

Executive Committee

Second Session

REPORT OF THE INTERIM COMMISSION REGARDING
CHAPTER VIII OF THE HAVANA CHARTER

A.

The Interim Commission examined the problems arising out of the resolution adopted by the United Nations Conference on Trade and Employment 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. 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 contrary to the position of that Member on any aspect of the dispute, 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.

2. 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 a Member of an obligation under the Charter. In such a case, the request for an advisory opinion shall, at the instance of a Member party to the dispute, include the question of monetary compensation.

B.

The Interim Commission considered that, as a general rule, the request for an advisory opinion should not include a question as to monetary compensation:-

(a) for any period prior to the date of the decision of the Conference, in cases where the decision has been adverse to the complaint; or

(b) in other cases, for any period prior to thirty days before the time when written representations or proposals satisfying the requirements of Article 93 of the Charter were first made with respect to the dispute.

The Interim Commission calls to the attention of the First Session of the Conference of the Organization the fact that paragraph 4 of Article 95 of the Charter in its present form does not provide a right of withdrawal in a case where the International Court of Justice decides that monetary compensation is the appropriate remedy.

C.

Annexed to this Report are two aide-memoires prepared by the Registrar of the International Court containing a record of the questions put to the Registrar by members of the Interim Commission in the course of consultation and of the answers given thereto.