Executive Committee
Second Session

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

The Sub-Committee continued its discussion of its Draft Report upon the basis of document ICIT0/EC.2/SC.1/10 and a new draft of the paragraph appearing on the top of page 3 of the English text of that document. That draft read as follows:

"The Interim Commission also 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 one month before the time when written representations or proposals with respect to the dispute were first made under Article 93 of the Charter."

Subject to drafting modifications the new text of numbered paragraph 2 which it was proposed should form part of paragraph 4 of the Draft Report (page 2 of document ICIT0/EC.2/SC.1/10) was accepted.

The new draft set out above was also accepted after sub-paragraph (b) had been amended to read as follows:

"(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 were first made with respect to the dispute."

The Sub-Committee indicated that it attached importance to the words "as a general rule" appearing at the commencement of the new draft, as ensuring that the formula stated had the necessary degree of flexibility. As an example of a case in which such flexibility might be necessary, the instance of the suspension of a decision of the Conference in the case of a matter arising under sub-paragraph (a) of the draft was cited.

The representative of Australia stated that he had just received instructions from his government upon the compromise solution which the Sub-Committee was about to propose to the Executive Committee. He had to record the strong dissent of the Australian Government to that compromise on the following grounds:

1. It was improper to give a right to any state to approach the International Court for an advisory opinion,
this procedure being expressly reserved to intergovernmental organizations. This would be the effect of the interpretation proposed by the Sub-Committee. The decision as to whether an advisory opinion should be requested in any case should be left to the Conference.

2. The interpretation proposed by the Sub-Committee amounted to an attempt to introduce by interpretation substance not covered by the present text of Article 96. As there was no provision in the Charter for monetary compensation, a request for an advisory opinion from the International Court could not include such a question. If this interpretation were adopted, the rôle of the Organization under Chapter VIII of the Charter as agreed at Havana would be changed.

It was agreed that a note of the reservation by the representative of Australia would be recorded in the Report of the Sub-Committee. The text of this reservation appears in the report (document ICITO/EC.2/15).

The Chairman pointed out that paragraph 4 of Article 95 of the Charter in its present form did not provide a right of withdrawal in a case where the International Court had decided that monetary compensation was the appropriate remedy. After some discussion it was agreed that a note of this fact should be made in the Report.