Extract from Note by the Executive Secretary on Intersessional Procedures

The procedures proposed for the application of the Waiver sought by the United Kingdom from the application of Article I presupposes the existence of machinery for speedy arbitration of differences arising when the CONTRACTING PARTIES are not in session. The CONTRACTING PARTIES will therefore wish to consider what modifications in the existing intersessional procedures would be necessary for this purpose. It would seem that the best machinery for this purpose would be to arrange for the setting up of a body, similar to the Panel on Complaints which operated successfully during the Seventh Session. In other words there should be a Panel of Arbitration consisting of a limited number of individuals drawn from countries not involved in the difference, and chosen for their competence in the matters in question. Accordingly, it would not be possible to fix the composition of the Panel in advance, since it might vary with each case arising. It is suggested, therefore, that the CONTRACTING PARTIES agree to the convening, in any case requiring prompt decision under these procedures, at a time when the CONTRACTING PARTIES are not in session, of a Panel of Arbitration to consist of the Chairman of the CONTRACTING PARTIES and six experts to be designated by him. For this purpose it is of course essential that contracting parties co-operate by making available promptly experts to serve on the Panel, and if these proposals are adopted, it should be made clear that they imply a commitment on this point by individual contracting parties.

A difficult question arises as to the binding character of the findings of the Panel of Arbitration. In paragraph 6 of the Intersessional Procedures adopted at the Seventh Session, it was suggested that the decision of the Ad Hoc Committee in a dispute or difference referred to it, might be submitted to the parties concerned without prior reference to the CONTRACTING PARTIES if the parties to the dispute so agreed. A similar solution might be adopted in the present case, and the decisions would be final if so agreed by the parties to any particular case, either prior to arbitration or subsequently. Failing such agreement, a party would presumably have a right of appeal to the CONTRACTING PARTIES. It would be expected, however, that a contracting party would not normally exercise this right of appeal when the decision of the Panel was unanimous. If such an appeal were made at a time when the CONTRACTING PARTIES were not due to meet in regular session at an early date, it should be dealt with at a special session to be convened by the Chairman in accordance with rule 1 of the rules of procedure.

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