

Executive Committee

Second Session

DRAFT REPORT OF SUB-COMMITTEE I ON CONSULTATIONS  
WITH THE INTERNATIONAL COURT OF JUSTICE.

1. The Sub-Committee on Consultations with the International Court of Justice which was composed of representatives of Australia, Benelux, Columbia, Egypt, France, Italy, Mexico, United Kingdom and United States and which was presided over by Mr. L. Couillard (Canada) had as its terms of reference the resolution concerning the relation of the International Trade Organization to the International Court of Justice adopted by the United Nations Conference on Trade and Employment.
2. Pursuant to the Resolution the Sub-Committee consulted with the International Court of Justice through the Registrar of the Court, Mr. E. Hambro, who attended the session of the Executive Committee expressly for this purpose. The Sub-Committee wishes to record its appreciation for the valuable assistance which the Registrar was able to give. The consultations took the form of the representatives addressing to the Registrar a series of questions arising out of Chapter VIII of the Charter in so far as that Chapter referred to recourse to the International Court of Justice. The Registrar recorded these questions and the answers he gave to them in two aide-memoires which are attached to the Notes of the First, Second and Third Meetings of the Sub-Committee (documents ICITO/EC.2/SC.1/3 and ICITO/EC.2/SC.1/6). The Sub-Committee recommends that these aide-memoires should eventually be incorporated in the report which the Interim

Commission will make to the First Session of the Conference of the Organization.

3. In the course of the consultations with the Registrar of the Court, the Registrar was asked his opinion upon the first question mentioned in the terms of reference of the Sub-Committee, that is, 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. The Registrar replied that there was nothing in the Statute of the International Court which would prevent the Organization or its Members agreeing that an advisory opinion should have binding force. After this opinion had been given, the Sub-Committee turned its attention particularly to answering the second question stated in its terms of reference.

4. The Sub-Committee recommends that the Interim Commission should make the following report upon this matter to the First Session of the Conference of the Organization:-

"The Interim Commission considered the problem arising out of the resolution relating to the review of decisions of the Organization by the International Court of Justice and out of Annex N of the Havana Charter. It was the conclusion of the Interim Commission, after consultation with the Registrar of the International Court of Justice, that no amendment to the Charter was necessary, on the understanding that the following is the interpretation of the relevant provisions of the Charter:-

1. For the purposes of paragraph 2 of Article 96
  - (a) any Member, party to a dispute between two or more Members which dispute has been the subject of

a decision of the Conference, will  
application for an advisory opinion  
interest which has been prejudiced

(b) any Member not a party to such  
be deemed, on application for an  
to have no interest that is prejudiced  
decision of the Conference by reason  
fact that the decision is contrary  
of the Member on the merits of the

2. Although not expressly so stated,  
of Article 94 does permit the question  
compensation to be one of the terms of  
arbitration.

3. Article 96 permits the Organization  
for an advisory opinion, to include the  
monetary compensation for a Member who  
been prejudiced in a case arising out of  
obligation under the Charter. The requi  
case, will, at the instance of a Member  
dispute, include the question of moneta

"The Sub-Committee recommends that the Interim Commission should make the following report upon this matter to the First Session of the Conference of the Organization:-

"The Interim Commission considered the resolution relating to the review of decisions of the Organization by the International Court of Justice and Annex N of the Havana Charter. It was the conclusion of the Interim Commission, after consultation with the Registrar of the International Court of Justice, that no amendment to the Charter was necessary, on the understanding that the following is the interpretation of the relevant provisions of the Charter:-

1. In connection with the procedure for obtaining an advisory opinion under paragraph 2 of Article 96

(a) Any Member, party to a dispute between two or more Members which has been the subject of a decision of the Conference, will be deemed to have an interest prejudiced by the said decision.

(b) The fact that a decision of the Conference is contrary to the position of a Member, not a party to such dispute, on the merits of the dispute shall not in itself determine the question whether the interest of such Member has or has not been prejudiced by the decision."

The following numbered paragraph 2 which it was proposed should form part of paragraph 4 of the Draft Report to replace the text which appears in the Draft Report shall be discussed at the next meeting:-

"Article 96 permits the Organization, in its request to the Court for an advisory opinion, to include the question of monetary compensation for a Member whose interests have been prejudiced in a case arising out of a breach by one or more Members, of certain obligations under the Charter. In such a case, and at the instance of a Member party to the dispute, the request for an advisory opinion shall include the question of monetary compensation."

The representative of the United Kingdom announced that he had received instructions from his Government that he could accept the solution which had been reached in the Sub-Committee provided that a second unnumbered paragraph were added to the part of paragraph 4 of the Draft Report in quotations reading somewhat as follows:-

"The Interim Commission also considered that as a general rule the request should not include a question as to monetary compensation for anything done or omitted before the dispute is submitted to the Executive Board."

Certain discussion took place upon this proposal and it was agreed that it would be further discussed at the next meeting when representatives had had an opportunity to give it full consideration.

The representative of France doubted whether he could accept the proposal of the representative of the United Kingdom as he considered that a Member, against whom a claim for monetary compensation might be made would be able to unduly prolong the period before which a dispute would be submitted to the Executive Board. However, the Sub-Committee agreed that under paragraph 1 of Article 9<sup>b</sup> consultations could only be interpreted as still in process of settlement while there was a hope of settlement. Failure of a member to whose request for consultation another member had failed to respond would be entitled, at the expiration of a reasonable period, to regard consultations as not having led to a satisfactory settlement for the purposes of that paragraph.