

Executive Committee

Second Session

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

Held at the Palais des Nations, Geneva,  
on Tuesday, 31 August 1948 at 3 p.m.

Acting Chairman: Mr. L. COUILLARD (Canada)

The Sub-Committee agreed that it would confine its discussions for the time being to sub-paragraph (a) of the operative part of the resolution pursuant to which the consultations with the International Court of Justice were being undertaken. The Sub-Committee also agreed that in view of the limited time which the Registrar of the International Court would be able to spend in Geneva, consultations with him should commence forthwith.

The Sub-Committee considered paragraph 2 of Article 96 of the Charter. The representative of Australia asked the Registrar for any criticism or comment of that paragraph or the other paragraphs of Article 96 in relation to the part of the resolution under discussion. The Registrar replied that the text of Article 96 was quite satisfactory as a means of requiring and securing an advisory opinion from the International Court.

A series of questions arising from the paragraph were addressed by the members of the Sub-Committee to the Registrar of the Court, the discussion centering around the question whether paragraph 2 of Article 96 gave a Member whose interests were prejudiced by a decision of the

Conference the right to compel the Organization to request an advisory opinion. The Chairman ruled that as he interpreted the language employed in that paragraph it did not give such a right as it was always possible that the Conference might determine that the interests of the Member requesting the advisory opinion were not prejudiced by the decision of the Conference. He thought, however, that such a decision would be taken only after serious consideration by the Conference.

The representative of France stated that if the interpretation of the Chairman were accepted, he considered an amendment of paragraph 2 of Article 96 was necessary. Such amendment would take the form of giving to any Member which considered its interests were prejudiced by a decision of the Conference the right to have the Organization request an advisory opinion from the Court. The representatives of Benelux, Colombia, Egypt and Italy were of the same opinion.

(Annexed to these notes is a record of the questions put to the Registrar together with his replies thereto).

A N N E X

AIDE MEMOIRE FROM THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE CONCERNING THE MEETING OF THE SUB-COMMITTEE ON 31 AUGUST, 1948.

The first question to be discussed was the binding character of advisory opinions. The Registrar stated that an advisory opinion was in no way legally binding on the Organization which had requested it. On the other hand the experience of the Permanent Court of International Justice had shown that the authority of such an opinion was so great that it was always acted upon favourably. He further stated that the procedure before the Court was exactly the same whether the decision of the Court took the form of a judgment or an advisory opinion. The parties or the interested states had exactly the same opportunities for stating their case, putting forward proofs and pleading their cause. As a matter of fact the two procedures were exactly identical and the inherent values of the opinion and of the judgment were also equal. The two differences consisted first, in the way in which the case was brought before the Court and secondly, in the legal force of the opinion. The intermediary stages were practically identical.

A discussion took place concerning the interpretation of paragraph 2 of Article 96. The Registrar wanted to be informed whether the Organization would be obliged to request an advisory opinion at the demand of any Member. The Chairman stated that he interpreted the language of paragraph 2 to mean that the Organization would have such a duty on the condition that the Organization itself by

simple majority had decided that the interests of the Member which demanded an advisory opinion really had been prejudiced. This meant that the Organization by simple majority might refuse to ask for an advisory opinion by determining that Members' interests were not prejudiced. The Registrar stated as his personal opinion that the natural interpretation of Article 96, paragraph 2 seemed to be the one put forward by the Chairman. He took care, however, to stress that any interpretation suggested by him could not be taken as the official point of view of the International Court of Justice.

The Registrar wanted to draw the attention of the Sub-Committee to the fact that this paragraph indirectly gave individual states the right to ask for advisory opinions although the accepted theory was that only organs of the United Nations and specialized agencies could request such opinions. He stated, however, that his personal feeling was that the International Court of Justice would accept jurisdiction if the Organization put forward a request for advisory opinion under this paragraph if the General Assembly of the United Nations gave this authority to the Organization. He wanted to underline that the practice of the Court seemed to indicate that it wanted as far as possible to accept jurisdiction and not to impose a restrictive interpretation on jurisdictional clauses.

A question was put concerning the possibility of the Court giving an advisory opinion concerning the decision of the Organization as to whether a Member's

interests were prejudiced or not. The Registrar answered that he thought it very unlikely that the Court would ever have to decide such a question since it would only deal with the matter when a request was handed in through the ordinary channels of the Organization. Furthermore, he stated that the question of whether the interests of a Member were prejudiced or not seemed to be a discretionary matter left to the judgment of the Organization. This question would therefore on the whole be of an economic, financial or political nature and not a legal one; and the Court dealt in principle only with legal questions. Such a question would arise if a Member should state that a decision by the Organization in this respect was taken in bad faith and constituted, "abus de pouvoir", an abuse of right. The Registrar was asked whether the three first paragraphs of Article 96 seemed to be satisfactory in a formal way. He answered in the affirmative.

The Registrar was asked whether it was proper for the Court to revise a decision of an international organization by means of an advisory opinion. The Registrar said that this was unusual, but there seemed to be no legal argument against states agreeing in advance to accept an advisory opinion as binding. It was stated the same result might be obtained in a much simpler way by giving the Members the right to appeal directly to the Court against any decision of the Conference. It might be agreed in advance that such a decision would be binding on all the other Members as well. The Registrar admitted that this was perfectly feasible.