

COMMITTEE VI: ORGANIZATION

REPORT OF WORKING PARTY OF SUB-COMMITTEE G OF
COMMITTEE VI ON CHAPTER VIII

1. The Working Party, composed of representatives of Australia, India, Mexico and the United States considered several alternatives suggested and agreed unanimously on the texts of Articles 89 and 90, paragraph 4.
2. The following is a suggested text for Article 89 - Consultation between Members:

"If any Member should consider 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, for 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 an obligation s 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 the Member may
..... discussions undertaken.

3. 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."

1. 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 1 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

attainment of one of the objectives set forth in Article 1, 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 1. In order to make entirely clear that Article 1 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 further that the addition of the phrase "implicitly or explicitly" 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.

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.
