Note by the Secretariat

1. Paragraphs 1 and 2 of Article 36 of the Statute of the International Court of Justice read as follows:

"1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

"2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation."

2. Paragraph 3 of Article 92 of the draft Charter reads as follows:

"3. The Members undertake that they will not have recourse to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of difficulties arising out of its operation ............. etc."

3. In the sub-committee set up to consider Chapter VIII of the Charter, the delegation of Mexico queried whether paragraph 3 of Article 92 did not conflict with the obligations of states which had deposited the declarations referred to in paragraph 2 of Article 36 of the Statute of the International Court. Opinions in the sub-committee on this question were seen, after a brief discussion, to be divided and the matter was referred, with other questions, to a working party of six delegations. When the matter came up for discussion in the working party, the working party had before it the following opinion cabled by the Legal Department of the United Nations:
"In our opinion serious doubt whether paragraph three article ninetytwo is consistent with obligations of states which have accepted compulsory jurisdiction International Court as regards legal questions provided article thirtysix Court Statute. Some declarations contain exception for disputes in which parties agree to have recourse other modes of settlement. Such reservations made Australia Canada France India Iran Luxembourg New Zealand Netherlands South Africa Turkey United Kingdom United States. Specific inclusion this reservation would seem indicate some states consider unconditional acceptance compulsory jurisdiction prevents agreement for recourse to other modes of settlement. Suggest inclusion following article ninetytwo "Subject obligations assumed under Statute International Court."

4. The working party, after a brief exchange of views, did not feel that it could take any decision on this matter until delegations had had a further opportunity of consulting their governments. In addition to the wording suggested by the Legal Department of the United Nations, the two following suggestions were made informally in the course of discussion in an endeavour to overcome the difficulty:

(a) to add the following words at the commencement of paragraph 3 of Article 92: "Provided that Members bound otherwise by obligations assumed under the Statute of the International Court of Justice will abide by such obligations, ..........."; and

(b) to add a paragraph at the end of Article 92 reading as follows:

"5. Obligations assumed by Members under this Chapter are subject to obligations assumed by them under the Statute of the International Court of Justice."

5. As this question is one of legal complexity the working party considered that delegations other than those represented upon it would wish to have early notice of the problem so that they might refer it to their governments if they thought necessary and obtain instructions upon it in good time. The Secretariat has therefore prepared and circulated this note.