

Session of Amsterdam – 1957

Judicial Redress Against the Decisions of International Organs

(Nineteenth Commission, Rapporteur : Mr Wilhelm Wengler)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering that every international organ and every international organization has the duty to respect the law and to ensure that the law be respected by its agents and officials ; that the same duty is incumbent on States as members of such organs or organizations.

I.

Is of the opinion that the opportunity and the possibilities of establishing judicial redress against the decisions of international organs depend essentially on the nature, structure and powers of the organs or organizations under consideration.

In consequence, the establishment of this control, the means of redress which it implies and the effects which would follow there from do not appear realizable in the present state of affairs, except through the conclusion of treaties or other instruments particularly suited to each organ or organization.

II.

Is of the opinion that judicial control of the decisions of international organs must have as its object the assurance of respect for rules of law which are binding on the organ or organization under consideration, notably :

- a) general international law,
- b) the constitutional provisions applicable to that organ or organization and those which regulate the functioning of the international organ,

- c) the rules established by that organ or organization whether they concern the States members, the agents and officials of the organ or organization, or private persons to the extent that their rights and interests are involved,
- d) the provisions of applicable treaties,
- e) any provision of internal law applicable to the juridical relations of that organ or organization.

III.

1. As a minimum, expresses the wish that, for every particular decision of an international organ or organization which involves private rights or interests, there be provided appropriate procedures for settling by judicial or arbitral methods juridical differences which might arise from such a decision.
2. Except for cases in which a special jurisdictional regime is provided, (the Institute) is of the opinion that it is desirable that the International Court of Justice be called upon to decide as to grievances based upon the lack of competence or grave irregularities of procedure of judicial or arbitral organs charged with deciding the differences envisaged in the preceding paragraph.

IV.

Draws the attention of draftsmen of treaty provisions or other instruments relative to the establishment of judicial control of the decisions of international organs particularly to the following points which they should bear in mind :

- a) the indication of States, international organs or organizations, collectivities or private persons to which means of redress would be available,
- b) the question who is to defend the validity of the decision attacked,
- c) the need to establish methods for notifying member States, and other interested parties, of a pending action and for determining their right to intervene, as well as the effects of a decision for those who have not been party to the proceedings,
- d) the choice between a general clause and a clause limiting the cases in which redress should be available,
- e) the question whether and to what extent decisions involving the application of technical knowledge should be submitted to jurisdictional review and the nature of the assistance which experts might be called upon to give in such cases,
- f) the question of the time limits for invoking measures of redress and the effect of such an invocation on the execution of the decision appealed from (whether or not it should be suspended),

g) the determination of the juridical significance of the decision of the tribunal seized of the dispute (declaration of illegality, annulment, award of damages and interests, etc.),

h) the degree to which the invocation of proceedings of redress should exclude any other jurisdictional review.

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(24 September 1957)