REPORT OF THE LEGAL AND DRAFTING COMMITTEE TO REVIEW WORKING PARTY IV ON THE POSSIBILITY OF CONFLICT BETWEEN DECISIONS TAKEN BY THE ORGANIZATION FOR TRADE CO-OPERATION AND OTHER INTERNATIONAL INSTITUTIONS

1. When the articles relating to decisions and recommendations included in the draft organizational agreement were being considered by the Legal and Drafting Committee, it became apparent that there was nothing in that agreement or in the General Agreement to prevent a member State from submitting a question concerning the implementation of those agreements to procedures other than those laid down for such purposes by the two agreements. The attention of the Committee was drawn, for example, to the inconvenience which might arise following contradictory decisions adopted by the Organization and other international institutions or authorities, in particular the International Court of Justice. Article 92 of the Havana Charter would provide an answer to such difficulties.

2. If one considers, for example, the Statute of the International Court of Justice, it appears that under Article 36 the Court is competent to adjudicate, in respect of any State which has recognized its jurisdiction as compulsory, all disputes concerning:

   (a) the interpretation of a treaty;
   
   (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
   
   (d) the nature or extent of the reparation to be made for a breach of an international obligation.

3. The decisions or recommendations adopted by the CONTRACTING PARTIES are of a special nature and bear no comparison with findings which an international tribunal would be called upon to issue on purely legal grounds. These decisions and recommendations, while based on provisions of the General Agreement, involve in practice a qualified appreciation of the factual circumstances in which the contracting parties concerned find themselves and which is based in most cases on reasons of expediency. Moreover, in most cases collective action by the contracting parties, as envisaged for example in Articles XXIII and XXV is of an optional nature.

4. Furthermore, the powers vested in the Court do not confer on that institution the competence necessary to take account in its findings of considerations of expediency resulting from a qualified appreciation of factual situations to anything like the extent permitted by the General Agreement.

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5. The question therefore arises whether it would be useful to include, if possible, in the text of the organizational agreement, a provision excluding in some measure recourse to procedures other than those provided in the organizational agreement or in the General Agreement.

From a legal standpoint, it does not seem possible to prohibit a country which has accepted the compulsory jurisdiction of the Court, to bring before the latter a dispute relating to the interpretation of the General Agreement. Furthermore, by virtue of Article 96 of the United Nations Charter, the Organization, as a specialized agency, would be entitled to request the Court to give an advisory opinion on any legal questions relating to the implementation of the Agreement. On the other hand, however, it would be desirable to include in the organizational agreement a provision excluding recourse to machinery other than the procedures envisaged by the General Agreement for the settlement of a dispute between two or more members concerning factual situations connected with the implementation of the General Agreement or of the organizational agreement.

6. In view of the implications of the abovementioned problem, the Legal and Drafting Committee has felt it advisable to draw the attention of Review Working Party IV to the importance of this question. If the Working Party deems it appropriate, the Legal and Drafting Committee could make a more thorough study of the whole matter and possibly provide it with definite proposals designed to remove to the fullest extent possible the difficulties inherent in the problem.