

INTERIM COMMISSION FOR THE INTERNATIONAL TRADE ORGANIZATION COMMISSION INTERIMAIRE DE L'ORGANISATION INTERNATIONALE DU COMMERCE LIMITED C
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ORIGINAL : ENGLISH

Executive Committee

Second Session

NOTES UPON THE FOURTH MEETING OF SUB-COMMITTEE I ON CONSULTATIONS WITH THE INTERNATIONAL COURT OF JUSTICE.

Held at the Palais des Nations, Geneva,
on Friday 3 September 1948 at 10.00 a.m.

Acting Chairman: Mr. L. COUILLARD (Canada)

The representative of the United States said that he wished to withdraw the reference he had made to paragraph 2(d) of Article 94 at the Third Meeting regarding the possibility of the Executive Board making a recommendation regarding pecuniary compensation. What he wished to say was that under paragraph 2 (c) of Article 94 one of the terms upon which a matter might be referred to arbitration was that the question of monetary compensation should be explored.

The representative of the United States also said that the first question he had asked the Registrar at the Third Meeting did not appear on the record of that meeting. He had asked the Registrar whether he considered the procedure of Chapter VIII needed to be changed to ensure that decisions of the Court on matters referred to it by the Organization would, with respect to the Organization, have the nature of a judgment. The Registrar had replied there was nothing in the Statute of the Court which would prevent the Organization or its Members agreeing that an advisory opinion should have binding force.

The Sub-Committee discussed the question of whether the amendment to Chapter VIII suggested by the representative of Columbia (document ICITO/EC.2/SC.1/5) fell within the terms of reference of the Interim Commission on this particular question. The representatives of Egypt, France, Italy and Mexico considered that the amendment did fall within the terms of reference while the representatives of Australia, Benelux, the United Kingdom and the United States considered that it did not do so.

The Chairman suggested that the Sub-Committee might make better progress if it turned immediately to a consideration of the substance of the amendment proposed by the representative of France (document ICITO/EC.2/SC.1/4), leaving aside the question of the admissibility of that amendment. This having been agreed, the representative of Columbia withdrew the amendment he had proposed.

The representative of the United States thought that the substance of the amendment proposed by the representative of France might have been met by introducing a new paragraph 3 in Article 96 which would read somewhat upon the following lines:-

"The request for an advisory opinion shall, at the instance of any Member whose interests are prejudiced by the decision, submit for the advice of the Court the question whether financial compensation would, in the particular circumstances, be an appropriate form of reparation in cases arising under paragraph 1(a) of Article 93."

The representative of Australia said that he thought the amendment proposed by the representative of France did not fall within the terms of reference of the Interim Commission as the Registrar had made it clear at the Third Meeting that the question of financial compensation could be considered by the Court when an advisory opinion had been requested. He did not favour direct access to the Court by a Member as was proposed by the representative of France. He therefore preferred the wording suggested by the representative of the United States, but considered that the reference in that wording to paragraph 1(a) of Article 93 should be extended to cover also paragraph 1(c) of that Article.

The Chairman said that he had suggested the sub-committee leave aside the question of admissibility of the amendment proposed by the representative of France as he thought that such a procedure would enable the Sub-Committee to make better progress.

The representative of France, after confirming that the phrase "in implementation of the provisions of the present Charter" at the conclusion of the English text of his amendment was a bad translation, said that he was opposed to the wording suggested by the representative of the United States as it would mean reverting to the advisory opinion procedure which the Organization in any particular case was not obliged to follow if the interpretation of paragraph 2 of Article 96 by the Chairman were accepted. He wished to clarify that under his amendment a Member would only be able to resort to the Court for financial compensation after the procedures of Chapter VIII had been exhausted.

The representative of Columbia agreed with the last remark of the representative of France.

The representative of the United Kingdom said that in view of the last remark of the representative of France he thought that the substance of the amendment of that representative might be met by amending the text of Article 96 to give any Member the right to have included in a request for an advisory opinion the question of financial compensation.

The representative of France replied that he would agree to the suggestion of the representative of the United Kingdom if provision was also added to Article 96 to the effect that if the Organization refused to request an advisory opinion a Member whose interests were prejudiced might lodge a claim for financial compensation with the Court.

The representative of the United Kingdom said that he could not agree to the additional provision suggested by the representative of France.

The representative of the United States, replying to the representative of Australia, said that he did not see how financial compensation could be granted in the case of a matter arising under paragraph 1(c) of Article 93. He wished to stress again that he considered it very unlikely that the Organization would deny any Member whose interests were really prejudiced the right to have a decision reviewed by the Court pursuant to an advisory opinion. He would be prepared to agree to having a statement along these lines recorded by the Interim Commission.

It was agreed that if at the next meeting there appeared to be no hope of reaching a compromise solution a report would be presented to the Executive Committee recording the different points of view expressed in the Sub-Committee. In the event of there being any hope of reaching such a solution, a small working party would be appointed.