

Executive Committee

Second Session

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at the Palais des Nations, Geneva
on 13 September 1948, at 10 p.m.

REPORT OF THE CREDENTIALS COMMITTEE ICITO/EC/13

The CHAIRMAN introduced the Report of the Committee and said all credentials had been found in good order. The meeting approved the report.

REPORT OF SUB-COMMITTEE 1 ON CONSULTATIONS WITH THE INTERNATIONAL COURT OF JUSTICE (ICITO/EC.2/15)

Mr. COUILLARD (Canada) who acted as Chairman of the Sub-Committee, was called upon by the Chairman to introduce the report.

He read the terms of reference of the Sub-Committee, which had been laid down in the Resolution of the Havana Conference and had set them two tasks:

- a) 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.
- b) whether an amendment should be presented to the Conference pursuant to and in accordance with the provisions of Article 100 of the Havana Charter.

With the exception of one reservation, the report was unanimously approved by the Sub-Committee.

Consultations were held with the Registrar of the International Court of Justice, Mr. Hambro, who gave his opinion that the provisions of Article 96 were satisfactory as a means of requiring and securing an opinion from the Court.

The Sub-Committee came to the conclusion that no amendment to Chapter VIII of the Charter was required, provided the provisions therein were interpreted as follows:

a) that, in connection with paragraph 2 of Article 96, any Member, party to a dispute between two or more members, which had been the subject of a decision of the Conference, would be deemed to have an interest prejudiced by the said decision;

b) that the fact that a decision is contrary to the position of a Member, not a party to such a dispute, on the merits of the dispute, shall not in itself determine the question whether the interests of such member has or has not been prejudiced by the decision;

c) that Article 96 further permitted the organization, in its request for an advisory opinion, to include the question of monetary compensation for a member whose interests had been prejudiced by a decision of the Organization.

The Sub-Committee also made recommendations as to the dates from which compensation might be claimed for interests which had been prejudiced.

The Sub-Committee called attention to the fact that paragraph 4 of Article 95 of the Charter did not provide a right of withdrawal in cases where the Court might decide that monetary compensation was the appropriate remedy.

The Representative of Australia had reserved his position as to the competence of the Interim Commission to give an interpretation and as to the substance of the interpretation proposed. The solution was a compromise and has been achieved after careful consideration.

The CHAIRMAN thought the first question to be discussed was whether the interpretation submitted by the Sub-Committee fell within the terms of the resolution of the Havana Charter and of Annex N of the Charter.

Mr. HEWITT (Australia) said he did not feel that the proposed solution fell within the competence of the Sub-Committee. Annex N to the Charter provided for amendments to Chapter VIII on matters arising out of the Charter. The Sub-Committee had agreed that no amendment was necessary and to this he had no objection. However, the Sub-Committee's decision was conditional on their interpretation of Chapter VIII. The question was whether Chapter VIII was clear and satisfactory. If it was, no question arose, but if it needed such an interpretation as that suggested, it followed that there had been more than one interpretation and what was being done was in effect to amend the Charter but not in accordance with Annex N. They were not confronted with a simple interpretation but with a statement on the substance and no change of substance could be made except in the form of an amendment under Annex N. According to the interpretation given, a member who had benefited by a favourable decision could still claim a prejudiced interest, an interpretation which in his opinion ran counter to paragraph 2 of Article 96. Only the Conference could decide whether the interests of the member had been prejudiced. His suggestion

was therefore that there was a divergence between the text and the interpretation, in which case the interpretation was indirectly an amendment and consequently did not satisfy Annex N.

Mr. PHILIP (France) said that his Delegation was not satisfied with Chapter VIII, when the Sub-Committee began its work, but they had entered negotiations with an open mind and he was now satisfied that a reasonable and realistic compromise had been reached. With regard to Annex N, he felt that from a juridical point of view, if it was possible to amend it, it would certainly be possible, by following the same procedure, to interpret the text of Chapter VIII. He did not think further that a decision of the Conference should necessarily satisfy both parties and that the party in whose favour the decision had been made might feel that the compensation awarded was unsatisfactory. It should therefore have a right to appeal.

Mr. SHACKLE (United Kingdom) said his Delegation had started with the same point of view held by Australia that no amendment was necessary, but there were numerous Delegations which felt that amendments were necessary and he was now convinced that the compromise reached was a satisfactory one which he could recommend to his Government. He agreed with Mr. Philip that both sides in the dispute could feel their interests were prejudiced by a decision of the Organization. In order more clearly to formulate the right of a party which, though the recipient of a favourable decision might feel that the redress was unsatisfactory, he suggested to introduce in paragraph A, 1(a) after the word "Conference", the words: "contrary to the position of a Member on any aspect of the dispute".

Mr. HEWITT wished to make it quite clear that he had no amendments to make to the text but that he opposed any interpretation which introduced changes of substance.

Mr. RUBIN affirmed that it was the opinion of his Delegation that nothing precluded the Interim Commission or the Sub-Committee from giving an interpretation. He felt the French Delegation had illustrated the point sufficiently. The Articles of the Charter gave room for differences of opinion and the interpretation suggested was a reasonable one and quite in accordance with the language of the text. He had had some concern with the wording of A 1 (a) and therefore supported the amendment suggested by Mr. Shackle.

Mr. HEWITT said the interpretation substantially altered the substance of paragraph 2 of Article 96 and in support of this he recalled the discussion which had taken place in the Sub-Committee. The registrar had pointed out that paragraph 2 of Article 96 practically gave individual States the right to request opinions from the Court although it was the accepted view that opinions should be requested only through organizations, but that he thought the Court would have no objections to make if the Assembly of the United Nations should give the Organization authority under the Article as now drafted. Mr. HEWITT added that in his opinion the Organization should not waive the right to refuse to grant a Member's request for an advisory opinion. This he suggested was the meaning of paragraph 2 of Article 96, which by giving the Organization the right to decide whether the interests of members had been prejudiced, left the Organization with some discretion as to whether access to the Court should or should not be granted. The present interpretation

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The Delegates of Brazil and the Philippines expressed their support for the compromise submitted by the Sub-Committee.

Mr. Shackle said his amendment to the interpretation of the Sub-Committee was merely intended to define more clearly the circumstances under which a member could ask, through the Organization, for an advisory opinion. It certainly did not purport to define matters on which judgment could be given by the Court.

Mr. WUNSZ KING (China) examined the compromise submitted by the Sub-Committee and thought the whole question could be considered as one of procedure under Article 97, paragraph 2, of the Charter. He also supported Mr. Shackle's amendment and moved the adoption of the report as amended.

Mr. LA ROSA (Italy) did not think the amendment proposed by Mr. Shackle would serve a useful purpose.

Mr. HEWITT said that the only analytical criticism of his views on the suggested interpretation of Article 96 was made by the Delegate of France. He wanted to point out, however, that when the Chairman of the Sub-Committee was asked whether paragraph 2 of Article 96 gave a member, who felt his interests prejudiced by a decision of the Conference, the right to compel the Organization to request an advisory opinion, he had replied in the negative because the Conference would always determine that the Member's interests had not been prejudiced, and that the Delegate of France had replied that if such an interpretation were accepted, his delegation would present an amendment. The Registrar was in agreement with the Chairman's interpretation. This proved his case by showing that the interpretation now under consideration was diametrically opposed to the one given by the Chairman.

On the question of the amendment suggested by Mr. Shackle he would ask what in addition to "the legal aspects" was intended by the words: "any aspects".

Mr. SHACKLE replied that no other aspect was intended. The purpose of the amendment was to bring in the question of redress besides the other legal points involved.

Mr. COUILLARD, commenting on the statements made by Mr. Hewitt, said paragraph 2 of Article 96 was the crux of the matter. The Registrar was quick to see the importance of this paragraph and to ask whether the Organization would be obliged to request an advisory opinion at the request of any member. He had been asked to give his interpretation of paragraph 2 of Article 96 and had done so in order to channelize the discussion. No agreement had been reached and he felt that the wording was vague enough to permit conflicting interpretations.

Mr. PHILIP (France) said that not only the French Delegation but others as well had not agreed with the Chairman's interpretation. What he had said was that if such an interpretation were accepted by the Sub-Committee, he would present an amendment because the Conference, having taken a decision which it felt, of necessity, to be the just one, would not consent to declaring that by its decision it had prejudiced the interests of Members against whom it had decided. The compromise solution, on the other hand, did not give an unrestricted right to all Members to appeal to the Court. In fact, a Member who was not a party to a dispute would not be considered to have been "ipso facto" prejudiced by a decision of the Conference which was contrary to his position.

The amendment proposed by Mr. Shackle was adopted by 13 votes in favour and two votes against.

Mr. HEWITT (Australia) expressed his regret that the question should now be put to the vote. The question had been the subject of discussion and dissension for two years and the Executive Committee now intended to find a solution in ten days, and this after a short discussion in which he had not yet been able to complete his statement in accordance with his instructions. He pointed out that he had barely had time to receive instructions from his Government and had not been permitted to make a statement at length on these in the Sub-Committee which had stated that the matter should be pursued in the discussion on the Report which would take place in the Executive Committee.

The CHAIRMAN wished to assure Mr. Hewitt that there had been no desire to deprive him of his right to put forward his case. He had thought that the discussion was exhausted but he would adjourn the discussion to the afternoon in order that Mr. Hewitt might be enabled to make his remarks.

Mr. RUBIN (United States) regretted he could not attend the meeting in the afternoon and reaffirmed his support of the Report, which he considered had been more than amply discussed by the Executive Committee.

The meeting rose at 1 p.m.