

EXECUTIVE COMMITTEE

Second session

SUB-COMMITTEE I ON THE INTERNATIONAL COURT OF JUSTICE

COMMENTS BY THE FRENCH DELEGATION ON THE RELATION OF THE INTERNATIONAL TRADE ORGANIZATION AND THE INTERNATIONAL COURT OF JUSTICE

Under its terms of reference, the Interim Commission for the ITO is required to consult with the Court and report on the following questions:

- a) Is any change required in the procedure for review by the International Court as provided for in Chapter VIII of the Charter to ensure that decisions of the Court should have the force of a judgment?
- b) Should the Charter be amended in accordance with the provisions of the annex to Article 100?

Without entering into details, the French delegation would like to draw the attention of the members of the Executive Committee to some general considerations concerning the relation to be established between the ITO and the Court.

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Chapter VIII in its present form contains not only incoherencies but also legal inconsistencies, and as the French delegation repeatedly emphasised at Havana, it is essential to establish the procedure for reference to the Court on a different basis.

Among the provisions open to criticism we would mention:

- 1) The incompatibility of Article 92, paragraph 1, with the obligations undertaken by various Members towards the Court (acceptance of the compulsory jurisdiction of the Court under Article 36 paragraph 2 of the Statute).
- 2) The binding nature of an advisory opinion requested from the International Court of Justice.
- 3) Refusal to introduce a simple and speedy procedure of review by the Court of decisions adopted by ITO organs in cases where such decisions are in conflict with the Charter.

The above points are not the only ones against which criticism could be levelled, and the French delegation reserves the right to raise additional ones during the prospective consultations with the Court's representative. Even at this stage, however, it is anxious to recall the arguments advanced at Havana in relation to the problem as a whole.

If Chapter VIII claims to have any meaning and provide for the settlement of differences, as its title indicates, it would have been simpler had it stated:

"Any disputes concerning the interpretation or application of the present Charter shall be referred to the Executive Board, which shall endeavour to achieve a settlement thereof. Should the Board fail to achieve such settlement, the matter shall be referred to the Conference with the same end in view. Should attempts to reach a friendly settlement by those means prove unsuccessful, the dispute may be referred to the International Court of Justice by any Member of the Organization. The Court's decision shall be binding on all parties to the action and on any other Member of the Organization to whom notice of the institution of such proceedings shall have been communicated at least 30 days before the expiry of the stipulated time-limit within which written statements must be received by the court."

Formulation in those terms would have left all parties undisturbed in their natural parts, by reproducing, with respect to the new International Trade Organization, a rule already adopted in other international agreements.

The French delegation is ready to submit and explain draft texts to the Sub-Committee with particulars as to the manner in which reference might be made to the Court in such circumstances.

The above comments show clearly that there is no question of asking the Court to become an adjudicator on economic or financial facts as established by or through the agency of the Organization. On a those facts have been deemed to be established, however, it is vital that Member States should be able to challenge, before the highest international judicial authority, the validity of decisions which ITO organs may have taken on the basis of such facts. The problem is thus simply one of applying and interpreting the Charter; the Court is not expected to examine economic facts.

This is general framework in which, according to the opinion of the French delegation, the problem referred to the Executive Committee should be dealt with.