptly investigate any matter so referred and shall make recommendations to the Members which it considers to be concerned or give a ruling on the matter, as appropriate. It may in the course of such investigation consult with Members, the Commissions of the Organization, the Economic and Social Council of the United Nations and any inter-governmental organization, in cases where it considers such consultation necessary.

2. The Executive Board may refer the matter, with the consent of the Members concerned, to arbitration upon such terms as may be agreed between the Board and such Members.

3. Any ruling of the Executive Board shall be reviewed by the Conference at the request of any interested Member. Upon such request the Conference shall by resolution confirm or modify or reverse such ruling.

4. If the Conference considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the applications to any other Member or Members of such obligations or concessions under or pursuant to this Charter as the Conference determines to be appropriate. If the application to any Member of any obligation or concession is in fact suspended, such Member shall then be free, not later than sixty days after such action is taken, to advise the Director-General in writing of its intention to withdraw from the Organization and such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the Director-General.

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 organizations 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

Reference to the International Court of Justice

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.

2. Any resolution or decision of the Conference under paragraph 3 of Article 90 or decision of the Conference under any other Article of this Charter shall 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 International Court of Justice. The request for review of such resolution or decision shall be made by the Organization, in appropriate form, upon the instance of any substantially interested Member.

/3. The request
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 facts underlying the question upon which an opinion is requested and accompanied by all documents likely to throw light upon the question. The Organization shall supply to the Court such further information as the Court may require.

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 upon any question referred to it by it shall be binding upon the Organization 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. For the purposes of the interpretation of this Charter under the provisions of this Chapter, the English and French texts shall be authoritative.*

2. Nothing in this Chapter 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 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.

3. The Members undertake that they will not have recourse to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of difficulties arising out of its operation, nor, without prejudice to any other international agreement, to unilateral sanctions of any kind on the ground that there has been a violation of an obligation of this Charter, in advance of a complaint to the Organization and a final decision of the Organization establishing such violation.

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.

* As agreed by the Sixth Committee.
The rules of the Conference shall include provisions concerning the maintenance in force or suspension of any rulings of the Executive Board pending review by the Conference under paragraph 3 of Article 90.

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.

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.