

NOTE FOR PREPARATORY COMMISSION BSubmitted by the Delegation of Belgium-LuxembourgSUBJECT: Settlement of Disputes

1. The Report of the Committee on Chapters I, II and VIII draws the Preparatory Committee's attention to the inadequate time allotted for studying the problem of the settlement of disputes among Members and between Members and the Organization. The same situation obtained when the report of this Sub-Committee had to be drafted, and the Belgian Delegation feels justified in pointing this out.
2. It also considers it necessary to make the following comments, which are designed to throw some light on the position taken up by this Delegation:
 - (1) on the question of the settlement of disputes within the ITO;
 - (2) on the question of referring decisions of the Conference to the International Court of Justice.
3. The Charter that resulted from the work of the First Session of the Preparatory Committee and of the New York Drafting Committee provided that "the Members accept the jurisdiction of the Court in respect of any dispute submitted to the Court under this Article" (Article 86).
4. The conclusions of the Sub-Committee on Chapter VIII provide that: "The Conference shall, at the instance of a substantially interested Member, request an advisory opinion from the International Court of Justice".

The Sub-Committee's report does not bring out the importance of this decision and the value of this concession to delegations such as those of Belgium and Luxembourg, which have been striving, since the First Session of the Preparatory Committee, to maintain the principle of compulsory justice between nations as between individuals.

The delegation of Belgium and Luxembourg agrees to make this concession, as it considers that the advisory opinion procedure will facilitate the settlement of disputes by sparing the political susceptibilities of States, which can subsequently take advantage of the light thrown on a case by public hearing and the opinion of the Court to arrive at a compromise among themselves by diplomatic means.

5. Since the Court's action in an advisory capacity should create the "atmosphere" which will encourage the Parties to seek a solution to their dispute, the Delegation of Belgium and Luxembourg felt that it would be well to enlarge the scope of this action as far as is permitted by the Statute of the Court. The "limitation" of the questions on which the advisory opinion of the International Court of Justice may be sought, caused a difference of opinion in the Sub-Committee on Chapter VIII.

6. The Belgium-Luxembourg Delegation is aware that the Sub-Committee did not have sufficient time to discuss this question thoroughly enough for an agreement to be reached.

Consequently, the delegations were asked to vote on texts on the implications of which they were not all in agreement. The Belgium-Luxembourg Delegation is here referring expressly to alternatives A and B reproduced in the text of the new Article 88.

The Belgium-Luxembourg Delegation believes that if the interpretation of alternative B had brought out the fact that Article 36, Para. 2, of the Statute of the International Court of Justice enumerated four categories of disputes, but that disputes over purely factual questions did not come under any one of these four categories, and that, further, Article 36, Para. 2 (c), established a connection between a disputed fact and an undisputed rule of international law, and that only disputes over the reality of a fact as a condition of the application of a rule of international law were covered by Article 36, Paragraph 2 (c), the minority vote for alternative B would no doubt have become a majority vote.

The same reasoning can be followed in studying alternative A. In the opinion of the Belgium-Luxembourg Delegation, the term "legal validity" used there is too vague and too elastic; it has, therefore, the defect of becoming a source of disagreement rather than a helpful formula for the settlement of disputes. To make the wording acceptable to the Belgium-Luxembourg Delegation it would have to be stated that the term refers expressly to :

- (a) the interpretation of the Charter;
- (b) any connection there might be between a disputed fact and an undisputed obligation under the Charter, i.e. the conditions under which the legal rules developed from the Charter are applied.

8. This question is not the only one the Sub-Committee did not have sufficient time to study fully. Another, no less important, remains to be settled. In the opinion of the Belgium-Luxembourg Delegation the work of the Preparatory

Committee on the problem of the settlement of disputes within the ITO will be incomplete so long as the Charter fails to take into account the settlement of an important category of legal disputes which may arise between Members of the Organization - namely, disputes over purely factual questions.

9. The disagreement between the parties to a dispute may be concerned with the reality of the facts themselves as well as with the legal consequences ensuing from the existence or non-existence of the alleged facts. The parties may agree on the legal consequences of the possible facts and the dispute may be limited to disagreement regarding the facts themselves.

In these circumstances, several delegations represented at the Preparatory Committee are opposed to the submission of such facts to the International Court of Justice for consideration and verification. The Belgium-Luxembourg Delegation agrees that until the Statute of the International Court of Justice has been altered the Court is not the most competent organ for the ascertainment of certain facts. It does not follow from this that disagreement regarding the existence or non-existence of such facts should be left to arbitrary decision.

10. At the first session of the Preparatory Committee in London, the Belgium and Luxembourg Delegation suggested that consideration be given to a recommendation to the United Nations calling for the establishment of an Economic Chamber as part of the International Court of Justice. This proposal was supported by several delegations.

11. At Geneva, the Belgium-Luxembourg Delegation suggested the establishment of a Claims Board as part of the I.T.O.

This proposal satisfied the Belgium-Luxembourg Delegation's desire that questions not within the competence of the International Court of Justice should be submitted to procedures guaranteeing competence, impartiality and independence.

The Belgium-Luxembourg proposal was widely supported during the meeting of Commission B and was discussed in the Sub-Committee. The reason for this may well be that the impression was prevalent at one stage that a very wide measure of agreement was going to be reached on the question of submitting disputes to the International Court of Justice for an advisory opinion.

12. The Belgium-Luxembourg Delegation regrets that the Sub-Committee's report omits any mention of this matter. The Belgium-Luxembourg Delegation draws Commission B's attention to the importance of the question, the need for devoting special attention to it and to the two formulas for its solution submitted by this Delegation. Both spring from the arguments put forward in the meetings of the Commission which may be summed up thus: Should the Organization be master in its own house?