

Executive Committee

Second Session

REPORT OF SUB-COMMITTEE 1 ON CONSULTATIONS WITH
THE INTERNATIONAL COURT OF JUSTICE

1. The Sub-Committee on Consultations with the International Court of Justice which was composed of representatives of Australia, Benelux, Columbia, Egypt, France, Italy, Mexico, United Kingdom and United States and which was presided over by Mr. L. Couillard (Canada) had as its terms of reference the resolution concerning the relation of the International Trade Organization to the International Court of Justice adopted by the United Nations Conference on Trade and Employment.
2. Pursuant to the Resolution the Sub-Committee consulted with the International Court of Justice through the Registrar of the Court, Mr. E. Hambro, who attended the session of the Executive Committee for this purpose. The Sub-Committee wishes to record its appreciation for the valuable assistance which the Registrar was able to give. The consultations took the form of the representatives addressing to the Registrar a series of questions arising out of Chapter VIII of the Charter in so far as that Chapter referred to recourse to the International Court of Justice. The Registrar recorded these questions and the answers he gave to them in two aide-memoires which are attached to the Notes of the First, Second and Third Meetings of the Sub-Committee (documents ICITO/EC.2/SC.1/3 and ICITO/EC.2/SC.1/6). The Sub-Committee recommends that these aide-memoires should eventually be incorporated in the report which the Interim Commission will make to the First Session of the Conference of the Organization. The Sub-Committee considered that no further consultations with the International Court of Justice or with its Registrar should be necessary.
3. In the course of the consultations with the Registrar of the Court, the Registrar was asked his opinion upon the first question mentioned in the terms of reference of the Sub-Committee, that is, the question whether the procedures set out in Chapter VIII of the Charter needed to be changed to ensure that decisions of the International Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment. The Registrar replied that there was nothing in the Statute of the International Court which would prevent the Organization or its Members agreeing that an advisory opinion should have binding force. The Registrar further stated that the text of Article 96 was quite satisfactory as a means of requiring and securing an advisory opinion from the International Court. After this opinion had been given, the Sub-Committee turned its attention particularly to answering the second question stated in its terms of reference.

4. During the discussion the Sub-Committee observed that there appeared to be nothing in sub-paragraph 2 (c) of Article 94 to prevent the question of monetary compensation being included in the terms of reference to arbitration in any case arising out of a breach of an obligation under the Charter.

5. The Sub-Committee recommends that the Interim Commission should make the following report upon this matter to the First Session of the Conference of the Organization:-

A

"The Interim Commission considered the problems arising out of the resolution relating to the review of decisions of the Organization by the International Court of Justice and out of Annex N of the Havana Charter. It was the conclusion of the Interim Commission, after consultation with the Registrar of the International Court of Justice, that no amendment to the Charter was necessary, on the understanding that the following is the interpretation of the relevant provisions of the Charter:-

1. In connection with the procedure for obtaining an advisory opinion under paragraph 2 of Article 96

(a) Any Member, party to a dispute between two or more Members which has been the subject of a decision of the Conference, will be deemed to have an interest prejudiced by the said decision.

(b) The fact that a decision of the Conference is contrary to the position of a Member, not a party to such dispute, on the merits of the dispute shall not in itself determine the question whether the interest of such Member has or has not been prejudiced by the decision.

2. Article 96 permits the Organization, in its request to the Court for an advisory opinion, to include the question of monetary compensation for a Member whose interests have been prejudiced in a case arising out of a breach by a Member of an obligation under the Charter. In such a case, the request for an advisory opinion shall, at the instance of a Member party to the dispute, include the question of monetary compensation.

B

The Interim Commission also considered that, as a general rule, the request for an advisory opinion should not include a question as to monetary compensation:-

(a) for any period prior to the date of the decision of the Conference, in cases where the decision has been adverse to the complaint; or

(b) in other cases, for any period prior to thirty days before the time when written representations or proposals satisfying the requirements of Article 93 of the Charter were first made with respect to the dispute.

The Interim Commission calls to the attention of the First Session of the Conference of the Organization the fact that paragraph 4 of Article 95 of the Charter in its present form does not provide a right of withdrawal in a case where the International Court of Justice decides that monetary compensation is the appropriate remedy."

6. The representative of Australia reserved his position as to whether the interpretation proposed by the Sub-Committee was within the terms of the Resolution of the United Nations Conference on Trade and Employment or within the terms of Annex N of the Charter. He also reserved his opinion upon the substance of the interpretation recommended by the Sub-Committee should the Executive Committee decide that it was within its competence.