

SIXTH COMMITTEE: ORGANIZATION

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

NOTES ON THE SIXTH MEETING

Held 20 January 1948 at 10.30 a.m.

Chairman: Mr. COUILLARD (Canada)

The Sub-Committee commenced consideration of paragraph 2 of Article 90. After a general discussion of the amendments presented by the delegations of Italy and the United Kingdom (see document E/CONF.2/C.6/W.15) the CHAIRMAN asked the members of the Sub-Committee to concentrate their remarks upon answering the following questions:

1. the manner in which resort to arbitration might be initiated.
2. the degree of control to be exercised by the Organization over resort to arbitration.
3. the types of cases which might be referred to arbitration.
4. whether or not terms upon which resort to arbitration might be permitted should be specified.
5. the effect of an arbitrator's decision - whether it would be binding upon the parties and the Organization, whether there should be allowed an appeal from the decision to the Organization, whether or not it would be regarded as a precedent of a binding nature or otherwise in the case law of the Organization and whether or not the decision of an arbitrator might contravene the provisions of the Charter.
6. what the powers of an arbitrator should be; for example, should an arbitrator be able to interpret the Charter.

Mr. FAWCETT (United Kingdom) said that as the Sub-Committee was now going to define the place of arbitration in relation to the whole of the Charter, the United Kingdom delegation would withdraw its amendment.

Discussion of Point 1

Mr. RUBEN (United States) said that in the opinion of his delegation consultation wherever mentioned in the Charter included the possibility of
/arbitration.

arbitration should the parties concerned desire to resort to arbitration. However, when any case had been referred to the Organization, the Executive Board or the Conference, resort could only be made to arbitration with the consent of the Executive Board or the Conference and upon the terms of reference to be laid down by the Board or the Conference.

The representatives of Mexico, Poland, the Netherlands and Australia agreed with the remarks of the representative of the United States.

Mr. MONDELLO (Italy) said that if the interpretation given to the word "consultation" by the representative of the United States was accepted the delegation of Italy would withdraw its amendment. However, the texts of Articles 88, 89 and 90 as they now stood did not clearly show that this interpretation was correct. To make the matter perfectly clear it would be advisable to redraft the commencement of paragraph 1 of Article 90 in the following fashion: "If the matter is not satisfactorily adjusted within a reasonable time by having recourse to consultation, conciliation, arbitration or otherwise, or if it falls within Article 89 (c)"

In reply to a statement by the representative of France it was agreed that the sense of the word "arbitration" where used in Chapter VIII was that of the making of a decision in a dispute by a disinterested party or parties which would take account of not only matters of law but also matters of fact. The decision to be made by an arbitrator under Article 90 would not be based solely on legal grounds. It was suggested that this interpretation of the word "arbitration" might be embodied in an interpretative note.
