

Executive Committee
Second Session

NOTES UPON THE FIFTH MEETING OF SUB-COMMITTEE I
ON CONSULTATIONS WITH THE INTERNATIONAL COURT OF
JUSTICE

The Sub-Committee accepted the following working draft after the Chairman had explained that it had been prepared in consultation with the delegations which had played the most active part in the discussions of the Sub-Committee:-

"The Executive Committee considered the problem arising out of the Resolution relating to the review of ITO decisions by the International Court and out of Annex N. It was the conclusion of the Executive Committee, after consultation with the Registrar of the International Court, 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. A party to a dispute between two or more Members would in all cases, for the purposes of Art.96(2), have an interest which would be prejudiced by an adverse decision. Disagreement with the position on the merits of the dispute would not in itself imply that a Member which is not a party to the dispute did not have a sufficient interest to support a request for an advisory opinion.

2. Although not explicitly so stated, Article 94(2) (c) does permit the question of monetary compensation to be one of the terms of the arbitration.

3. Article 96 permits the ITO, in its request for an advisory opinion, to include query as to the suitability of monetary compensation for a Member which has been prejudiced in cases arising out of breach of Charter obligations. When an advisory opinion is being sought, the Organization shall, at the request of a Member which was a party to the dispute, include in its request the question of monetary compensation."

The Sub-Committee examined the draft paragraph by paragraph and agreed upon a number of drafting amendments.

The representative of Australia did not agree with the final phrase of the first sentence of paragraph 3 and maintained that that sentence should not be limited to cases arising out of breaches of obligation under the Charter. This objection was not supported by any other representative. The representative of Australia reserved his position upon this point.

The text of the draft as amended in the course of the meeting appears in the Draft Report of the Sub-Committee (document ICITO/EC.2/SC.1/9).