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SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON CHAPTER VIII (SETTLEMENT OF DIFFERENCES - INTERPRETATION)

NOTES ON SEVENTH MEETING

Held 21 January 1948 at 10.30 a.m.

Chairman: Mr. COUILLARD (Canada)

The Sub-Committee continued its discussion of the questions put by the Chairman at the last meeting (see document E/CONF.2/C.6/W.59).

The Sub-Committee first gave further consideration to the statement made by the representative of the United States in reply to question No. 1. It was agreed that the words "desire to resort" in that statement meant that recourse could only be had to arbitration when both the parties to the dispute in question were fully in agreement upon adopting that procedure to settle their differences, that is, they must agree on all such matters as who the arbitrator should be.

Discussion of Point 2

Mr. HAIDER (Iraq) said that resort to arbitration should be controlled in accordance with the three following principles:

- (a) the result of arbitration should not enable a Member to violate the Charter nor release it from obligations under the Charter;
- (b) the result of arbitration should not nullify the benefits of other Members under the Charter; and
- (c) most-favoured-nation treatment should apply to the results of arbitration.

Upon other representatives expressing the viewpoint that it was not necessary to specify in the Charter the principles mentioned by the representative of Iraq which the arbitrator's decision must take into account, since the Organization would be kept informed of the progress of the arbitration and would be able to protect these principles; the representative of Iraq said that he would not insist upon his point.

The Sub-Committee agreed that the Organization should be kept au courant with the progress of any resort to arbitration which Members made to settle a difference between them arising from the Charter.

/It was agreed

It was agreed that it would be possible under the arbitration procedure laid down in Article 90 for Members to request the International Court of Justice to act as an arbitrator. However, it seemed unlikely that the Court would grant such a request.

Mr. RUBIN (United States) suggested that the position should be clarified by inserting some provision in Article 91 to the effect that the procedures for reference to the International Court laid down in that article were the only procedures by which Members might resort to the Court.

Discussion of Point 3

It was agreed that there should be no limits upon the types of cases which might be submitted to arbitration.

Discussion of Point 4

It was agreed that it was not necessary to specify terms upon which resort to arbitration might be permitted, such as the interest of a certain number of Members in the dispute, as had been suggested in the amendment proposed by the United Kingdom delegation.

Discussion of Point 5

It was agreed that whether or not a decision of an arbitrator would be binding on the parties depended upon the agreement between the parties at the time that they decided to submit themselves to arbitration. However, should a decision of an arbitrator result in the nullification or impairment of the benefits of a third Member under the Charter, that third Member would be able to resort to the procedures laid down in Chapter VIII. It was also agreed that a decision of an arbitrator would never be binding upon the Organization. Whether or not an appeal should be allowed from a decision of an arbitrator would depend upon the agreement of the parties. A decision of an arbitrator would not create a precedent of binding force.

The discussion upon the question of arbitration being concluded, the matter was referred to the working party upon Article 90 which the Sub-Committee had decided to establish at a previous meeting.
