Executive Committee
Second Session

DRAFT REPORT OF SUB-COMMITTEE I ON CONSULTATIONS WITH THE INTERNATIONAL COURT OF JUSTICE.

1. The Sub-Committee on Consultations with the International Court of Justice which was composed of representatives of Australia, Benelux, Columbia, Egypt, France, Italy, Mexico, United Kingdom and United States and which was presided over by Mr. L. Couillard (Canada) had as its terms of reference the resolution concerning the relation of the International Trade Organization to the International Court of Justice adopted by the United Nations Conference on Trade and Employment.

2. Pursuant to the Resolution the Sub-Committee consulted with the International Court of Justice through the Registrar of the Court, Mr. E. Hambro, who attended the session of the Executive Committee expressly for this purpose. The Sub-Committee wishes to record its appreciation for the valuable assistance which the Registrar was able to give. The consultations took the form of the representatives addressing to the Registrar a series of questions arising out of Chapter VIII of the Charter in so far as that Chapter referred to recourse to the International Court of Justice. The Registrar recorded these questions and the answers he gave to them in two aide-memoires which are attached to the Notes of the First, Second and Third Meetings of the Sub-Committee (documents ICITO/EC.2/SC.1/3 and ICITO/EC.2/SC.1/6). The Sub-Committee recommends that these aide-memoires should eventually be incorporated in the report which the Interim
Commission will make to the First Session of the Conference of the Organization.

3. In the course of the consultations with the Registrar of the Court, the Registrar was asked his opinion upon the first question mentioned in the terms of reference of the Sub-Committee, that is, the question whether the procedures set out in Chapter VIII of the Charter needed to be changed to ensure that decisions of the International Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment. The Registrar replied that there was nothing in the Statute of the International Court which would prevent the Organization or its Members agreeing that an advisory opinion should have binding force. After this opinion had been given, the Sub-Committee turned its attention particularly to answering the second question stated in its terms of reference.

4. The Sub-Committee recommends that the Interim Commission should make the following report upon this matter to the First Session of the Conference of the Organization:

"The Interim Commission considered the problem arising out of the resolution 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. For the purposes of paragraph 2 of Article 96
   (a) any Member, party to a dispute between two or more Members which dispute has been the subject of
a decision of the Conference, will be deemed, on application for an advisory opinion, to have an interest which has been prejudiced by such decision;

(b) any Member not a party to such a dispute will not be deemed, on application for an advisory opinion, to have no interest that is prejudiced by the decision of the Conference by reason only of the fact that the decision is contrary to the position of the Member on the merits of the dispute.

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

3. Article 96 permits the Organization, in its request 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 of an obligation under the Charter. The request, in such a case, will, at the instance of a Member party to the dispute, include the question of monetary compensation."