

SIXTH COMMITTEE: ORGANIZATION  
SUB-COMMITTEE ON CHAPTER VIII  
(SETTLEMENT OF DIFFERENCES - INTERPRETATION)

NOTES ON SIXTH MEETING

Held 16 January 1948 at 5.30 p.m.

Chairman: Mr. COUILLARD (Canada)

The Sub-Committee resumed its consideration of the phrase "give a ruling" in paragraph 1 of Article 90 insofar as the powers of the Executive Board under this Article were concerned.

Mr. HEBERT (Canada) said that he thought the Executive Board had the following powers under Article 90 when a dispute had been brought to its attention:

- (a) to decide whether or not nullification or impairment under Article 89 existed;
- (b) to make recommendations to the Members;
- (c) to issue a cease or desist order;
- (d) to refer the dispute to arbitration under paragraph 2 of Article 90; and
- (e) to refer the matter to the Conference under paragraph 3 of Article 90.

Mr. KARMARKAR (India) asked whether a Member complying with the provisions of the Charter yet causing the nullification or impairment of the benefits of the Charter as regards another Member might be asked to desist. This question led him to the conclusion that as regards the powers set out in Article 90 it was necessary to distinguish between nullification or impairment of benefits arising out of action taken or omission by a Member which was in conformity with the Charter and action or omission which contravened the provisions of the Charter. The powers under paragraph 1 also depended upon whether the measures mentioned in paragraph 4 were compensatory or punitive in character. He thought that to give the Executive Board power to issue a cease or desist order under Article 90 would go beyond its jurisdiction as specified in Article 78.

/The CHAIRMAN

The CHAIRMAN remarked in reply to the representative of India that the Sub-Committee agreed that if a Member was acting within the provisions of the Charter the Executive Board would not be able to issue a cease or desist order.

Mr. AMADOR (Mexico) said that he interpreted "give a ruling" as issue a declaration that a situation existed or did not exist.

Mr. HOLLOWAY (South Africa) agreed with the representative of India that it would be necessary to distinguish a dispute arising from action taken or omission by a Member conforming to the provisions of the Charter and action taken or omission not conforming to the provisions of the Charter. In the former case the Executive Board would not be able to make any effective action short of referring the matter directly to the Conference for the awarding of compensation.

The CHAIRMAN said that the general question of the powers of the Executive Board under Article 90 still remained open. However, he wished the Sub-Committee to consider firstly the powers of the Board under sub-paragraphs (a) and (b) of Article 89 excluding the case where the application by another Member of any measure did not conflict with the provisions of the Charter, and secondly, the powers of the Board where the application by another Member of any measure did not conflict with the provisions of the Charter, and in the case of situations arising under sub-paragraph (c) of Article 89, particularly, as regards both cases, the power to issue a cease or desist order.

Mr. HAIDER (Iraq) said that in his opinion the Executive Board could not issue a cease or desist order in either case.

Mr. RUBIN (United States) said that he thought the powers of the Executive Board under Article 90 should be identical with those of the Conference except that the Board should not possess the power of enforcing its rulings, which power should rest with the Conference alone.

Mr. FAWCETT (United Kingdom) said that the powers of the Board under Chapter VIII must not exceed those of the Conference. Also these powers must not be exercised in such a way that their results would not be acceptable to the Members. If any power to issue a cease or desist order were to exist under Chapter VIII (and he was uncertain that his delegation would agree that this should be the case) that power must reside in the Conference alone. Similarly the power to give release from obligations as a result of the application of the procedures of Chapter VIII must reside wholly in the Conference. It followed, therefore, that the United Kingdom delegation wished to limit any power the Board might have to submit disputes to arbitration. He considered that under Article 90 the Board might make  
/investigations,

investigations, findings and recommendations, as well as interpret the Charter, in cases where there had been a breach of an obligation by a Member or the application of a measure conflicting with the provisions of the Charter or in any other situation.

Mr. FACK (Netherlands), referring only to cases arising under sub-paragraph (a) of Article 89, said that a Member might either admit that it had failed to carry out its obligations under the Charter or it might refuse to make such an admission. In the former case, all that the Board would need to do would be to make a finding as to whether there had been a nullification or impairment of benefits. In the latter case the Board would have to issue a ruling.

Mr. AMADOR (Mexico) said that both in cases arising under sub-paragraph (a) of Article 89 and under sub-paragraph (b) of that article where a Member had taken a measure conflicting with the provisions of the Charter the Executive Board would make an investigation and issue a ruling determining whether or not there had been a violation of the provisions of the Charter. On the basis of that ruling the Board would make a recommendation aimed at conciliation. In the event of failure of conciliation, the Board would give a ruling in the sense of a decision. If this ruling were accepted the case would be closed; if not, it would go to the Conference. In the case of matters brought before the Executive Board under sub-paragraph (c) of Article 89, the Board would make recommendations only to the Conference.

Mr. TANGE (Australia) said that in his opinion the first step taken by the Board in the case of matters brought to its attention under Chapter VIII would be to decide whether a reasonable attempt had been made to reach an agreement through consultation. The Board should use its good offices to this end. If this process of consultation failed, the Board would then consider whether or not there had been a nullification or impairment of benefits. If the Board decided there had been a nullification or impairment of benefits, it must refer the question to the Conference. If it decided otherwise, the case would lapse, unless it was brought before the Conference under paragraph 3 of Article 90. To this procedure he would add the general power of the Executive Board to make recommendations to the Members.

The CHAIRMAN summed up the discussion by saying that it seemed the sub-committee was in agreement upon the following functions of the Executive Board under Article 90:

/1. The Board

1. The Board could investigate a case to decide whether or not there had been a nullification or impairment of benefits under the Charter. In the course of such investigation it might, if necessary, interpret the Charter.
2. The Board could make recommendations not of a binding character to the Conference and to the Members.
3. The Board might decide whether the case should be dealt with by itself or referred directly to the Conference or to arbitration (paragraph 2 of Article 90).

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