

UNCDO - Working Papers - Commissions + Technical Committees - Advisory Opinion

15 May 1945
30 May 1945

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THE UNITED NATIONS CONFERENCE
ON INTERNATIONAL ORGANIZATION

REQUESTS FOR ADVISORY OPINIONS

Title

Memo. from U.K. concerning requests for advisory opinions from the international court of Justice, dated May 27.

Memo to doc. office to circulate on commission II and III masthead. May 26.

Doc. 595, II/1/29

Letter to Neville Butler of May 25 from Gilchrist in answer to Butler's letter of May 20 to the Sec. Gen.

Memo. circulated at the request of the U.K. delegation dated May 25
TITLE: REQUESTS FOR ADVISORY OPINIONS FROM THE INTERNATIONAL
COURT OF JUSTICE

~~TITLE: xxxxx~~

Memo to Gilchrist from Padelford of May 22 re British proposal concerning advisory opinions.

Memo. to Rothwell from Padelford of May 22 re British inquiry.

Memo. to Padelford and Gilchrist from Rothwell of May 21 requesting consideration of British note.

Letter to Sec. Gen. of May 20 from Neville Butler attaching British memo. on Requests for Advisory Opinions from Int. Court of Justice.

*Matters for the consideration of Subcom. A of
Com. II/2 of May 29.
Doc. 633 of May 27.*

RESTRICTED
May 29, 1945

MATTERS FOR THE CONSIDERATION OF SUBCOMMITTEE A OF COMMITTEE II/2

I. Requests for advisory opinions from the International Court of Justice

- (a) Committee II/2 discussed, but did not vote on, the question of whether a provision for reference by the Assembly of juridical matters to the International Court should be included in the Charter. It was not clear from the discussion whether the Assembly should be authorized, or whether it should be required, to refer such questions to the International Court. At its fifth meeting, Subcommittee B decided that the Chairman should bring before Committee II/2 the entire question of referral by the Assembly of juridical questions to the Court.
- (b) The United Kingdom Delegation has suggested (Doc. 633, II/2/30, at page 3):
 - (i) that specific provision be made in the Charter to empower the General Assembly and the Security Council to request advisory opinions from the Court;
 - (ii) that suitable provision be made to enable such international agencies as the General Assembly may authorize for the purpose to request advisory opinions on questions of a constitutional or judicial character arising within the scope of their activities;
- (c) The United Nations Committee of Jurists has stated that it did not feel able to adopt the suggestion that the

right to request an advisory opinion should be accorded to international organizations, because that Committee regarded this as a matter of policy which raised other than purely judicial considerations, and was not, therefore, one to be determined by them. (see Doc. 633, II/2/30, at page 3).

- (d) It has been suggested by the Secretariat that the United Kingdom proposal might be considered, in the first instance, by Committee III/2 insofar as concerns the Security Council, and by Committee II/2 insofar as concerns the General Assembly and other international agencies.
- (e) This Subcommittee could bring the matters discussed above to the attention of Committee II/2 by submitting the following questions to it:

1. Should the Charter contain a specific provision empowering the General Assembly to request from the International Court advisory opinions (concerning juridical questions)?
2. Should the Charter contain a specific provision requiring the General Assembly to refer juridical questions to the International Court?
3. Should provision be made to enable such international agencies as the General Assembly may authorize for that purpose, to request advisory opinions on questions of a constitutional or judicial character arising within the scope of their activities?

II. Referral to Committee II/2 of the Ecuador Amendment Regarding a Statute Concerning Regional Commissions

- (a) Committee III/2 at its meeting on May 16 had under consideration the following amendment proposed by Ecuador for insertion after Chapter VIII, Section A, Paragraph 3:

"The General Assembly shall approve by the affirmative vote of two-thirds of its members a Statute providing for the establishment of continental or regional commissions charged with

promoting and obtaining through the procedure of conciliation, a settlement of the differences or controversies of a political nature which might arise between the States belonging to the respective continents or regions. The General Assembly shall coordinate, as well, the provisions of this Statute with those contained in the agreements or treaties of conciliation existing among the members of the General Organization. This Statute will have binding force as soon as it is ratified, according to their respective constitutional procedures, by two-thirds of the Members of the General Organization."

Committee III/2 decided to refer to Committee II/2 the proposals of Ecuador insofar as they relate to the powers of the Assembly, retaining for its own consideration the question of inserting in Section A suitable reference to the use of procedures for peaceful settlement under regional arrangements.

- (b) It is suggested that this amendment not be broken down into questions, but that it be submitted in its present form for the consideration of Committee II/2.

ADDITION AUX "QUESTIONS SOUMISES A L'ETUDE DU SOUS-COMITE A
DU COMITE II/2"

A. Addition concernant le point I. Le Comité III/2 a adressé à la Commission II une communication où il est déclaré:

"Suivant la suggestion émanant du secrétariat et figurant en annexe à un memorandum de la délégation du Royaume-Uni en date du 20 mai 1945, relatif aux demandes d'avis consultatifs à la Cour Internationale de Justice (document 634, III/2/22) la question de conférer au Conseil de Sécurité le droit de demander des avis consultatifs à la Cour a été soumise au Comité III/2 pour examen à la séance qu'il a tenue aujourd'hui 29 mai. L'opinion unanime a été que la question telle qu'elle était formulée à la page 3 du memorandum dépassait le mandat du Comité III/2. Le Comité a toutefois voté la deuxième phrase du paragraphe 6 du Chapitre VIII, Section A qui donne au Conseil de Sécurité le droit "de renvoyer à la Cour, pour avis, les questions juridiques se rapportant à d'autres différends."

B. Addition se plaçant après le point II:

III. Le Comité I/2 a adressé au Comité II/2 une communication où il est déclaré:

"Le Sous-comité spécial du Comité I/2 relatif au Secrétariat a examiné un projet d'amendement visant le paragraphe 3 du Chapitre X soumis par la délégation du Venezuela et qui a pour but d'étendre le droit du Secrétaire Général d'attirer l'attention du Conseil de Sécurité et/ou de l'Assemblée Générale sur toute question susceptible, à son avis, de compromettre la paix et la sécurité internationales.

"Le Sous-comité a jugé que, puisque le Comité II/2 s'occupait des relations du Conseil de Sécurité avec l'Assemblée Générale, l'amendement en question rentrait logiquement dans le cadre de son mandat."

Les communications ci-dessus posent la question de savoir si l'amendement dont il s'agit doit être soumis au Comité II/2 et, dans l'affirmative, sous quelle forme.

File
May 27, 1945

MEMORANDUM FROM THE UNITED KINGDOM DELEGATION
CONCERNING REQUESTS FOR ADVISORY OPINIONS FROM THE
INTERNATIONAL COURT OF JUSTICE
(Circulated originally to Committee II/1
as Document 595)

Note by the Secretariat supplementing the Note in Doc. 595

In view of the references in Document 595 (memorandum from the United Kingdom Delegation) to the Security Council and to the powers of the General Assembly, it is suggested that that document might be considered in the first instance by Committee III/2 in so far as concerns the Security Council and by Committee II/2 in so far as concerns the General Assembly and other international agencies. It is now circulated accordingly to these Committees instead of to Committee II/1 which would only be concerned with this question at a later stage.

Subject to the recommendations made by these Committees, the matter might subsequently be referred to Committee IV/1 for recommendation as to such amendment of Chapter VII of the Dumbarton Oaks proposals and of the Statute of the International Court of Justice as might be considered necessary.

cc: Mr. Leland Goodrich
Mr. Staley
Mr. Padelford

MEMORANDUM

May 26, 1945

INSTRUCTIONS FOR DOCUMENT OFFICE

Please circulate the attached document:

1. On Commission II/2 Masthead
2. On Commission III/2 Masthead

Huntington Gilchrist,
Executive Officer, Commission II.

COMMISSION II General Assembly

Committee I Structure and Procedures

REQUESTS FOR ADVISORY OPINIONS FROM THE INTERNATIONAL COURT OF JUSTICE

(Note by the Secretariat: This memorandum is circulated at the request of the United Kingdom Delegation.

Preliminary consideration was given to the principle involved in this problem by Committee IV/1 at its sixth meeting on May 11th (Doc. 264). It was finally agreed to postpone further consideration until proposals which were mentioned in the discussion had been submitted in writing. Since that date, proposals have been received and circulated from Venezuela, Doc. 283; and Lebanon, Doc. 285.

The United Kingdom proposal is circulated to Committee II/1 with the thought that if this Committee sees fit to empower the General Assembly to authorize international agencies to make requests for advisory opinions, the matter could then be referred to Committee IV/1 for recommendation as to such amendment of Chapter VII of the Dumbarton Oaks Proposals and of the Statute of the Court as might be considered necessary.)

1. It is necessary to determine in the Charter what organs of the United Nations shall be qualified to lay before the International Court a request for an advisory opinion. The United Nations Committee of Jurists has proceeded on the assumption that the General Assembly, as well as the Security Council, would have this function but the necessary provision has not yet been made in the Dumbarton Oaks Proposals.

2. The United Nations Committee of Jurists did not feel able to adopt the suggestion that the right to request an advisory opinion should be accorded to international organisations (Jurist 86, G/73, Chapter IV). It is understood that the Committee regarded this as a matter of policy which raises other than purely judicial considerations, and was not therefore one to be determined by them.

The relevant passage of their Report is as follows:-

"CHAPTER IV

Advisory Opinions

It is for the Charter of the United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Although this was not stated in the Dumbarton Oaks Proposals, the Committee believed, however, that it might presume that not only the Security Council but also the General Assembly would have this function, and it is on that basis that it has determined how the application should be submitted. The suggestion has been made to allow international organisations and, even to a certain extent, states to ask for advisory opinions; the Commission did not believe that it should adopt it. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

Article 65

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary General of the United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question."

3. It is the view of the United Kingdom Delegation that provision should be made in the Charter and the Statute of the Court to enable certain international agencies which are to be brought into relationship with the United Nations Organisation to request advisory opinions from the Court on questions relating to the interpretation of their constitutions or of conventions within their respective fields.

4. Unless such provision is made it will presumably be necessary in every case for application to the Court to be made either through the General Assembly or the Security Council. Application through the Security Council would appear to be inappropriate, since the matters upon which the agencies concerned may seek an advisory opinion are not likely to be within the scope of the Council, e.g., many such matters would probably relate to the interpretation to be placed upon some particular provision in their Statutes. Application through the General Assembly, which will normally meet only once a year, might involve such

delay in bringing matters before the Court as would result in serious difficulties to the organisations and parties concerned.

5. The United Kingdom Delegation accordingly suggests:

- (i) that specific provision be made in the Charter to empower the General Assembly and the Security Council to request advisory opinions from the Court;
- (ii) that suitable provision be made to enable such international agencies as the General Assembly may authorise for the purpose to request advisory opinions on questions of a constitutional or judicial character arising within the scope of their activities;
- (iii) that the necessary consequential amendments be made in the draft Statute of the Court.

May 25, 1945

Neville Butler, Esquire
United Kingdom Delegation
Mark Hopkins Hotel

Dear Mr. Butler:

Your letter of May 20th to the Secretary-General has received careful consideration and the memorandum attached thereto will be circulated at once as a conference document with a note by the Secretariat (copy which is attached hereto) to explain the situation and the reference of the question in the first instance to Committee II/1 as you had suggested.

I trust you will agree that this action deals appropriately with the situation.

Very sincerely yours,

Huntington Gilchrist,
Executive Officer, Commission II.

cc: Mr. Padelford
Mr. Brown
Mr. Rothwell

May 25, 1945

(Official Document for Committee II/1)

REQUESTS FOR ADVISORY OPINIONS FROM THE
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The United Kingdom proposal is circulated to Committee II/1 with the thought that if this Committee sees fit to empower the General Assembly to authorize international agencies to make requests for advisory opinions, the matter could then be referred to Committee IV/1 for recommendation as to such amendment of Chapter VII of the Dumbarton Oaks Proposals and of the Statute of the Court as might be considered necessary.)

cc: Mr. Padelford
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Com II / 1
File

Gilchrist

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- (iii) that the necessary consequential amendments be made in the draft Statute of the Court.

May 22, 1945

MEMORANDUM

To: Mr. Gilchrist

Subject: British proposal concerning advisory opinions.

If your Committee II/1 decides to consider the British proposal, which would authorize the Assembly to designate the international agencies which might request advisory opinions of the Court, it should also take cognizance of the Venezuelan proposal for Article 65 of the Statute, contained in Doc. 283, IV/1/23, May 14, 1945.

A. H. H. H. H.

May 22, 1945

MEMORANDUM

To: Mr. C. E. Rothwell
Executive Secretary

Subject: British inquiry regarding request for advisory
opinions by international agencies.

Reference is made to the note of recent date from Mr. Neville Butler of the British Delegation to Mr. Hiss, concerning the appropriate Committee to which the British proposal to authorize the International Court of Justice to give advisory opinions at the request of international agencies other than the Assembly and Security Council should be referred.

Preliminary consideration was given to the principle involved in this problem by Committee IV/1 at its sixth meeting on May 11. It was finally agreed to postpone further consideration until proposals which were mentioned in the discussion had been submitted in writing. Since that date proposals have been received and circulated, to empower the Court to give advisory opinions at the request of international agencies dependent on the United Nations. (Venezuela, Doc. 283; Lebanon, Doc. 285). The British proposal appears in general to be in line with the proposals submitted by these other Governments.

In view of the fact that the British proposal raises the previous question of the Assembly authorizing certain international agencies to request advisory opinions, it would seem proper to refer the matter first to Committee II/1 for consideration. If that Committee sees fit to empower the Assembly to authorize international agencies to make requests for advisory opinions, the matter can then be referred to Committee IV/1 for amendment of the Statute.

It does not seem to me necessary that the British proposal should be referred to the Executive Committee for authorization of its introduction. Mr. Butler's letter and the British proposal have been turned over to Mr. Gilchrist of Commission II.

Norman J. Padelford
Executive Officer
Commission IV

MEMORANDUM

May 21, 1945

TO: Mr. Padelford
Mr. Gilchrist

ER

From: Mr. Rothwell

*

Will you kindly consider the attached request from the British Delegation with respect to making provision in the Charter to empower the General Assembly, the Security Council and certain other international agencies, to request advisory opinions of the Court.

It is essential to determine,

- 1) to which committee such a request should be addressed, and
- 2) whether such request constitutes a new proposal requiring prior acceptance by the Executive Committee under the agreed rules.

Will you please advise me as to your judgment?

*

Attachment

ER:ns



UNITED KINGDOM DELEGATION
SAN FRANCISCO CONFERENCE

Rothwell
Padelford
Gilchrist

20th May, 1945.

Dear Mr. Hiss,

I would be grateful if I could have your assistance about a question of procedure which has arisen in connexion with requests for advisory opinions from the International Court.

The position as we see it is briefly as follows. The Committee of Jurists, in preparing the draft Statute, proceeded on the assumption that the General Assembly and the Security Council would be empowered to ask for advisory opinions from the Court and that the substantive provision for that purpose would be made in the Charter. Such provision seems to be clearly necessary and the appropriate place for it would, we assume, be in Chapter VII. As yet, however, I do not think that any Committee of the Conference has taken up the question, though various amendments relating to opinions from the Court have been put down to different sections of the Dumbarton Oaks proposals.

The United Kingdom Delegation wishes to propose that such other international organisations as may be authorised for the purpose by the General Assembly will also be able to request advisory opinions and we have prepared a note on the subject a copy of which is enclosed herewith. It is not, however, quite clear to us which of the Committees of the Conference is the competent body to consider the matter. The Committee of Jurists took the view, as we understand it, that such a proposal raised other than purely judicial considerations and was not therefore one to be determined by them. Committee IV/1 seems inclined to take a similar view. It may be that the best procedure would be to bring the matter in the first instance

before/

Mr. Alger Hiss,
Secretary-General of the
United Nations Conference
on International Organisation.

before Committee II/1 in order to obtain their views and recommendations on the general principle involved and then refer it to Committee IV/1 if it is agreed that the requisite provision should be made in Chapter VII. If this course commends itself to you, I would be grateful if you would arrange for the enclosed note to be circulated accordingly.

Yours sincerely,
Nevile Butler

(Nevile Butler)

REQUESTS FOR ADVISORY OPINIONS FROM THE
INTERNATIONAL COURT OF JUSTICE

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2. The United Nations Committee of Jurists did not feel able to adopt the suggestion that the right to request an advisory opinion should be accorded to international organisations (Jurist 86, G/73, Chapter IV). It is understood that the Committee regarded this as a matter of policy which raises other than purely judicial considerations, and was not therefore one to be determined by them.

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3. It is the view of the U.K. Delegation that provision should be made in the Charter and the Statute of the Court to enable certain international agencies which are to be brought into relationship with the United Nations Organisation to request advisory opinions from the Court on questions relating to the interpretation of their constitutions or of conventions within their respective fields.

4. Unless such provision is made it will presumably be necessary in every case for application to the Court to be made either through the General Assembly or the Security Council. Application through the Security Council would appear to be inappropriate, since the matters upon which the agencies concerned may seek an advisory opinion are not likely to be within the scope of the Council, e.g. many such matters would probably relate to the interpretation to be placed upon some particular provision in their Statutes. Application through the General Assembly which will normally meet only once a year might involve such delay in bringing matters before the Court as would result in serious difficulties to the organisations and parties concerned.

5. The U.K. Delegation accordingly suggests:-

- (i) that specific provision be made in the Charter to empower the General Assembly and the Security Council to request advisory opinions from the Court;
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4. Unless such provision is made it will presumably be necessary in every case for application to the Court to be made either through the General Assembly or the Security Council. Application through the Security Council would appear to be inappropriate, since the matters upon which the agencies concerned may seek an advisory opinion are not likely to be within the scope of the Council, e.g. many such matters would probably relate to the interpretation to be placed upon some particular provision in their Statutes. Application through the General Assembly which will normally meet only once a year might involve such delay in bringing matters before the Court as would result in serious difficulties to the organisations and parties concerned.

5. The U.K. Delegation accordingly suggests:-

- (i) that specific provision be made in the Charter to empower the General Assembly and the Security Council to request advisory opinions from the Court;
- (ii) that suitable provision be made to enable such international agencies as the General Assembly may authorise for the purpose to request advisory opinions on questions of a constitutional or judicial character arising within the scope of their activities;
- (iii) that the necessary consequential ^{Amendment 15} be made in the draft Statute of the Court.