

UNCIO - Commissions & technical committees - Commission #1  
Judicial organization - general

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03/06

5-1018  
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(PA65-2.2.3)

MEMOIRE

Au: ~~M.~~ Dr. Caracciolo Parra-Perez  
Président de la Commission IV

De: M. Norman J. Padelford  
Secrétaire Administratif, Commission IV

Objet: Etat des travaux des Comités IV/1 et IV/2 à ce jour.

Comité IV/1.

Le Comité IV/1 a tenu jusqu'ici 13 séances. Il a adopté 6 paragraphes à insérer au Chapitre VII de la Charte; ces six paragraphes couvrent tout le contenu de ce Chapitre dans la rédaction de Dumbarton Oaks. Des paragraphes additionnels ont été proposés par diverses Délégations ce qui entraînera un examen ultérieur du Chapitre.

Le Comité a approuvé 60 des 69 Articles du Statut de la Cour. Les autres Articles sont consacrés aux questions de fond concernant la juridiction, y compris la juridiction obligatoire, les avis consultatifs et les amendements au Statut.

Il est vraisemblable que de quatre à six séances supplémentaires seront nécessaires pour terminer les travaux du Comité IV/1. Leur nombre dépendra en grande partie de la durée des débats et de la difficulté d'obtenir les deux tiers de majorité pour l'article sur la juridiction obligatoire.

On doit reconnaître que M. Garcia a dirigé les travaux du Comité d'une façon remarquable. Les débats ne s'écartent pas du sujet et le Comité est guidé systématiquement vers la conclusion de l'examen méthodique qu'il fait de chaque sujet de l'ordre du Jour.

Comité IV/2.

Le Comité IV/2 a tenu 11 séances plénières et 9 séances de sous-comités.

Dix questions juridiques différentes ont été soumises à l'examen du Comité au cours de ses travaux. Il a terminé la rédaction des textes d'articles de la Charte relatifs à deux de ces questions: (Privilèges et Immunités; Enregistrement



et Publication des Traités).

Trois des questions ont fait l'objet des mesures suivantes: (a) Décision prise par une autre Commission (Développement du Droit International); (b) Renvoi à une autre Commission (Re-vision des Traités); et (c) Vote dont le résultat n'a pas donné la majorité des deux tiers nécessaire à l'inclusion des textes (Rapport entre la Charte et le Droit National).

Deux des questions ont été renvoyées à un sous-comité qui n'a pu encore arriver à un accord sur les textes: (Obligations Incompatibles avec la Charte; Statut Juridique de l'Organisation).

Trois des questions n'ont pas été examinées: (Interprétation de la Charte; Entrée en vigueur de la Charte; Rapports avec la Société des Nations). Les deux dernières de ces trois questions seront probablement examinées par le Comité. On ne sait pas encore d'une façon certaine ce qu'il y aurait lieu de faire au sujet de la première, qui fait l'objet de conversations entre diverses Délégations, en dehors du Comité.

Le Comité IV/2 ne semble guère avoir terminé plus de la moitié de ses travaux.

Un minimum de quatre séances supplémentaires sera nécessaire. Ce minimum devra être largement dépassé si des questions supplémentaires sont renvoyées au Comité par d'autres Commissions ou si le Comité aborde l'examen des rapports avec la Société des Nations.

Les travaux du Comité continuent à être ralentis par la tendance du Président à encourager les débats détaillés et à retarder le vote jusqu'à ce que la discussion aboutisse à un accord virtuellement unanime. Il faut ajouter que le Comité continue à perdre un certain temps à presque chacune de ses séances en raison de l'arrivée tardive du Président.

THE UNITED NATIONS CONFERENCE  
ON INTERNATIONAL ORGANIZATION

MATERIAL SUBMITTED TO ARCHIVES FROM COMMISSION IV/1 & IV/2

1. Subcommittee IV/1/A - (2 folders)
2. Jurists Committee Communications to Coordination Committee
3. Mimeographed Instructions
4. Miscellaneous Memoranda
5. Materials sent to Coordination Committee
6. Committee of Jurists
7. Miscellaneous Memoranda
8. General Administration
9. Letters
10. Matters referred by one Committee to Another Committee
11. Committee of Jurists - Letter of transmittal to Conference
12. Meetings of heads of all Commissions
13. Commission IV - General
14. Commission IV/1 - General
15. Commission IV/2 - General
16. Subcommittee IV/2/A - (2 folders)
17. Possible Personnel
18. Commission III
19. Personnel - Secretariat
20. ~~Commission III~~ All Commissions - General
21. ~~Commission III~~ Rules of Procedure

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22. Attendance Material
23. Progress Report Material & Other Miscellaneous Information
24. Notes, IV/2 and IV/2/A
25. Organization of Conference
26. June 14 & June 15 meetings
27. June 13, attendance record
28. June 11, 12, 13 meetings
29. June 6 & 7 meetings
30. June 2, 4, 5 meetings
31. June 1 attendance record
32. May 31 meeting
33. May 28, 29, 30 meetings
34. May 26 meeting
35. May 24 & 25 meetings
36. May 23 meeting
37. May 22 meeting
38. May 21 meeting
39. May 19 Commission meeting
40. May 19 Meeting
41. May 18 meeting
42. May 17 meeting
43. Draft material May 16, 1945
44. Draft material May 14 and 15, 1945
45. Draft material - May 4 - 13, 1945

- Continued -

THE UNITED NATIONS CONFERENCE  
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- 46. Draft material Committee IV/2
- 47. Miscellaneous folder for Mr. Padelford



For the Journal

The Second Session of Commission IV was held on June 14, in the auditorium of the Opera House under the Presidency of Dr. Caracciolo Parra-Pérez, Foreign Minister of Venezuela. The reports of the two committees of this Commission were presented and statements as to their contents were made by the Rapporteurs, Nasrat Al-Farsy of Iraq for the First Committee and Mariano Argüello Vargas of Nicaragua for the Second Committee. The reports were accepted by the Commission by acclamation. In addition, the Commission gave its specific approval to the proposals presented by the committees for approval by the Conference. These included, for Committee 1, five articles comprising the chapter of the Charter for the United Nations Organization, dealing with the proposed International Court of Justice, and also the Statute of the Court, comprising seventy articles. For Committee 2, articles for the Charter were submitted dealing with the privileges and immunities of officials of the International Organization, the registration and publication of treaties, obligations incompatible with the Charter, juridical status of the Organization, and the coming into force of the Charter. The Commission also adopted a recommendation presented by Committee 1 that the Conference should recommend to the members of the Organization that they make declarations under

paragraph 2 of Article 36 of the Court Statute accepting the jurisdiction of the Court as obligatory. In support of this recommendation, remarks were made to the Commission by Dr. Jalal Abdoh, Delegate of Iran and Mr. Herbert Evatt, Delegate of Australia.



## **COMMISSION IV Judicial Organization**

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### AGENDA FOR FIRST MEETING OF COMMISSION IV

May 19, 1945

1. Introductory Statement by President of Commission IV

Caracciolo Parra-Pérez (Venezuela)

2. Progress Report - Committee IV/1

Chairman - Manuel C. Gallagher (Peru)  
Rapporteur - Nasrat Al-Farsy (Iraq)

3. Progress Report - Committee IV/2

Chairman - Abdel Hamid Pasha Badawi (Egypt)  
Rapporteur - Mariano Arguello Vargas (Nicaragua)

4. Announcement by Assistant Secretary General

Ato Emmanuel Abraham (Ethiopia)

5. Adjournment

*Observations regarding Reports by President of the  
Commissions*

*[get from verbatim report or interpreter]*

ANNOUNCEMENT REGARDING FURTHER COMMISSION  
MEETINGS  
BY ASSISTANT SECRETARY GENERAL  
ATO EMANUEL ABRAHAM (ETHIOPIA)

Committees 1 and 2 of Commission IV will continue their meetings this next week with a view to completing their agendas.

The next meeting of the Commission will be held when the Committees are ready to report definite proposals to the Commission for approval. The meeting will be convened on call by the President of the Commission.

FIRST MEETING OF COMMISSION IV  
May 19, 1945

INTRODUCTORY STATEMENT BY PRESIDENT OF COMMISSION IV  
DR. CARACCIOLA PARRA-PÉREZ (VENEZUELA)



REMARKS OF DR. C. PARRA-PEREZ, PRESIDENT OF  
COMMISSION IV, AT THE FIRST MEETING OF SAID COMMISSION

May 19, 1945

Opera House, 10:30 A.M.

HONORABLE DELEGATES:

Upon Commission IV, of which I have the honor to be President, devolves a work as important as it is extensive, since it includes all the aspects of the judicial organization of the World Organization. For this reason it has seemed to me advisable, after having consulted the Chairmen of the Committees, as well as the Secretary General, to call this preliminary meeting for the purpose of hearing a statement of the results of the work so far attained. We shall not be able to discuss profitably at this time these results, nor make decisions thereon, in view of the fact that certain drafting details are still pending with respect to the documents which are to be submitted to us. I hope that at the next meeting we shall enter into the Commission's work proper, which is to study draft proposals submitted to it by its Committees and to recommend to the Conference the adoption of final drafts.

The Committees have been obliged to work with relative slowness, not only because the points dealt with are very delicate but also because, in addition to their juridical aspect, they



present a political aspect which sometimes falls beyond the strict competence of our Commission and is the subject of discussion in Committees under another Commission. Hence the importance of coordination between the various Commissions. On the other hand, there are a great number of amendments and new proposals submitted by various Governments which require careful examination.

Committee 1 of Commission IV is charged with the drafting of the Statute of the International Court of Justice and the drafting of Chapter VII of the Dumbarton Oaks Proposals which deals with the principles of the Court within the general structure of the United Nations Organization. To Committee 2 belongs the study of numerous other juridical problems likewise related to said Organization.

I am sure that I interpret the unanimous feeling of the Delegates when I repeat that the Court is to be one of the fundamental organs of the World Organization and that its functioning will work more and more toward causing the principles of justice and law to prevail in the relations between states. Through its jurisprudence the Court will, furthermore, perform an essential function in giving the proper interpretation to the rules of international law.

In the drafting of the Statute of the Court, we have the advantage of having available the experience of the Permanent Court of International Justice at The Hague. The great weight of its decisions, the intellectual and moral capacity of its judges,



the respect which it has won in the World, are other assets which are today available to us. As a connecting link between the past and future eras, we have enjoyed here the collaboration of some of its members which has been very profitable, and for it we are sincerely grateful to them.

On the other hand, the work of Committee 1 of the Commission has been facilitated by the work done at Washington shortly before the meeting of this Conference by the Committee of Jurists, which drew up a draft Statute based on the Statute of the present Court of The Hague, and quite excellent as to its technique.

Our Committee 1 has discussed this draft in its entirety and will have to decide specifically those fundamental points with respect to which the Washington Committee deemed it advisable not to express any opinion, owing to the delicate problems of a diverse nature which they involve. I am particularly referring to the fundamental question of the Statute, that is, to the compulsory or optional jurisdiction of the Court.

Committee 2 of the Commission will propose concrete solutions to the questions which have been referred to it. Among the most important of them I can mention those which refer to the juridical nature of the Charter of the World Organization, to obligations inconsistent with the latter's Charter, to the registration of treaties, to the privileges and immunities of the officers, and to what has been called the relations with the League of Nations.



But it devolves upon the Chairmen of the Committees to advise you of the details of the work which they are so competently directing. The respective Rapporteurs will in turn present their remarks, and it will be a pleasure for me to give them the floor later.

Norman —

Ayamara showed  
in the correction on  
page 2.

He says Gallagher  
wants him to read  
the English text in  
the meeting tomorrow.

Yours



FIRST MEETING OF COMMISSION IV  
MAY 19, 1945

STATEMENT ON THE WORK OF COMMITTEE IV/1 BY THE CHAIRMAN  
Manual C. Gallagher (Peru)

Mr. President:

I was honored with the office of Chairman of Committee I of this Commission, over which you so ably preside. I wish to go on record expressly as saying that the delegates who compose the first Committee consider with legitimate pride that their work is well advanced. The progress attained is a consequence of two factors: first, the Committee has had as a basis for discussion the draft formulated by the Committee of Jurists of Washington, and secondly, it has had the benefit of the skill, discretion, and perseverance with which each one of the delegates has worked. Speeches in their literary aspect have been suppressed and an attempt has been made to have all addresses refer strictly to the question under debate.

Direction of the Committee has been as easy task for me due to the spirit among the delegates and to the ability which they have demonstrated during our proceedings. Almost all of our decisions have been adopted by unanimous vote and in very few and exceptional cases have minority votes appeared. Even in these last mentioned cases the majority has been greater than the two-thirds required by the rules, which means that the opinion of the Committee has been practically

unanimous in the different resolutions which have been adopted. The study of the Statutes of the International Court of Justice, which is to determine the differences among nations submitted to its decision, is about to be completed. The question whether a new court should be created or the old court, born of the League of Nations, should be continued was one of the greatest importance. The problem was so difficult and such strong arguments were advanced on both sides that the Committee entrusted the study of the matter to a Subcommittee over which I have also had the honor to preside. That Subcommittee has already fulfilled its function and presents to the Committee a recommendation to create a new court. The solution is not perfect but it is more in accord with the purposes of the United Nations and a better answer to the legal problems involved in the resolution which may be adopted.

~~I have formulated in writing a resumé of the work already accomplished by the Committee, which is going to be read by Mr. Al-Farsy, delegate of Iraq, who is the Rapporteur of the Committee,~~ *will read an account of the work accomplished*

I am sure that I interpret the feeling of all the delegates when I thank the Secretary, whose work has been continuous and perfect, and the other members of the Secretariat for their cooperation, when I offer to you, Mr. President of the Commission, the sentiments of our special esteem. Personally, I would like to express publicly my appreciation of the fact that Peru has



been designated to preside over this Committee, as well as my special gratitude to all the delegates for the cooperation which they have lent in all the sessions that have taken place -- cooperation which has manifested itself in the most perfect harmony and which constitutes a proof that none of the nations which participate in this Conference aspire to a predominance of their ideas, nor to privileged positions. Rather they seek harmonious solutions which advance the cause of universal peace, which is the principal purpose of the Conference in San Francisco.

FIRST MEETING OF COMMISSION IV

MAY 19, 1945

Progress Report by the Rapporteur of Committee IV/1  
Nasrat Al-Farsy (Iraq)

Committee I of Commission IV has been charged with the drafting of the Statute of the International Court of Justice as well as the relevant Sections of the Charter of the United Nations. The Committee held its first meeting on Thursday, May the third, and has held nine meetings.

The Committee decided to deal with all articles of the Draft Statute seriatim and has approved all the Articles which were non-controversial in character. It has made an initial study of the entire text of the proposed Statute and has approved of 51 out of the 69 Articles.

The articles approved by the Committee include a number of important subjects dealing with the organization of the Court. The Court, it was decided shall be composed of a body of independent judges to be elected regardless of their nationality on the basis of character and legal qualifications. The Court is to consist of 15 members, no two of whom may be nationals of the same state.

A term of nine years has been selected as the length of time in which a judge may serve on the Court. He may, however, be reelected, and the Committee is proposing a method by which there will be a gradual replacement of judges by providing that the terms of one-third shall expire every three years. The Court has been empowered to promulgate rules in order to exercise its various functions, especially in the field of procedure. Furthermore, the Committee has retained the rule which permits any litigant to have a judge of its own nationality on the Court. The Court, moreover, is to be open to the members of the United Nations and to states which are parties to the Statute. The conditions under which the Court shall be open to other states is still to be determined.



Finally, the Committee approved all of Chapter III of the draft Statute which establishes rules of procedure for the orderly functioning of the Court. These relate to such subjects as the official languages of the Court, the access of documents to the parties, the interrogation of witnesses and conditions regarding the rendering, the entering and revising of judgments.

There remain a number of articles which involve matters of principle and upon which different views are held. Some of these are being studied by a subcommittee and others are still under discussion by the Committee. Generally, it can be stated with fairness that all points at issue have been considered by the Committee and it is hoped that definite decisions on these matters can soon be made.

FIRST MEETING OF COMMISSION IV

May 12, 1945

STATEMENT ON WORK OF COMMITTEE IV/2

BY

ABDEL HAMID PASHA BADAWI (EGYPT), CHAIRMAN

The scope of our work is at the same time broader and undoubtedly less well defined than that assigned to the other committees.

While the latter have the power to examine specific chapters or sections of chapters of the Dumbarton Oaks Proposals and to amend the wording thereof, the task assigned to Committee IV/2 entails the study of all the juridical problems inherent in the completion of the Charter.

The Dumbarton Oaks Conference was, in fact, especially concerned with the solution of political questions and did not take up the study of juridical problems which were of a less urgent nature.

Moreover, the proposals submitted do not contain formal texts to guide us in our work; and it has fallen upon us to elaborate the draft proposals which we might deem necessary in order to resolve any juridical difficulties which arise.

The commission entrusted to us by the Steering Committee contemplated more especially that our work should concern itself with the following questions:

1. Registration of treaties
2. Obligations inconsistent with the Charter
3. Legal status of the Organization and immunities and privileges to be accorded to its officials.

Many proposed texts have been presented for consideration in this connection by the various delegations.

They reveal all the interest manifested in these questions and at the same time stress their complexity.

Furthermore, the enumeration we have just given is not restrictive for our mission comprises juridical questions in their entirety.

Under these conditions we should particularly proceed to the study of suggestions presented by various delegations with respect to the revision of treaties and situations the continuation of which may imperil the peace--to the development and codification of international law--to the dissolution of the League of Nations, and to the integration within the new organization of certain of its institutions--to the taking effect of the Charter...



May 14, 1945

MEMORANDUM

To: Dr. Carraciolo Parra Pérez  
President, Commission IV

From: Mr. Norman J. Padelford  
Executive Officer,  
Commission IV

Subject: Progress Report on Committees IV/1 - 2.

Committee 1

1. Committee IV/1 has adopted as a basis of discussion the report and draft Statute submitted to it by the Committee of Jurists which met in Washington in April. It has now read through the draft Statute, setting aside articles which were controversial, and voting on the remainder. In this way, 50 articles have been approved.

2. The remaining 19 articles consist roughly of (1) those on which amendments have been proposed and (2) those as to which alternate texts were submitted by the Committee of Jurists. They include, generally, the major substantive issues of continuity, nomination of judges, and jurisdiction. In addition, the Committee must consider Chapter VII of the Dumbarton Oaks Proposals.

3. Questions have been raised in the Committee as to whether the following questions belong within its jurisdiction:

(a) Jurisdiction, including advisory jurisdiction and the determination of the question whether a case falls within domestic jurisdiction. (Committee III/2)

(b) Enforcement of judgments. (Committee III/3)

4. The Committee has encountered some procedural difficulties. The rule was adopted at an early meeting that during the first reading of the Statute, delegates would indicate if they had any additional comment. The matter was then to be set aside until the proposals had been submitted in writing. Nevertheless, delegates have been inclined to enter into discussion on substantive questions during the first reading and the Chairman has at times been reluctant to apply the rule indicated.



Since the first reading has now been completed, the principle procedural difficulty that might be anticipated would seem to be that states might continue to submit proposals even though the time for this has presumably passed.

5. It is not yet certain whether the Chairman will appoint a subcommittee or committees to consider any of the questions which remain. He has previously indicated an indisposition to do this on the ground that the issues will merely have to be reconsidered in the full committee.

6. The Committee may reasonably be expected to finish its work within two weeks. This estimate needs to remain flexible.

\* \* \* \* \*

#### Committee 2

1. Following the organization meeting on May 5, the Committee has held three meetings to consider substantive items appropriate to its agenda. At the meeting on May 10, the Committee reached agreement in principle on the problem of Privileges and Immunities. At the meeting on May 11, the Committee reached agreement in principle on the problem of Registration and Publication of Treaties and International Agreements.

(a) These topics have been referred to a subcommittee consisting of Belgium, Colombia, France, Iran, New Zealand, Norway, Philippine Commonwealth, United Kingdom, U.S.A., U.S.S.R., and Venezuela. The delegate from Colombia was designated as Rapporteur of the Committee. The Chairman of Committee IV/2 will serve as Chairman of the subcommittee. The subcommittee's initial meeting is scheduled for Monday, May 14, at 8:30 p.m.

2. At the meeting on May 12, the Committee considered Obligations Inconsistent with the Charter of the United Nations Organization. Following conclusion of the discussion of this item at the next meeting of the Committee, it is anticipated that this topic will also be referred to the same subcommittee.

3. Problems remaining to be discussed by Committee IV/2 are: (a) the Reconsideration of Treaties, (b) the Development of International Law, (c) the Coming into Force of the Charter,

and (d) the Relations with the League of Nations. It is anticipated that the Reconsideration of Treaties may be referred to the subcommittee already created.

4. It is anticipated that a second subcommittee may be created later to draft proposals relating to the Development of International Law, the Coming into Force of the Charter, and Relations with the League of Nations.

5. To date there appear to have been no conflicts of jurisdiction over substantive problems considered by Committee IV/2 with other committees.

6. No procedural difficulties have arisen to date in the course of the Committee's discussions.

7. It is estimated that the preliminary disposition of matters pending before the Committee may require further meetings as follows:

(a) One meeting to complete the discussion of Obligations Inconsistent with the Charter and to take up and complete discussion of the Reconsideration of Treaties;

(b) One meeting for the discussion of the Development of International Law and the Coming into Force of the Charter;

(c) One meeting for the discussion of Relations with the League of Nations.

(d) It is further estimated that subcommittee 1 may require three meetings for the discharge of its functions and that the second subcommittee will in all probability require two meetings.

(e) It would appear likely that two or three additional meetings of the entire committee may be required for consideration of the reports of the two subcommittees and appropriate action thereof.

There is thus anticipated a total of not less than five or six meetings of the whole committee and perhaps five meetings of the two subcommittees. If the meetings noted are held only at the regularly scheduled hours it will thus require the better part of the next two weeks to dispose finally of the problems which are apparently coming to Committee IV/2.