In considering the provisions of Article 98, the Sub-Committee tentatively inserted the date of 30 June 1949, in the proviso of the second paragraph. However, in order to determine more accurately the most reasonable date for this purpose, all delegations are kindly requested to submit to the Secretary of the Sixth Committee the following information:

(a) the earliest possible date by which their respective governments can be expected to ratify the Charter;

(b) if (a) above cannot be estimated, the general reasons why such an estimate cannot be made.

The Sub-Committee realizes that there will be a wide range of dates submitted by delegations because of the different times when their legislative bodies convene, the different procedures by which each government, according to its constitution, will have to ratify, etc. The co-operation of all delegations in submitting their answers at the earliest practicable time will be greatly appreciated so that the Sixth Committee may have at its disposal concrete data with which to formulate the most logical date to be inserted in Article 98.

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3390
In considering the provisions of Article 98, the Sub-Committee tentatively inserted the date of 30 June 1949, in the proviso of the second paragraph. However, in order to determine more accurately the most reasonable date for this purpose, all delegations are kindly requested to submit to the Secretary of the Sixth Committee the following information:

(a) the earliest possible date by which their respective governments can be expected to ratify the Charter;

(b) if (a) above cannot be estimated, the general reasons why such an estimate cannot be made.

The Sub-Committee realizes that there will be a wide range of dates submitted by delegations because of the different times when their legislative bodies convene, the different procedures by which each government, according to its constitution, will have to ratify, etc. The co-operation of all delegations in submitting their answers at the earliest practicable time will be greatly appreciated so that the Sixth Committee may have at its disposal concrete data with which to formulate the most logical date to be inserted in Article 98.
ARTICLE 99

TERRITORIAL APPLICATION

1. Each Government accepting this Charter does so in respect of its metropolitan territory and of the other territories for which it has international responsibility except such separate customs territories as it shall notify to the Organization at the time of its own acceptance.

2. Each Member may at any time accept this Charter in accordance with paragraph 1 of Article 98 on behalf of any separate customs territory excepted under paragraph 1 of this Article.

3. Unchanged.
PROVIDED that, if this Charter shall not have received the required number of acceptances for it shall not have entered into force by ................ 194..., the Secretary-General of the United Nations shall convene those countries which signed the Havana Final Act and which are willing to bring this Charter into force, to decide if, and under what conditions, they desire to do so.
ARTICLE 96
Review of the Charter

1. The Conference shall review the provisions of this Charter at a special session to be convened in conjunction with the regular session at the end of the fifth year after its entry into force.

2. The Director General shall circulate invitations to each Member, at least one year in advance, to submit any amendments which they may wish to propose for consideration by the other Members.

3. Amendments resulting from such review shall be approved and become effective according to the procedure established in Article 95.
1. The following is a suggested text for Article 89 - Consultations between Members.

"If any Members should consider that any benefit accruing to it directly or indirectly or by reasonable implication under any of the provisions of this Charter other than Article I is being nullified or impaired, or that the attainment of any of the objectives set forth in Article I is being impeded, as a result of

(a) the failure of another Member to carry out [its] an obligation under this Charter, or
(b) the application by another Member of any measure, whether or not it conflicts with the provisions of the Charter, or
(c) the existence of any other situation outside of its own jurisdiction, the Member may undertake discussions undertaken.

2. The following is a suggested text for Article 90 - Reference to the Organization.

Paragraph 4

If the Conference considers that the circumstances are serious enough the nullification or impairment referred to in Article 89 in fact exists and is sufficiently serious to justify such action... etc.

3. Comments

(a) After consideration of the points of view expressed in the sub-committee meeting the working party considered that it could best reconcile these views and the sense of the meeting by narrowing the scope of the preamble to Article 89. It was felt that Article I of the Charter is so broad that it would be possible to show that almost any action taken by a Member impeded the attainment of one of the objectives set forth in Article I, and therefore provided a basis for complaint. The working party, therefore, felt that a considerable narrowing of the scope of Article 89 and a consequent elimination of many of the difficulties encountered by certain delegations would result from elimination of the reference to Article I. In order to make entirely clear that Article I could not be read back into Article 89 by construction of the words "any benefit", it was also decided to qualify the words "any benefit" in the manner shown in the redraft.

/It was agreed
It was agreed further that the addition of the phrase "or by reasonable implication" would make clear that a high level of employment consequent to demand in another Member country was a benefit to any Member reasonably implied under Chapter 2.

(b) The working party decided to make the indicated change in sub-paragraph (a) of Article 89 in order to make clear that it was not necessary to allege a failure of a Member to carry out all of its obligations under the Charter.

(c) After extensive discussion of sub-paragraph (b) of Article 89 it was decided to allow this sub-paragraph to remain as in the Geneva text. The working party considered that this sub-paragraph would apply to the situation of action taken by a Member such as action pursuant to Article 94 of the Charter. Such action, for example, in the interest of national security in time of war or other international emergency would be entirely consistent with the Charter, but might nevertheless result in the nullification or impairment of benefits accruing to other Members. Such other Members should, under those circumstances, have the right to bring the matter before the Organization, not on the ground that the measure taken was inconsistent with the Charter, but on the ground that the measure so taken effectively nullified benefits accruing to the complaining Member.

(d) The words "outside of its own jurisdiction" have been added to sub-paragraph (c) of Article 89 in order further to narrow the scope of Article 89 and to state more definitely the type of situation which might cause a nullification or impairment of a benefit and therefore fall within the scope of Article 89.
SUB-COMMITTEE I OF COMMITTEE VI (ARTICLE 94)

Notes Prepared by the Secretariat

It may be a convenience for members of the Sub-Committee to have before them the information reported below relevant to each of the various proposals for adding new paragraphs at the end of Article 94. In this paper the proposals are mentioned in the order listed in Part 2 of document E/CONF.2/C.6/V.23.

(a) Proposal by the Delegation of Iraq concerning trade serving a political purpose contrary to the essential interests of a Member.

The following is an extract from the summary record of the seventeenth meeting of Committee IIIa at which this problem was raised by the representative of Iraq (see E/CONF.2/C.3/6R.17):

"Mr. PACHAICI (Iraq) stated that Iraq had prohibited during the war the entrance of certain goods which were not of purely commercial nature, but which conveyed political ideas. In answer to his question whether these prohibitions, still in force, were a violation of any Articles of the Charter, and if not, what Article of the Charter covered such exceptions, the CHAIRMAN referred to Article 94, and stated that the representative of Iraq might submit an amendment either to Article 43 or to Article 94.

"Mr. DJABBARA (Syria) believed that a case such as that of Iraq should be dealt with under Article 94 rather than Article 43."

(b) Proposal by the Delegation of Costa Rica concerning readjustment of specific duties in case of legal devaluation of the importer's currency and concerning the maintenance of existing monopolies.

Concerning the first proposal by the representative of Costa Rica, the following is an extract from the notes of the meeting of Sub-Committee A of Committee III (which has not yet completed its discussions) relating to the discussion of a somewhat similar proposal which had been put forward with reference to Article 17 by the representative of Peru (see E/CONF.2/C.3/A/5.18/Rev.2):

"The Sub-Committee reached substantial agreement that ... there is no need to write the Peruvian proposal into Article 17 because

(1) prior to negotiations, any Member country would be free to increase the specific duty on any unbound item for any reason since Article 17 does not provide for a general binding of all items. It would, however, remain to be determined during negotiations whether a readjustment of specific duties to compensate for the devaluation of a Member's currency had had the effect of increasing their protective incidence or was merely equivalent compensation.
(2) subsequent to negotiations, should a Member's currency be devalued consistently with the Articles of Agreement of the International Monetary Fund by more than twenty percent, the General Agreement (Article II, 6 (a)) permits the readjustment of specific duties to take account of the devaluation, subject to certain safeguards."

The proposal by the delegation of Peru had been to add a sub-paragraph to the effect that:

"The readjustment of customs duties by countries using specific rates on their tariffs, in order to compensate for a substantial depreciation of their currencies will not be considered as an increase of their tariffs (see E/CONF.2/0.3/6, item 33)."

The following is the text of paragraph 6 of Article II of the General Agreement to which reference is made in the above minutes:

"(a) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty percentum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction;

"Provided that the CONTRACTING PARTIES (i.e. the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

"(b) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV."

Concerning the second proposal by the representative of Costa Rica it is to be noted that Articles 18, 30, 31 and 43 (particularly paragraph 1, (d) relating to internal regulations, state trading and monopolies) have recently been referred to sub-committees of Committee III which have not yet reported. The question of "public commercial enterprises" is dealt with in the report of Sub-Committee A of Committee IV (E/CONF.2/0.4/5), in connection with Article 44 and other articles of Chapter V.

// Proposal by
(c) **Proposal by the Delegation of India concerning the special situation of India and Pakistan as newly established independent states.**

The provision in the General Agreement to which reference is made by the Delegation of India appears as part of Article XXIV, which deals with "Territorial Application - Frontier Traffic - Customs Unions," (comparable in other respects with Articles 42 and 99 of the Draft Charter), and reads as follows:

"5. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent states and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis."

This provision is accompanied in the General Agreement by the following note in Annex I - "Interpretative Notes":

"**Ad Article XXIV**

***Paragraph 5***

"Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement."

(d) **Proposal by the Delegation of Czechoslovakia concerning the treaties of peace and special regimes established by the United Nations for separate territories.**

The proposal by the Delegation of Italy, to which the Czechoslovak proposal relates in part, has been referred to the Sub-Committee dealing with Article 16 which has not yet completed consideration of that Article.

The proposal by the Delegation of Italy relating to Article 16 reads as follows (E/CONF.2/C.3/6; Item 22):

"The disposition of paragraph 1 of this Article do not modify the special regime existing between the Republic of Italy and the Republic of San Marino and the State of the Vatican City, and do not raise obstacles to the special regime which shall be established between Italy and the Free Territory of Trieste."
The United States delegation after having studied the suggestions of the Colombian, United Kingdom and Cuban delegations suggests the following draft which is based upon ideas taken from all of the above papers. It is the purpose of this suggestion to obtain the simplest form of text possible:

"2. This Charter shall enter into force:

(a) During the period of one year from the date of signature of the Final Act of the United Nations Conference on Trade and Employment, on the sixtieth day following the day on which a majority of the Governments signing the said Final Act have deposited instruments of acceptance pursuant to paragraph 1 of this Article.

(b) If it has not entered into force pursuant to sub-paragraph (a) of this paragraph, then on the sixtieth day following the day on which the number of Governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance pursuant to paragraph 1 of this Article, shall reach twenty: Provided that, if this Charter shall not have entered into force by September 30, 1949, the Secretary-General of the United Nations shall institute consultation among those governments which have deposited acceptances to determine whether, and on what conditions, they desire to bring the Charter into force."

This would require the addition of a new sentence at the end of paragraph 1 of the Article as follows:

"After the entry into force of this Charter pursuant to the terms of paragraph 2 of this Article, each instrument of acceptance so deposited shall take effect on the sixtieth day following the day on which it is deposited."
Third Meeting to be held at 6.00 p.m., 12 January 1948

1. Report of the Working Party concerning the amendment by Australia relating to "raw materials" and to the "indirect supply of another country's military establishment." (This item might be considered if the Working Party's report is available or can be made orally by the time of the meeting).

2. Proposals by the Delegations of India and Iraq concerning action in respect of trade for the purpose of protecting "essential interests." The original amendments are given on page 2 of E/CONF.2/C.6/W.32. The Chairman's informal proposal is given on page 1 of E/CONF.2/C.6/W.32. In connection with the discussion of these proposals it might be noted that the somewhat related amendments to Article 39 (Boycotts) have not yet been considered by the Sub-Committee to which they have been referred.

3. Proposal by the Delegation of India concerning the special situation of India and Pakistan. The preliminary discussion of this proposal is reported on pages 2 and 3 of E/CONF.2/C.6/W.32. The representatives of India and Pakistan might report on the acceptability to them of the additions suggested in the previous meeting to bring the provision into conformity with the General Agreement.

The Sub-Committee might consider, in addition to the substance of the proposal, the question of consultation with Committee III or its appropriate Sub-Committee.

4. Proposal by the Delegation of Czechoslovakia concerning "special regimes and the Treaties of Peace." The suggestion at the previous meeting was that the provision might read somewhat as follows:

"Nothing in this Charter shall override any of the provisions of any treaty of peace in force at the time of the entry into force of the Charter or any special regimes established by the United Nations for separate territories."

5. Relation between Article 94 and Articles 89 and 90.

Sub-Committee G is considering this question. The following is an extract from the Working Party report which is being considered by that Sub-Committee (E/CONF.2/C.6/W.30):

"After extensive
"After extensive discussion of sub-paragraph (b) of Article 89 it was decided to allow this sub-paragraph to remain as in the Geneva text. The Working Party considered that this sub-paragraph would apply to the situation of action taken by a Member such as action pursuant to Article 94 of the Charter. Such action, for example, in the interest of national security in time of war or other international emergency would be entirely consistent with the Charter, but might nevertheless result in the nullification or impairment of benefits accruing to other Members. Such other Members should, under those circumstances, have the right to bring the matter before the Organization, not on the ground that the measure taken was inconsistent with the Charter, but on the ground that the measure so taken effectively nullified benefits accruing to the complaining Member.

"The representative of India was doubtful about the necessity of inclusion of the sub-paragraphs (a), (b) and (c) but other Members of the Working Party felt that there were some advantages in keeping the sub-paragraphs (a), (b) and (c) in the text of Article 89 as it stands now."
Note by the United Kingdom Delegation

1. Since the last meeting of Sub-Committee I of Committee VI on Article 94, at which the U. K. amendment contained in document E/CONF.2/C.6/W.48 of 16 January 1948 was presented, the U. K. delegation has carried on informal discussions with certain other members of the Sub-Committee with a view to expediting work on the U. K. amendment.

2. As a result of these discussions, it appears to the U. K. delegation that its original amendment covered matters which involve the question of the allocation of responsibility as between the I.T.O. and the United Nations. Accordingly, with the permission of the Sub-Committee, the U. K. delegation would therefore propose to withdraw its original amendment and to submit the following in its place:

New Article

Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement to be approved by the Conference.

2. Any such agreement shall, subject to the provisions of the Charter, provide for effective co-operation and the avoidance of unnecessary duplication in the activities of the respective organizations, and for co-operation in furthering the restoration and maintenance of international peace and security.

3. In order to avoid conflict of responsibility between the United Nations and the Organization with respect to political matters, any measure which is directly related to a political matter brought before the United Nations in accordance with Chapter IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations, and shall not be subject to the provisions of this Charter.

4. No action, taken by a member in pursuance of its obligations under the United Nations Charter for the restoration and maintenance of international peace and security, shall be deemed to conflict with the provisions of this Charter.

The underlying idea of the U. K. amendment has always been that problems which are
which are essentially political, but which produce economic consequences, should be dealt with by the appropriate political organs of the United Nations, i.e. the General Assembly and the Security Council. An article on relations with the United Nations seems to be a more appropriate place for such a provision than Article 94 on general exceptions. The new article would in its first two paragraphs replace paragraph 1 of the existing Article 84 and in its last two replace sub-paragraph (d) of Article 94 as amended in E/CONF.2/C.6/W.48 and the existing sub-paragraph (c) of the Geneva draft. It would thus gather together into a single article the main provisions in the Charter dealing with relations with the United Nations. This might become a new Article 83A.

4. The U. K. delegation realizes that consideration of such an articles does not fall entirely within the scope of Sub-Committee I. But as paragraphs 3 and 4 of the suggested new article are substantially the same as certain provisions of Article 94, which were referred to Sub-Committee I, the U. K. delegation suggests for the consideration of the Sub-Committee that it could properly discuss these two paragraphs, and, if it approves them, could submit the proposed new article to Committee VI, stating that it had examined and approved the two paragraphs which fall within its terms of reference.
At the last meeting of the Sub-Committee the United Kingdom proposal for a new Article dealing with relations with the United Nations was discussed. After further informal discussion with some of the other delegations concerned the United Kingdom delegation has come to the conclusion that it would be best to retain the wording of the proposed new Article unchanged except that the words "directly related to" in paragraph 3 should be deleted and replaced by "directly in connection with". The text of the proposed new Article, as amended, is given in the annex to this paper.

2. Two questions were raised at the last meeting of the Sub-Committee. One concerned the interpretation of the words "directly related to" and the other the method by which Members, which have no direct political concern in the matter brought before the United Nations but which are nevertheless injured by the economic measures taken by the Members directly concerned, can obtain compensation. Ordinarily, any question involving interpretation of the wording of the Charter is properly the function of the Organization. It seems to the United Kingdom delegation, however, (and the discussion in the Sub-Committee confirms this view) that disputes as to the interpretation of the words "directly in connection with" would almost inevitably become part of the general political situation or dispute. The general purpose of the new Article proposed by the United Kingdom delegation is to ensure that I.T.O. does not have to pass judgment on political matters. For these reasons it may, in the opinion of the United Kingdom delegation, sometimes be desirable that questions involving interpretation of "directly in connection with" should not be undertaken by I.T.O. The United Kingdom delegation considers that this question and the other question of compensation to "third parties" can best be covered by an interpretative note to the proposed new Article which might read as follows:

"(a) If any Member raises the question whether a measure taken under paragraph 3 of this Article is in fact directly in connection with a political matter brought before the United Nations in accordance with the terms of Chapter IV or Chapter VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the International Trade Organization, but if political issues beyond the competence of the Organization are involved, it may decide that the question falls within the scope of the United Nations.

(b) If a Member
(b) If a Member which has no direct political concern in the matter brought before the United Nations finds that a measure taken under paragraph 3 of this Article nullifies or impairs any benefit accruing to it, it shall seek redress only by recourse to the procedures laid down in Chapter VIII of the Charter of the International Trade Organization.

3. The United Kingdom delegation has been asked two other questions regarding the proposed new Article:

(a) Would the suggested language cover measures maintained by any Member, whether or not it was the Member which had brought the matter before the United Nations?
Answer: Yes, provided that the measure is taken directly in connection with the matter brought before the United Nations.

(b) Would the suggested language mean that the Member maintaining the measure could continue the measure so long as it felt that the circumstances were unchanged so far as it was concerned?
Answer: Yes.
ANNEX

New Article

Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement to be approved by the Conference.

2. Any such agreement shall, subject to the provisions of this Charter, provide for effective co-operation and the avoidance of unnecessary duplication in the activities of the respective organization, and for co-operation in furthering the restoration and maintenance of international peace and security.

3. In order to avoid conflict of responsibility between the United Nations and the Organization with respect to political matters any measure which is directly in connection with a political matter brought before the United Nations in accordance with Chapter IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations and shall not be subject to the provisions of this Charter.

4. No action, taken by a member in pursuance of its obligations under the United Nations Charter for the restoration and maintenance of international peace and security, shall be deemed to conflict with the provisions of this Charter.

Interpretative Note

(a) If any Member raises the question whether a measure taken under paragraph 3 of this Article is in fact directly in connection with a political matter brought before the United Nations in accordance with the terms of Chapter IV or Chapter VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the International Trade Organization, but if political issues beyond the competence of the Organization are involved, the question shall fall within the scope of the United Nations.

(b) If a Member which has no direct political concern in the matter brought before the United Nations finds that a measure taken under paragraph 3 of this Article nullifies or impairs any benefit which would have accrued directly or indirectly to it in the absence of such measures, it shall seek redress only by recourse to the procedures laid down in Chapter VIII of the Charter of the International Trade Organization.
Mr. Erik Colban,
Chairman, Committee VI,
Conference on Trade and Employment,
Havana, Cuba.

Dear Mr. Colban:

Further to my letter of 17th January,* I wish to advise that the Working Party of the Joint Sub-Committee of Committees II and III has considered the contents of the letter dated 13 January addressed to you by the Chairman of Sub-Committee I of Committee VI.

It is noted that Sub-Committee I of Committee VI has agreed that the Charter should include a provision on the relations between India and Pakistan corresponding to paragraph 5 of Article XXIV of the General Agreement on Tariffs and Trade and also a note corresponding to the Interpretative Note on that same paragraph in Annex I to the General Agreement. The Working Party has considered whether these provisions would be inserted most appropriately in Chapter IV, possibly in Article 42, but from a consultation with the delegation of India it appears that in certain important matters; such as investments, commodity agreements and relations with non-members, special arrangements may be required by India and Pakistan pending the establishment of their relations on a definitive basis.

Accordingly, it is considered that if it is decided to extend the scope of the proposed new paragraph beyond Chapter IV this paragraph should be inserted in an Article of the Chapter for which Committee VI is responsible.

Yours sincerely,

L. D. Wilgress,
Chairman of Committee III.

* Routine acknowledgment not attached.
Mr. Erik Colban,
Chairman of Committee VI
United Nations Conference on
Trade and Employment
Capitólio
Havana, Cuba.

Dear Mr. Colban:

Sub-Committee I of the Sixth Committee has agreed to the inclusion in the Charter of the following provisions:

"Taking into account the special circumstances arising out of the establishment of India and Pakistan as independent states, and recognizing the fact that they have long constituted an economic unit, the Members agree that the provisions of the Charter shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis."

The Sub-Committee agreed also to the inclusion, in an appropriate manner, of an interpretative note to the following effect:

"Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Charter, but these measures would in general be consistent with the objectives of the Charter."

The Sub-Committee feels that before making any recommendation to the Sixth Committee concerning the location of these provisions in the Charter it should have the benefit of the advice of Committee III, particularly in view of the fact that in the General Agreement on Tariffs and Trade these provisions were included in connection with an article corresponding to Article 42 of the Charter. The representative of India expressed the view that these provisions might more appropriately be included in Article 94. The discussion in the Sub-Committee on this question is reported in Documents E/CONF.2/C.6/W.32 and E/CONF.2/C.6/W.40.

The Sub-Committee would be grateful if you would consult on the question of the location of these provisions with the Chairman of Committee III who might seek the advice of the appropriate Sub-Committee of that Committee.

/ Sub-Committee I
Sub-Committee I would then be in a position to take account of this advice in making its recommendation to Committee VI.

Yours sincerely,

Luis D. Tinoco, Chairman
Sub-Committee I of Committee VI
AGENDA FOR THE SIXTH MEETING

To be Held at 6.00 p.m., Saturday, 14 February 1948


2. Consideration of the possible inclusion of the word "solely" before "for the purpose of" in the text of paragraph (c) or elsewhere in relation to Article 94 as a whole (see paragraph 7 of E/CONF.2/C.6/45).

3. Consideration of the scope and location of the provision concerning special arrangements between India and Pakistan (see a white paper distributed today).

A note of 13 February submitted by the United Kingdom delegation has also been circulated to members of the Sub-Committee relating to the matters which were discussed at the last meeting.
Subcommittee I of Committee VI

Suggestion of U.K. and U.S. Delegations Regarding Paragraph 1(c), Article 94

At the last meeting of Subcommittee I it was decided that prior to the next meeting the U.K. and U.S. representatives would resolve their differences on the use of the word "solely" before the phrase "for the purpose of" in paragraph 1(c), Article 94.

As a result of discussions between the U.K. and U.S., the U.K. delegate concurs in the present language of paragraph 1(c), Article 94 but wishes to have a note in the Subcommittee report to the effect that the Subcommittee understood the exception granted in paragraph 1(c), Article 94 was granted solely for the purpose of permitting a Member country to provide for its national security requirements.

LFSchockner:mb
2/27/48
SUB-COMMITTEE I OF COMMITTEE VI

ARTICLE 94
Amendment Proposed by the Delegation of the United Kingdom

Add to paragraph 1 of Article 94 the following new sub-paragraph:

"(a) to prevent action taken in accordance with the terms of Annex Y to this Charter."

ANNEX Y

Special provisions regarding India and Pakistan

Since there are special circumstances arising out of the establishment of India and Pakistan as independent states, and since they have long constituted an economic unit, the provisions of the Charter shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis. Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, may depart from particular provisions of this Charter; Provided that such measures are in general consistent with the objectives of the Charter.
SIXTH COMMITTEE: ORGANIZATION

DRAFT REPORT OF SUB-COMMITTEE I (ARTICLE 94)

Terms of Reference and Composition

1. At its nineteenth meeting, the Sixth Committee established a sub-committee to examine all amendments relating to the subject matter of Article 94. Representatives of the following delegations comprised the membership of the Sub-Committee: Australia, Costa Rica, Czechoslovakia, Guatemala, Iraq, India, Pakistan, the Union of South Africa, the United Kingdom and the United States of America. At its first meeting the Sub-Committee unanimously elected Mr. TINOCO (Costa Rica) as Chairman. At the seventh meeting, in view of the absence of Mr. TINOCO from the Conference, Mr. J. GOMEZ-ROBLES (Guatemala) was elected unanimously to serve in his place as Chairman.

Activities of the Sub-Committee

2. The Sub-Committee examined the various proposals set forth in connection with Article 94 in E/CONF.2/C.6/12 (with the exception of the amendment proposed by the delegation of Egypt which was withdrawn prior to the establishment of the Sub-Committee), together with the proposals in Addenda 8 and 9 to that document. The representative of Costa Rica withdrew the amendment which his delegation had proposed in view of the discussion of other provisions in the Charter relating to that proposal.

3. The Sub-Committee held nine meetings. The large measure of agreement reached on the texts appended to this report, relating to such complex and difficult questions, reflects the thoroughness of the formal and informal discussions among members of the Sub-Committee and the capable guidance by the Chairman. The comments and reservations made by members of the Sub-Committee, collectively or individually, regarding these texts are indicated below.

Article 94 (see Attachment 1 with Annex)

4. No change has been made in the text of paragraph 1(a) as given in the Geneva draft.

5. The preamble of sub-paragraph (b) has been modified to make it clear that the action referred to might be taken by a single Member or by that Member acting with other states. The Sub-Committee has also modified slightly this preamble, as well as the following sub-paragraphs, in order to indicate more...
6. Apart from the slight drafting change mentioned above, which required the substitution of "relates" for "relating", the text of sub-paragraph (i) in the Geneva draft has not been changed.

7. Sub-paragraph (ii) has been changed to refer explicitly both to the military establishment of the Member and of any other country rather than merely to "a military establishment".

8. Apart from the drafting modifications consequential upon the changes made in the preamble, sub-paragraph (iii) remains unchanged.

9. Paragraph 1 (c) has already been recommended to the Fifth and Sixth Committees by a joint sub-committee (E/CONF.2/C.5/14 and E/CONF.2/C.6/45). The Fifth Committee has approved this text subject to the recommendation of the joint sub-committee that the present sub-committee should consider the possible inclusion of the word "solely" before "for the purpose of ...". The present Sub-Committee has considered this matter and has concurred in the present language of paragraph 1 (c), without the addition of the word "solely". The Sub-Committee understands that as now drafted the exception granted in this paragraph is granted solely for the purpose of permitting a Member country to provide for its national security requirements.

10. In the course of its consideration of the special circumstances of India and Pakistan as newly created independent states, the Sub-Committee sought the advice of the appropriate Sub-Committee of the Third Committee concerning the proper location in the Charter of a provision on this subject. In the light of the advice received, the present Sub-Committee agrees that this special situation should be dealt with in connection with Article 94. In view of the fact that the situation referred to is of temporary duration, the Sub-Committee is of the opinion that the detailed provision should appear as an annex to the Charter rather than in the text proper of a particular article. Paragraph 1 (d) is designed to make this provision, although contained in an annex, an integral part of the Charter.

11. In the preparation of paragraph 2, the Sub-Committee established a working party to consider the exceptions relating to "peace treaties" and "special regimes".
"special regimes". The report of this working party is contained in E/CONF.2/C.6/N.44. The Sub-Committee has not considered it desirable to cover in this general provision the peace treaties or permanent settlements prior to the Second World War, particularly in the absence of authoritative information concerning the provisions and present validity of such earlier treaties or settlements. The representative of Iraq entered a provisional reservation concerning paragraph 2 (a) pending final decisions on the texts of Articles 15 and 16. The representative of Turkey, who was not a member of the Sub-Committee, indicated that his delegation also reserved its position pending the outcome of the discussions on Article 16. In drafting paragraph 2 (b) the Sub-Committee has been guided by the terminology of paragraph 4 of Article 68 as approved by the Sixth Committee (E/CONF.2/C.6/88).

The Sub-Committee communicated to the appropriate Sub-Committee of the Third Committee a suggestion that an exception might be made in Article 43 concerning action "necessary to the enforcement of police or other laws relating to public safety" or "necessary for the maintenance of public order or safety". The Third Committee has now approved the inclusion in Article 43, as paragraph 1 (a) (ii), of measures "necessary to the enforcement of laws and regulations relating to public safety" (E/CONF.2/C.8/5/Rev.l).

New Article 83A (see attachment 2 with interpretative note)

On examining several of the proposals submitted by delegations relating to action taken in connection with political matters or with the essential interests of Members, the Sub-Committee concluded that provisions regarding such action should be made in connection with an article on "Relations with the United Nations" since the question of the proper allocation of responsibility as between the Organization and the United Nations was involved. Accordingly, the Sub-Committee recommends the inclusion in the Charter of the article contained in Attachment 2, together with the accompanying interpretative note.

It will be noted that paragraphs 1, 2 and 4 of the new text are intended to replace paragraph 1 of Article 84, and paragraph (c) of Article 94 in the Geneva draft.

Paragraph 3 of the proposed new article, which, like paragraph 4, is independent in its operation, is designed to deal with any measure which is directly in connection with a political matter brought before the United Nations in a manner which will avoid conflict of responsibility between the
between the United Nations and the Organization with respect to political matters. In the course of the discussion on this paragraph the Sub-Committee agreed that this provision would cover measures maintained by a Member even though another Member had brought the particular matter before the United Nations, so long as the measure was taken directly in connection with the matter. It was agreed also that under this provision the Member maintaining the measure could continue that measure so long as it felt that the circumstances were unchanged as far as it was concerned. The Sub-Committee noted that in the light of the adoption of the new article changes in paragraph 2 (c) of the draft terms of reference of the Interim Commission may be required (E/CONF.2/C.6/N.117).

16. The representative of India indicated that he accepted the text and that his delegation would wish to maintain for the time being the original amendment submitted.

17. The representative of Iraq indicated that he was in agreement with the text of the new article subject to confirmation by his government.

18. The representative of the Union of South Africa stated that different members of the Sub-Committee had appealed to him to try to reach a compromise. He had promised to do so and had accordingly successively proposed three amendments to the United Kingdom amendment which has been accepted as paragraph 3 of the proposed text. He had not received any support in his attempts to arrive at a compromise, nor had any other member tried to suggest a compromise text. He accordingly felt that he had redeemed his promise and reserved full right to discuss the question, if necessary, in all its bearings in Committee VI. He asked that his amendments be recorded in the report of the Sub-Committee. These amendments read as follows:

A. The following text to be substituted for paragraph 3 of the Sub-Committee's text:

"3. Members recognize that the Organization should not attempt to take any action which would involve passing judgement, in whole or in part, on essentially political issues. If a complaint is referred to the Organization on a matter which is on the agenda of the United Nations, the Organization shall refer such complaint to the United Nations."

B. Alternatively,
B. Alternatively, the following changes might be made in the present text of paragraph 3:

- delete: "and shall not be subject to the provisions of this Charter"
- substitute: "and not within the scope of the Organization; Provided that this paragraph shall not be construed as permitting unilateral use of sanctions".

C. Or, finally, the words "brought before" in paragraph 3 might be replaced by "which appears on the agenda of the appropriate organ of . . ."
ATTACHMENT 1

Text Proposed by Sub-Committee I of Committee VI

ARTICLE 94

General Exceptions

1. Nothing in this Charter shall be construed
   (a) to require a Member to furnish any information the disclosure of
       which it considers contrary to its essential security interests; or
   (b) to prevent a Member from taking, either singly or with other states,
       any action which it considers necessary for the protection of its
       essential security interests* under such action
       (i) relates to fissionable materials or the materials from which
           they are derived;
       (ii) relates to the traffic in arms, ammunition and implements of
            war and to such traffic in other goods and materials as is
            carried on directly or indirectly for the purpose of supplying
            a military establishment of the Member or of any other country;
       (iii) is taken in time of war or other emergency in international
            relations; or
   (c) to prevent a Member from entering into or carrying out any
       inter-governmental agreement, or other agreement on behalf of a
       government for the purpose specified in this exception, made by or for a
       military establishment for the purpose of meeting essential requirements
       of the national security of one or more of the participating countries; or
   (d) to prevent action taken in accordance with the terms of Annex 00
       to the Charter.

2. Nothing in this Charter shall override
   (a) any of the provisions of peace treaties or permanent settlements
       resulting from the Second World War which are or shall be in force and
       which are or shall be registered with the United Nations, or
   (b) any of the provisions of instruments creating Trust Territories or
       any other special regimes established by the United Nations.
ANNEX CC

Special Provisions Regarding India and Pakistan

Since there are special circumstances arising out of the establishment of India and Pakistan as independent states, and since they have long constituted an economic unit, the provisions of the Charter shall not prevent the two countries from entering into special agreements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis. Measures adopted by India and Pakistan in order to carry out definitive agreements in respect of their mutual trade, once they have been agreed upon, may depart from particular provisions of this Charter; provided that such measures are in general consistent with the purpose and objectives of the Charter.
NEW ARTICLE (83A)

Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement to be approved by the Conference.

2. Any such agreement shall, subject to the provisions of this Charter, provide for effective co-operation and the avoidance of unnecessary duplication in the activities of the respective organization, and for co-operation in furthering the restoration and maintenance of international peace and security.

3. In order to avoid conflict of responsibility between the United Nations and the Organization with respect to political matters, any measure which is directly in connection with a political matter brought before the United Nations in accordance with the Chapter IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations, and shall not be subject to the provisions of this Charter.

4. No action, taken by a member in pursuance of its obligations under the United Nations Charter for the restoration and maintenance of international peace and security, shall be deemed to conflict with the provisions of this Charter.

Interpretative Note

(a) If any Member raises the question whether a measure taken under paragraph 3 of this Article is in fact directly in connection with a political matter brought before the United Nations in accordance with the terms of Chapter IV or Chapter VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the International Trade Organization, but if political issues beyond the competence of the Organization are involved the question shall be deemed to fall within the scope of the United Nations.

(b) If a Member which has no direct political concern in the matter brought before the United Nations finds that a measure taken under paragraph 3 of this Article nullifies or impairs any benefit accruing to it directly or indirectly in the absence of such measures, it shall seek redress.
seek redress only by recourse to the procedures laid down in Chapter VIII of the Charter of the International Trade Organization.
MODIFICATION SUGGESTED BY THE DELEGATION OF IRAN TO THE DRAFT PROPOSED BY THE DELEGATION OF THE UNITED STATES

Article 93

Relations with Non-Members

To be added at the end of paragraph 4.

In making its recommendation the Organization 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 and shall take appropriate account of the consequences of its recommendation upon the interests of such Members.

MODIFICATION AU TEXTE DE L'ARTICLE 93 PROPOSE PAR LA DELEGATION DES ETATS-UNIS, SOUMISE PAR LA DELEGATION DE L'IRAN

Article 93

Relations avec les Etats non Membres

Ajouter le texte suivant à la fin du paragraphe 4

En formulant ses recommandations, l'Organisation tiendra dûment compte des conditions et de la situation économique particulières qui existent chez les Etats Membres qui sont créateurs des Etats non Membres en question ou ont depuis longtemps avec eux un commerce important; elle se préoccupera en outre des conséquences que ses recommandations pourront avoir pour les intérêts de ces Etats Membres.

4964
DRAFT SUGGESTED BY THE DELEGATION OF THE UNITED STATES
AS A BASIS OF DISCUSSION

Article 93
Relations with Non-Members

1. Each Member recognizes that it would be inconsistent with the purposes of this Charter to seek any arrangement with a non-Member for the purpose of obtaining for the trade of such Member preferential treatment as compared with the trade of other Members. Accordingly, no Member shall enter into any new arrangement with a non-Member which guarantees to its trade any preferential advantage over the trade of other Members.

2. The provisions of this Charter through which non-Members may receive benefits incidental to those provided to Members shall not be construed to accord to non-Members any right to such benefits.

3. Subject to the provisions of Article 16, no Member shall extend to the trade of any non-Member treatment more favourable than that which it extends to the other Members.

4. If the Organization finds that any non-Member is discriminating against the trade of any Member or is failing to grant to the trade of the Members benefits comparable with any benefits which it may receive as a result of tariff or other concessions negotiated in accordance with the provisions of this Charter or other substantial advantages resulting from the provisions of this Charter, it may recommend that Members which are not already doing so withdraw from such non-Member any or all of such benefits or advantages.

5. The Executive Board shall make periodic studies of the matters referred to in paragraph 4, shall report periodically to the Conference on the results of these studies and may submit to the Conference such additional provisions for inclusion in this Article as it may consider desirable. Any such recommendation shall be dealt with in accordance with Article 95.
Article 93
Relations with Non-Members

1. Nothing in this Charter shall preclude any Member from concluding or maintaining commercial treaties or maintaining economic relations with non-Members.

2. Members recognize that it would be inconsistent with the purpose of this Charter to seek any arrangements with non-Members for the purpose of obtaining for the trade of such Members preferential treatment as compared with the trade of other Members, or so to conduct their trade with non-Members as to result in injury to other Members. Accordingly, no Member shall enter into any new arrangement with a non-Member which precludes the non-Member from extending to other Members any benefit provided for by such arrangement.

3. Subject to the provisions of Chapter IV, no Member shall extend to the trade of any non-Member treatment which, being more favorable than that which it extends to any Member, injures the interests of another Member.

4. Nothing in this Charter shall be interpreted to require a Member to extend to non-Members treatment as favorable as that which it extends to Members under the provisions of the Charter. Failure to extend such treatment shall not be regarded as inconsistent with the terms or the spirit of the Charter.

5. The Executive Board shall make periodic studies of general problems arising out of commercial relations between Members and non-Members and, with a view to promoting the purpose of the Charter, may make recommendations to the Conference with respect to such relations. Any recommendation to alter the provisions of this Article shall be dealt with in accordance with Article 95.
Paragraph 1
Acceptable.

Paragraph 2
(i) The first sentence is acceptable. The second sentence seems to involve a difficulty for the United Kingdom. It would appear to rule out the continuance of the imperial preferential system with a territory, listed in Annex A of Article 16, which was not a Member of I.T.O. This difficulty could, in the opinion of the United Kingdom delegation, best be avoided by adding the words "subject to the provisions of Article 16" after "accordingly". It is true that Article 16 refers in this connection to "territories" not to "Members" and that therefore in that respect the fact that a territory, listed in Annex A was not a Member of I.T.O., would not render it subject to the provisions of Article 93. But Article 16 (2) says "The provisions of paragraph 1 of this Article shall not require the elimination etc.", which appears to imply that Article 93 could require that United Kingdom, if a Member of I.T.O., should not receive imperial preferences from a territory listed in Annex A which was not a Member, as other Members would be precluded from receiving such preferences.

(ii) It appeared to the United Kingdom representative at the last meeting but one of the Sub-Committee that the Sub-Committee was in agreement that the words "which precludes the non-Member from extending to other Members any benefit provided for by such arrangement" should be interpreted as meaning "precludes by the inclusion in the terms of such arrangement a prohibition of the extension to other countries of the benefits for which it provides". This meaning could in the opinion of the United Kingdom delegation best be made clear by adding the word "specifically" before "precludes" or the words "in terms" after "precludes".

Paragraph 3
(i) The United Kingdom would prefer, for reasons stated at the last meeting of the Sub-Committee, to amend the last clause of this paragraph.
paragraph to read "materially injures the economic interests of another Member."

(ii) In order to prevent any possibility of this paragraph being held to prevent the operation of Article 57 (1) the United Kingdom would like to see the following interpretative note included in the Charter:

"Nothing in this article shall be construed to prejudice or prevent the operation of the provisions of Article 57 (1) regarding the treatment to be accorded to non-participating countries under the terms of a commodity control agreement which conforms to the requirements of Chapter VI".

Paragraphs 4 and 5
Acceptable.
February 23, 1948

The following is suggested by various Delegations as a method of reconciling the differences arising out of the amendments proposed by Colombia and France in document E/CONF.2/C.6/Add.23, February 9, 1948.

1. The Colombian and French Delegations agree not to press for the adoption by this Conference of the amendment proposed in the document under reference.

2. It is proposed that the following Annex be added 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 upon the points covered by such opinion."

3. Add the following text in the report of the Subcommittee:

"The view of certain delegations was expressed that the provisions of Chapter VIII do not provide for recourse to the International Court 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."
"Under these circumstances, and in view of the difficulties of this subject and the limited time available for discussion, the Subcommittee unanimously agreed that the Interim Commission should examine the question, and the Subcommittee has proposed a resolution providing for such examination. The Subcommittee 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 has, therefore, suggested an annex to Article 95 providing for amendments in this respect by a simple majority vote of the Conference."

4. Amend the proposed resolution in the manner shown:

The United Nations Conference on Trade and Employment

Having given serious consideration to the relation of the International Trade Organization and the International Court; and

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

RESOLVES

That the Interim Commission of the International Trade Organization, through such means as may be appropriate, including a request by the Economic and Social Council of the United Nations for an advisory opinion, 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 amended 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 may appropriately be presented to the Conference pursuant to and in accordance with provisions of the annex to Article 95 of the Charter.
Insert the following in the Draft Resolution as shown:

THEREFORE RESOLVES and AGREES:

1. upon the questions of:
   (a) ... 
   (b) whether, having regard to the desirability that decisions of the Court should have the nature of a judgment with respect to the Organization, there may be improvement of the procedures established by the Charter Court; and

2. ...
SUB-COMMITTEE ON CHAPTER VIII

DRAFT REPORT

1. The Sub-Committee, composed of the representatives of Australia, Canada, Colombia, Denmark, France, India, 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 an exhaustive examination of all the provisions of the Chapter which fell within its terms of reference holding, in all, twenty meetings as well as establishing four working parties. As a result of its discussions the text of the Chapter has been very considerably expanded and clarified although the principles at the basis of the original text have been retained.

3. The Sub-Committee considered that paragraph 3 of the original text of Article 92 (Miscellaneous Provisions) should receive greater emphasis. It therefore recommends that this paragraph, as reworded, should be taken out of Article 92 and made into a new Article 89, entitled "Reliance on the Procedures of the Charter."

4. The scope of the original text of Article 89 (Consultation between Members*) 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. The new text of this article was accepted by the representative of Australia on the understanding that paragraph 1 (c) covered a situation arising from a serious decline in employment and effective demand in any country of major economic importance. The Sub-Committee agreed that the word "matter" in paragraph 1 of the new text of Article 89 referred to the nullification or impairment of a benefit and not to the failure, inaction, measure or situation.

* Now Article 90.
measure or situation referred to in paragraphs 1 (a), (b) and (c). Finally, Article 89 has been clarified so as to make it clear that under that article resort may be had to arbitration, upon terms to be agreed, the results of which do not bind the Organization or any Member other than those parties to the arbitration.

5. The Sub-Committee found it desirable to break down the original Article 90 (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 complaint has been brought to its attention have been set out, while in both of these articles the "compensatory" rather than "punitive" nature of any relief to be granted is made clear. The Sub-Committee agreed that paragraph 3 of the article dealing with reference to the Conference and the corresponding paragraph of the article concerning references to the Executive Board do not empower the Conference or the Board to propose the suspension or withdrawal of a measure not in conflict with the Charter.

6. The Sub-Committee realized that it would be desirable to obtain the advice and assistance of the International Court of Justice upon the question of the relationship between the Court and the International Trade Organization, as laid down in the new text of Chapter VIII, particularly from the point of view of the improvement of the procedures established by the Chapter. It therefore suggests that the Sixth Committee should recommend to the Conference the adoption of the following resolution:

(Text of resolution)

7. The Sub-Committee recommends to the Sixth Committee the following text of Chapter VIII:

(Text to be inserted)
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 an exhaustive examination of all the provisions of the Chapter which fell within its terms of reference holding, in all, twenty-one meetings as well as establishing four working parties. As a result of its discussions the text of the Chapter has been very considerably expanded and clarified although the principles at the basis of the original text have been retained.

3. The Sub-Committee considered that paragraph 3 of the original text of Article 92 (Miscellaneous Provisions) should receive greater emphasis. It therefore recommends that this paragraph, as reworded, should be taken out of Article 92 and made into a new article at the commencement of Chapter VIII, entitled "Reliance on the Procedures of the Charter." The Sub-Committee gave serious 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 came to the conclusion that no conflict existed.

4. The scope of the original text of Article 89 (Consultation between Members) 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. 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. The Sub-Committee agreed that the word "matter"
in paragraph 1 of the new text of Article 89 referred to the nullification or
impairment of a benefit and not to the failure, inaction, measure or situation
referred to in paragraphs 1 (a), (b) and (c). Finally, Article 89 has been
clarified so as to make it clear that under that article resort may be had to
arbitration, upon terms to be agreed, the results of which do not bind the
Organization or any Member other than those parties to the arbitration.

5. The Sub-Committee found it desirable to break down the original Article 90
(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
complaint has been brought to its attention have been set out, while in both
of these articles the "compensatory" rather than "punitive" nature of any
relief to be granted is made clear. Also while examining the former article,
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. To bring this
article into conformity with Chapter VIII, the Sub-Committee recommends that
paragraph 2 should be amended to read:

"2. The Executive Board may make recommendations to the Conference, to
Members or ......"

The Sub-Committee agreed that paragraph 3 of the article dealing with referen-
to the Conference and the corresponding paragraph of the article concerning
reference to the Executive Board do not empower the Conference or the Board
to propose the suspension or withdrawal of a measure not in conflict with the
Charter.

6. The only question upon which the Sub-Committee was unable to reach a
unanimous conclusion arose both in connection with Article 91 (Reference to
the International Court of Justice) and paragraph 3 of Article 92 concerning
non-recourse to other procedures for the settlement of differences arising
out of the operation of the Charter. That question was whether or not Members
should be obliged to confine their recourse to the International Court of
Justice to the advisory opinion procedure through the Organization or whether,
in addition, they should be able to exercise their rights under Article 36 of
the Statute of the Court. The delegations of Colombia and France submitted
the following amendment to paragraph 3 of Article 92 (now Article 92A)
/embobbing
embodying the latter proposition - to add at the beginning of that paragraph the phrase "Without prejudice to their rights under Article 36 of the Statute of the International Court of Justice." This proposal was supported by the delegations of Italy, Mexico, Poland, Switzerland and Uruguay. It was opposed by the delegations of Australia, Canada, Denmark, Netherlands, South Africa, United Kingdom and United States, while the delegations of India and Iraq were unable to express a definite opinion pending the receipt of instructions.

7. The Sub-Committee realized that it would be desirable to obtain the advice and assistance of the International Court of Justice upon the question of the relationship between the Court and the International Trade Organization, as laid down in the new text of Chapter VIII, particularly from the point of view of the improvement of the procedures established by the Charter. It therefore suggests that the Sixth Committee should recommend to the Conference the adoption of the following resolution:

(Text of resolution).

8. In the course of its work the Sub-Committee considered the relationship between Chapter VIII and other chapters of the Charter. The Chairman of the Sub-Committee presented the following interim report on this matter to the Sixth Committee on 3 February 1948:

"The Sub-Committee wishes to make known to other Committees and Sub-Committees of the Conference that where an Article of the Charter other than those contained in Chapter VIII establishes procedures for action by a Member or by the Organization, action in accordance with that procedure should, unless the basis of the complaint is nullification or impairment of a benefit accruing to a Member, precede that provided for in Chapter VIII, but shall not, unless it is so specified, impair

* It was explained that if the amendment were adopted these words would be omitted so as to allow Members also to have recourse to the Court as a court of arbitration.

** Subject to reservation of final approval.
the rights of Members under Chapter VIII. However, it is the view of
the Sub-Committee that if consultation or investigation has taken place
under the provisions of another article, the Organization may regard
such consultation or investigation as fulfilling either in whole or in
part any similar procedural requirements in Chapter VIII. This will
be made clear in the appropriate Article of Chapter VIII."

9. Subject to paragraph 6 of this Report, the Sub-Committee recommends to
the Sixth Committee the following text of Chapter VIII:
(Text to be inserted).
SUB-COMMITTEE ON CHAPTER VIII

DRAFT REPORT

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 an exhaustive examination of all the provisions of the Chapter which fell within its terms of reference holding, in all, twenty-one meetings as well as establishing four working parties. As a result of its discussions the text of the Chapter has been very considerably expanded and clarified although the principles at the basis of the original text have been retained.

3. The Sub-Committee considered that paragraph 3 of the original text of Article 92 (Miscellaneous Provisions) should receive greater emphasis. It therefore recommends that this paragraph, as reworded, should be taken out of Article 92 and made into a new article at the commencement of Chapter VIII, entitled "Reliance on the Procedures of the Charter." The Sub-Committee gave serious 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 came to the conclusion that no conflict existed.

4. The scope of the original text of Article 89 (Consultation between Members) 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. 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. The Sub-Committee agreed that the word "matter"
in paragraph 1 of the new text of Article 89 referred to the nullification or
impairment of a benefit and not to the failure, inaction, measure or situation
referred to in paragraphs 1 (a), (b) and (c). Finally, Article 89 has been
clarified so as to make it clear that under that article resort may be had to
arbitration, upon terms to be agreed, the results of which do not bind the
Organization or any Member other than those parties to the arbitration.

5. The Sub-Committee found it desirable to break down the original Article 90
(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
complaint has been brought to its attention have been set out, while in both
of these articles the "compensatory" rather than "punitive" nature of any
relief to be granted is made clear. Also while examining the former article,
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. To bring this
article into conformity with Chapter VIII, the Sub-Committee recommends that
paragraph 2 should be amended to read:

"2. The Executive Board may make recommendations to the Conference, to
Members or .......

The Sub-Committee agreed that paragraph 3 of the article dealing with referen;
to the Conference and the corresponding paragraph of the article concerning
reference to the Executive Board do not empower the Conference or the Board
to propose the suspension or withdrawal of a measure not in conflict with the
Charter.

6. The only question upon which the Sub-Committee was unable to reach a
unanimous conclusion arose both in connection with Article 91 (Reference to
the International Court of Justice) and paragraph 3 of Article 92 concerning
non-recourse to other procedures for the settlement of differences arising
out of the operation of the Charter. That question was whether or not Members
should be obliged to confine their recourse to the International Court of
Justice to the advisory opinion procedure through the Organization or whether,
in addition, they should be able to exercise their rights under Article 36 of
the Statute of the Court. The delegations of Colombia and France submitted
the following amendment to paragraph 3 of Article 92 (now Article 88A)

/embodying
embodying the latter proposition * to add at the beginning of that paragraph the phrase "Without prejudice to their rights under Article 36 of the Statute of the International Court of Justice." This proposal was supported by the delegations of Italy, Mexico**, Poland, Switzerland and Uruguay. It was opposed by the delegations of Australia, Canada, Denmark, Netherlands, South Africa, United Kingdom and United States, while the delegations of India and Iraq were unable to express a definite opinion pending the receipt of instructions.

7. The Sub-Committee realized that it would be desirable to obtain the advice and assistance of the International Court of Justice upon the question of the relationship between the Court and the International Trade Organization, as laid down in the new text of Chapter VIII, particularly from the point of view of the improvement of the procedures established by the Chapter. It therefore suggests that the Sixth Committee should recommend to the Conference the adoption of the following resolution:

(Text of resolution).

8. In the course of its work the Sub-Committee considered the relationship between Chapter VIII and other chapters of the Charter. The Chairman of the Sub-Committee presented the following interim report on this matter to the Sixth Committee on 3 February 1948:

"The Sub-Committee wishes to make known to other Committees and Sub-Committees of the Conference that where an Article of the Charter other than those contained in Chapter VIII establishes procedures for action by a Member or by the Organization, action in accordance with that procedure should, unless the basis of the complaint is nullification or impairment of a benefit accruing to a Member, precede that provided for in Chapter VIII, but shall not, unless it is so specified, impair

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* It was explained that if the amendment were adopted these words would be omitted so as to allow Members also to have recourse to the Court as a court of arbitration.

** Subject to reservation of final approval.
the rights of Members under Chapter VIII. However, it is the view of the Sub-Committee that if consultation or investigation has taken place under the provisions of another article, the Organization may regard such consultation or investigation as fulfilling either in whole or in part any similar procedural requirements in Chapter VIII. This will be made clear in the appropriate Article of Chapter VIII."

9. Subject to paragraph 6 of this Report, the Sub-Committee recommends to the Sixth Committee the following text of Chapter VIII:

(Text to be inserted).
SUB-COMMITTEE G OF COMMITTEE VI

Article 91

New Paragraph 6 proposed by the French delegation:

6. When the procedure established in Chapter VIII has thus been concluded, Members may exercise the rights they possess in virtue of Article 36 of the Statute of the International Court of Justice.

16 February 1948

SOUS-COMMISSION G DE LA SIXIÈME COMMISSION

Article 91

Nouveau paragraphe 6 proposé par la délégation française :

6. Lorsque la procédure établie au Chapitre VIII aura ainsi atteint son terme, les États Membres pourront faire valoir les droits qu'ils possèdent en vertu de l'article 36 des statuts de la Cour internationale de Justice.
Article 92, Paragraph 3

Amendment of the new Paragraph 3 of Article 92, proposed by the French Delegation:

3. Without prejudice to their rights under Article 36 of the Statutes of the International Court of Justice, the Members undertake, in relation to other Members or the Organization, that ......

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SUB-COMMITTEE G OF COMMITTEE VI

16 February 1948

Article 92, paragraphe 3

Amendement au nouveau paragraphe 3 de l'article 92 proposé par la délégation de la France :

3. Sans préjudice des droits qu'ils tiennent de l'article 36 du Statut de la Cour Internationale de Justice, les Etats Membres s'engagent vis-à-vis des autres Etats Membres ou de l'Organisation à n'avoir recours...

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SOUS-COMMISSION G DE LA SIXIÈME COMMISSION

16 février 1948
NEW Paragraph 6 proposed by the French delegation:

6. When the procedure established in Chapter VIII has thus been concluded, Members may exercise the rights they possess in virtue of Article 36 of the Statute of the International Court of Justice.
Article 92, Paragraph 3

Amendment of the new Paragraph 3 of Article 92, proposed by the French Delegation:

3. Without prejudice to their rights under Article 36 of the Statutes of the International Court of Justice, the Members undertake, in relation to other Members or the Organization, that ......

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Article 92, paragraphe 3

Amendement au nouveau paragraphe 3 de l'article 92 proposé par la délégation de la France :

3. Sans préjudice des droits qu'ils tiennent de l'article 36 du Statut de la Cour internationale de Justice, les États Membres s'engagent vis-à-vis des autres États Membres ou de l'Organisation à n'avoir recours....

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