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

Held at the Palais des Nations, Geneva,
on Wednesday, 1 September 1948 at 3 p.m.
and Thursday, 2 September 1948 at 10 a.m.

Acting Chairman: Mr. L. COUILLARD (Canada)

(A note upon the questions to the Registrar of the
Court and his answers thereto will be found in the
aide-memoire attached to this document)

The Sub-Committee first discussed the question whether
paragraph 1 of Article 92 of the Charter conflicted with the
obligations of Members which had accepted the compulsory
jurisdiction of the International Court of Justice.

The Registrar gave his opinion upon this question.

The representative of the United States stated that
the issue was not whether there should be free access to the
International Court as the provisions of the Charter did
allow free access subject to certain necessary limitations
designed to protect the interests of the Organization and
of its Members generally.

He pointed out that the Havana Conference had formally
decided that no conflict existed between paragraph 1 of
Article 92 and the obligations of Members which had accepted
the compulsory jurisdiction of the International Court
(document E/CONF.2/C.6/81) Article 95 of the Charter of the
United Nations supported this decision. In addition the
constitutions of other specialized agencies, for example,
that of the International Monetary Fund, provided for the
solution of disputes arising out of their constitutions
solely by the procedures set out therein and no state had
yet contended that this procedure was not proper.

The representative of Benelux wished to clarify the
support he had expressed at the first meeting for the
position adopted by the representative of France. All he
had wished to indicate by such support was that he considered
the interpretation of paragraph 2 of Article 96 which the
Chairman had expressed could not be supported by any language
in the Charter.

The representative of France stated that despite the
remarks of the representative of the United States the only
two objective opinions which had been expressed regarding
paragraph 1 of Article 92, namely those of the Registrar and
the Legal Department of the United Nations (the latter of which appeared in document E/CONF.2/C.6/71) stated that at least there was serious doubt whether this paragraph did not conflict with the obligations of the Members which had accepted the compulsory jurisdiction of the International Court.

The Chairman asked the Registrar whether, under paragraph 2 of Article 96, a Member whose request for an advisory opinion had been rejected by the Conference on the ground that its interests were not prejudiced by a substantive decision, might request an advisory opinion upon the question whether its first request should have been rejected or not.

The representative of France then addressed further questions to the Registrar.

The representative of the United States addressed two questions to the Registrar.

The representative of France stated that a state raising a question before the International Court under Article 36 of the Statute could claim damages, whereas the Charter did not provide for monetary compensation in the event of the breach of an obligation. It was therefore improbable that if the Organization requested an advisory opinion under paragraph 2 of Article 96, it would so put the question to the Court that the Court might award monetary compensation.

The representative of the United States stated that under Article 94 of the Charter the Executive Board might recommend the payment of damages as the most satisfactory means of adjusting a dispute. He did not put forward this view as a definite opinion but merely as a basis for discussion.

The representative of Australia said that he assumed the representative of the United States was referring to paragraph 2 (e) of Article 94; however, that paragraph did not relate to the breach of an obligation.

The representative of the United States replied that while he recognized the force of the point made by the representative of Australia, the Executive Board might still possibly make a recommendation regarding damages under paragraphs 2 (c) and (d) of Article 94.

The representatives of Australia and Colombia address certain questions to the Registrar.

The representative of France asked the opinion of the Sub-Committee whether an advisory opinion in the following form might be requested by the Organization under paragraph 2 of Article 96:

1) Had a Member contravened its obligations under the Charter?

2) If so, were the remedies recommended by the Organization adequate?
3) Assuming that the answer to the first question was in the affirmative and the answer to the second question was in the negative, should monetary compensation be awarded, and if so, the amount of such compensation?

The representative of the United States replied that he thought the Organization might request an advisory opinion in that form.

The representatives of France and Australia addressed further questions to the Registrar.

The Sub-Committee agreed that the word "Organization" in paragraph 5 of Article 96 meant "Members".

No representative wishing to ask the Registrar further questions, the Chairman announced the consultations with the Registrar to be concluded. He thanked the Registrar for his co-operation with and his assistance to the Sub-Committee.

It was agreed that Sub-Committee should conduct the remainder of its work upon the basis of amendments to the provisions of the Charter to be submitted by representatives.

The representative of France gave notice that he would propose to add to Article 96 a new paragraph which would, without prejudice to the procedure set out in Chapter VIII, give to any Member whose interests were prejudiced by the decisions of the Conference the right to bring the matter before the International Court with a view to obtaining monetary compensation.

The representative of Colombia gave notice that he would propose to add at the commencement of paragraph 1 of Article 92 the words "without prejudice to their rights under the Statute of the International Court of Justice."

The first question to be discussed at the meeting of September 1 was whether there was any incompatibility between paragraph 1 of Article 92 of the Charter and the declarations by which certain States had accepted the obligatory jurisdiction of the International Court under Article 36 of the Statute.

The Registrar stated that according to his conception the question could be looked upon in two different ways.

It could either be said that such declarations constituted a series of bilateral agreements and that the parties were at any time free to change their relations by mutual agreement. Similarly Article 95 of the Charter of the United Nations expressly stated that the Members should always be free to use other means of peaceful settlement. According to this interpretation there was no incompatibility.

Or, on the other hand, it might be argued that the acceptance of the obligatory jurisdiction of the Court was a solemn international engagement under the Statute of the Court which forms an integral part of the Charter of the United Nations. These declarations might therefore be subject to the ruling laid down in Article 103 of the Charter of the United Nations. If this interpretation were adopted the declarations under Article 36 of the Statute would remain unchanged by Article 92 of the ITO Charter.

It might incidentally be mentioned that Article 95 of the United Nations Charter foresees other solutions of conflicts whereas Article 92 of the ITO Charter implies a renunciation of modes of settlement.

The Registrar also stated that irrespective of the interpretation adopted, the states were not bound in duty to bring any case before the Court even after having accepted the obligatory jurisdiction of the Court. The two parties to a dispute could always by mutual agreement settle it as they deemed fit. The problem would only arise if one of the states having accepted both the obligatory jurisdiction of the Court and Article 92 of the Charter should try to force another Member to come before the Court. The Registrar declined to prophesy which decision the Court would take in such a case.

The Registrar stated that the position of the Organization would be substantially the same whether the matter was brought before the Court as a contentious case or for an advisory opinion. In both cases the Court would be perfectly free to submit written and oral statements.
A lengthy discussion took place concerning the possibility of asking the Court to fix a monetary compensation by advisory opinion. The Registrar stated that in his opinion there was nothing either in the nature of an advisory opinion or in the rules of procedure of the Court that prevented the Court from fixing compensation if it should be asked to do so. Under Article 36, paragraph 2 (d) "the nature or extent of the reparation to be made for the breach of an international obligation" is eminently a legal question and would presumably also be a legal question if forming part of an advisory opinion.

A question was put as to whether anything in the ITO Charter prevented Members from bringing their views before the Court in an advisory proceeding. The Registrar stated that the Statute of the Court had rules for procedure in this case and that those rules would be employed. According to the provisions of Chapter IV of the Statute, and particularly Article 6, all Members had every possibility of submitting written statements or of participating in an oral debate in order to present all the arguments they might wish. The states had the same opportunity in this respect as they would have had as parties before the Court.

The Registrar stated that the Court could always appoint assessors to sit with the Court in matters of a technical nature. He referred to Article 30, paragraph 2 of the Statute. He also drew attention to Article 26 of the Statute which provided for special Chambers of the Court. He stated that it was perfectly possible to form Chambers for economic affairs with economic assessors. He also drew the attention of the members of the Sub-Committee to the second paragraph of Article 82 of the Rules of the Court which provides for an accelerated procedure in advisory cases.

In answer to a specific question the Registrar stated that Article 92, paragraph 1 of the Charter in no way prevented a Member from bringing a case against a non-Member before the International Court of Justice, nor did it prevent a non-Member from bringing a case against a Member.