

LEAGUE OF NATIONS  
BARCELONA CONFERENCE

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VERBATIM REPORTS AND TEXTS

RELATING TO THE

CONVENTION

ON

FREEDOM OF TRANSIT.



GENEVA 1921

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**PART I.**

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**STATEMENT BY M. LOUDON**

(VICE-PRESIDENT OF THE CONFERENCE)

ON THE

**QUESTION OF TRANSIT**

AND

**GENERAL DISCUSSION BY THE CONFERENCE**

# SEVENTH MEETING OF THE CONFERENCE

(Monday, March 14th, 1921, at 11 a.m.)

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## GENERAL SURVEY OF THE QUESTION OF TRANSIT. — GENERAL DISCUSSION

*The Meeting opened with M. Hanotaux, President, in the Chair.*

### GENERAL SURVEY OF THE QUESTION OF TRANSIT

The PRESIDENT (speaking in French). — Gentlemen, in accordance with the decision taken at the meeting on Saturday evening, we will now proceed to deal with the Transit Convention (1). In accordance with the Agenda, a general statement regarding this question will be made by M. Loudon, one of our Vice-Presidents, whom I now call upon to speak. After this statement the question will be open for general discussion. At the termination of this discussion, the Conference will go into Committee, with M. Loudon as Chairman, and the various articles will be considered in detail.

M. LOUDON (Vice-President; speaking in French). — Mr. Chairman and Gentlemen, the Draft Convention on Freedom of Transit has its origin in Article 23 (e) of the Covenant. It is of especial interest, in that it constitutes an innovation and is an entirely new departure in the history of international law, for although railways and waterways have already been the subject of general conventions, this does not apply to transit.

The primary object of the Draft Convention is to provide the minimum guarantees necessary to ensure freedom of transit. Its provisions bear the impress of liberal ideas, in spite of the fact that it was found necessary to restrict the application of the principle of freedom in certain respects, to which I shall refer later. One of the more important of these restrictions relates to transport tariffs. The Convention, though of a general nature, only deals with transit by waterways and railways; since transit by road—over and above the Customs difficulties which it involves—has not yet assumed an economic importance sufficiently great to justify its inclusion, while transport by air will be dealt with by the International Convention on Air Navigation.

Article 1, though it does not give an exact definition of transit, lays down that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the High Contracting Parties, when the passage across the said territories is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the Contracting Party across whose territory the transit takes place. The provisions of the draft only refer to the utilisation of those *existing* routes which are most suitable for international transit. They do not in any way contemplate the establishment of new or special routes for this transit. Further, nothing in this Convention entails an obligation on the part of a State to afford to traffic in transit a general right of priority over internal traffic. The Convention recognises that the States through which the traffic passes in transit have a sovereign right to regulate the conditions applicable to such traffic, to select the

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(1) The text employed as a basis for discussion will be found in Part IV, Section IV of this volume: *Draft Convention on Freedom of Transit.*

routes to be followed, to fix the rates charged, to impose legitimate duties and taxes and to take the necessary measures for police supervision.

With regard to dues, it is stipulated that no special duties or taxes shall be imposed on account of entry, exit, or transit, but this does not preclude the collection of dues on merchandise in transit solely in order to cover legitimate expenses of supervision and administration in connection with such transit traffic.

With regard to charges, Article 4 lays down that tariffs applied to transit traffic must be reasonable, *having regard to the conditions of the traffic, including considerations of commercial competition between different routes*. In the Commission of Enquiry (1), one of the most debated questions was whether a State through which transit traffic passed should be obliged to treat such traffic on a footing of equality with its own traffic, with regard to the tariffs and facilities afforded. A number of delegates considered that a State was entitled to encourage its industries and its agriculture by means of transport tariffs. Other delegations upheld the view that, if this principle were admitted, freedom of transit would cease to be a reality for a State whose commerce was dependent upon transit through other countries. It was also pointed out that, in order to protect its own commerce, a State might apply customs duties, but not special transport rates. It was found impossible to reach agreement on the points referred to. The Commission, however, compromised upon a text which sanctioned commercial differentiation but excluded distinctions of a political nature, and left it to the competent authority to provide a *reasonable* interpretation, that is, one in accordance with the spirit of the Convention.

It would be out of the question not to allow certain other exceptions to be made in connection with general police duties, national defence, the observance of health regulations, etc. For instance, the Contracting Parties would not be bound to ensure transit for travellers whose entry into their territory was prohibited on grounds of public health or safety, or the transit of goods the importation of which was forbidden as a measure of protection against diseases of animals or plants. The authorities in the country of transit could also take reasonable measures to assure themselves of the genuine nature of traffic in transit, and to provide for the safety of ways and means of communication. Free transit could not be insisted upon for immigrants whose entry into the country of destination is forbidden. Another exception must be made as prescribed in the Covenant itself in the case of regions devastated in the war.

As regards the application of the Convention in the event of grave national emergency, that is to say internal disturbances, strikes, famine or other troubles, and in time of war, the Contracting Parties would have the right within their territory to take the measures necessary for national security, whilst respecting as far as possible the principle of freedom of transit.

Though the Convention deals with the question of freedom of transit in time of peace, it also aims at maintaining this freedom, as far as possible, in time of war. In particular, it states that, in such an event, the Contracting Powers will maintain this freedom in so far as it is compatible with the rights and duties of belligerents and neutrals.

Freedom of transit implies *equal conditions of transit* for all the Contracting Powers. No distinction may be drawn with respect to *the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport*. Preferential treatment, therefore, is not permitted, but this does not preclude differentiation of a commercial character, in so far as this may be considered legitimate on commercial grounds, within the frontiers of each country. The institution of tariffs tending to impede transit is forbidden; it is in fact inadmissible that a State, whose import and export trade is dependent upon transit across an adjacent State, should be made economically dependent upon the latter.

However desirable it may be to secure equality between *all* nations, and although

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(1) The Commission of Enquiry on Freedom of Communications and Transit was held at Paris in October 1919, on the proposal of the French Government, under the chairmanship of M. Claveille, then French Minister of Public Works. This Commission was instructed, firstly by the Powers which had appointed delegates upon it, and subsequently, on February 13th, 1920, by the Council of the League of Nations, to prepare draft general international conventions upon transit, waterways and railways.

the Commission of Enquiry advocated this universal equality, we are at the moment dealing only with equality between the Contracting Parties. Nevertheless all other nations are free to benefit by it, should they wish to do so, by adhering to the Convention and assuming the responsibilities which it entails.

Even equality does not suffice to ensure freedom of transit in all circumstances. An obvious example would be the case of a State which possessed no merchant fleet and, for this reason, had but little interest in transit effected through its territory. Such a State could very easily impose prohibitive conditions upon transit, which might, it is true, be alike for all, but would hardly affect the State itself at all. For this reason the Convention reinforces the general principles of equality by more definite guarantees as regards reasonable conditions for transit traffic, including the charges to be levied.

The Draft Convention does not impose on the Contracting Parties any obligation which is not consistent with their rights and obligations as Members of the League of Nations.

As regards the relation between this Convention and special previous or subsequent agreements relating to transit, Article 10 of the Draft Convention provides that, generally speaking, all existing obligations and agreements are cancelled in so far as they are incompatible with the terms of the Convention. It further provides that for the future, the conclusion of similar agreements is only permissible in exceptional circumstances and when it can be justified by such a combination of special economic, topographical and technical considerations as, in the opinion of the Commission of Enquiry, is inseparable. The article also provides an opportunity for the signatory States to enumerate certain conventions which will still be kept in force. As regards existing conventions between Contracting and Non-Contracting Powers, there is nothing to prevent their remaining in force. In the future, however, no agreement relating to transit is to be concluded with non-acceding Powers which would not be permissible between Contracting Parties.

With reference to transit facilities greater than the minimum accorded by this Convention, it is laid down that such facilities will not be abolished if granted previously, nor will they be prohibited in the future provided they are granted in conditions compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties.

If disputes arise in regard to the application of the Convention, the Contracting Parties, before submitting them to the Court of International Justice, will have recourse to a *friendly settlement* by the Advisory Committee established by the League of Nations. The very elasticity of this procedure of conciliation will have the effect of making the Convention a living force. Should one of the Contracting Parties not comply with the finding of the Committee or the judgment of the Court, any other Contracting Party may apply to the Court for a ruling as to the steps which each of the Contracting Parties would be entitled to take.

The concluding articles of the Draft relate to the ratification of the Convention, its coming into force, the date of its application, the right to denounce it — which may be exercised after ten years — and its revision. At least once every ten years the Advisory Committee shall submit to the General Conference a report on the application of the Convention, and shall decide whether there is any need to submit the question of revision to the Conference.

This short statement will, I hope, serve as an introduction to the discussion upon the Draft Convention on Freedom of Transit.

The PRESIDENT (speaking in French). — The Conference will certainly wish me to tender its thanks to our Vice-President, M. Loudon, for the very clear and complete summary which he has made. He has brought out the novelty and originality, from an international standpoint, of the Transit Convention which is laid before you for your consideration. It is a document of the utmost importance, both in regard to relations between peoples and to the value of that concerted action which, as we know, is the object pursued by the League of Nations.



## GENERAL DISCUSSION

The transit question is now open for general discussion.

M. TSANG-OU (China; speaking in French). — Before proceeding to discuss the Conventions which are before us, I venture to make a short statement on behalf of the Chinese Government.

The Chinese Government is anxious to seize the opportunity afforded by the assembling of the Barcelona Conference for the consideration of questions of great importance relating to freedom of communications and international transit, in order to express its strong desire to take part in the final preparation of the Conventions to be drawn up by the Conference. Its co-operation will be governed by the principles of liberty, equality and reciprocity, upon which is based the Draft Convention communicated to it by the League of Nations on September 20th, 1921.

The fact that China is a Member of the League of Nations not only demonstrates her keen desire to take part in all measures calculated to establish improved political and economic relations between all the Powers, but is also a proof of her firm intention to continue to apply the new and recently adopted policy of a closer understanding with other Powers.

China does not, however, disguise from herself the fact that, in her own case, the existence of numerous previous treaties with certain Contracting Powers will be a source of serious difficulties, which will require solution before the new Conventions can be brought into agreement with the provisions of these treaties.

The Chinese Government, therefore, confidently hopes that these Powers, animated by a spirit of equity, will afford China every possible help in introducing into these existing treaties the amendments necessary to enable the new Conventions to be put into application, and that the General Conference will use its influence in this matter to convince these Powers of the difficulties which the Chinese Government will encounter in carrying out the new Conventions.

I do not make this statement because China is in any way anxious to shirk these difficulties; on the contrary, she is inspired with a keen desire to take a full share in your efforts to promote international solidarity. This is the keynote of my statement.

May I be permitted to add a few words?

Would it not be advisable to appoint forthwith a special sub-committee to consider the difficulties which will be encountered by certain countries in applying the new Draft Conventions? This would clear the ground, and, in our opinion, the discussion of the articles would gain thereby in clearness and brevity. I think that by proceeding on these lines, instead of in accordance with diplomatic usage, each delegation would give a more sincere expression to its views.

The PRESIDENT (speaking in French). — The Chinese Delegation proposes that a sub-committee should be immediately appointed to consider the difficulties which will be encountered by certain States in applying the new Draft Conventions. It seems to me that such a sub-committee could only be appointed after the adoption of each Convention. I certainly think that directly a vote has been taken upon the Transit Convention it would be desirable to appoint a sub-committee to consider the question of the application, but I think that it would be difficult to appoint this sub-committee before the Convention has been formally adopted.

M. TSANG-OU (China; speaking in French). — I agree.

The PRESIDENT (speaking in French). — As soon as the first Convention has been adopted, a sub-committee will meet to consider and deal with the difficulties connected with its application. If there is no objection, this procedure will be adopted.

With regard to the statements made by the Chinese Delegate on behalf of his Government, due regard will be paid to them during the discussion, and they will be included in the Records. I would also point out that in the drafts laid before us, and

in the Covenant itself, it is laid down that account shall be taken of conventions concluded previous to those which will be concluded by the present Conference.

M. Sibille, the principal French Delegate, has informed me that M. Serruys, the expert delegate, has been specially detailed to follow the discussion, and that he will speak on behalf of the French Delegation during these debates.

The discussion will now continue. I call upon M. Alvarez, of the Chilian Delegation.

M. Alejandro ALVAREZ (Chile; speaking in French). — Before entering upon a discussion of the Draft upon transit,—the question which has been submitted for the consideration of the Barcelona Conference—I would point out that we are dealing with one of the most important and complex problems of International Law.

The complexity of the subject is in particular due to the fact that it has both a *technical and a legal* aspect. Jurists cannot frame satisfactory rules for the regulation of this problem unless they are supplied beforehand, by scientists and engineers, with the technical data which govern the question of communications.

There is another reason, partly political and partly historical, which helps to explain the complexity of the subject. Hitherto, in all matters appertaining to routes of communication, and especially to navigation on international rivers (see the Final Act of the Congress of Vienna 1815), the question before us has only been dealt with in the light of the individualistic tendencies which prevailed in the life of States at that time, and taking into account to the interests and conditions obtaining on the continent of Europe alone. It is not for us to criticise the authors of this settlement. In 1815 the territories of the New World—at all events those of Central and South America—were only just beginning to form themselves into independent States. During the nineteenth century, as these new political formations gradually developed under geographical and economic conditions very different from those prevailing in the Old World, they felt the necessity of settling some of these questions by agreements *inter partes* based on an outlook very different from that prevailing in Europe.

In the third place it should be remembered that technical improvements and the increasing development of discoveries affecting means of communication have further complicated the issue. Railways have been introduced, whereas rivers were formerly the sole means of reaching the interior of a country. Eventually the great war broke out, and now that it is ended a new era in International Law is beginning. Hitherto International Law had been based on the individualistic and jealously guarded principle of the sovereignty of States, but a tendency is now developing towards reconstruction on a basis of *international solidarity and co-operation*—principles which have found expression mainly during the last few years. In the framing of international legislation under this new régime, account is taken of the general interests of the whole body of States, rather than of the narrow and exclusive interests of each separate State. We must not, however, endeavour to push forward *too quickly, or too far*, along this new path. We are living in a time of profound economic disturbance and we must not try to crystallise in definite legal form to relations which have very likely not yet assumed their ultimate shape. Moreover, as a result of the world-war, national feeling is still very strong among the different peoples. We must therefore exercise prudence in making any innovations.

I have ventured to submit the preceding general observations because I feel that they give an idea of the factors which ought to govern the code of rules to be drawn up by this Conference. These rules must, in the first place, take account of the scientific knowledge now at the disposal of experts and of the uses to which is knowledge is applied by engineers to means of communication.

In the second place, the principles of treaty law, adopted by American States in this connection, should be borne in mind, in order that, by comparing these principles with those adopted in European treaty law, an understanding may be arrived at with regard to the general lines on which we should proceed. Where a world agreement is unattainable, we must content ourselves with *continental*, or even *regional*, or *inter partes* agreements, or with internal regulation on the part of each State.

A rapid survey of the ideas which have prevailed on the American continent, in the

settlement of questions of this nature will therefore not be without value. Almost at the outset of their independence, the States of Latin America enunciated two main principles either in their constitutions or in their systems of legislation :—

a) Freedom of communications and transit through their territory, and territorial waters, both sea and river, though in the case of their rivers some restrictions are imposed;

b) Equal rights for nationals and foreigners with regard to the acquisition and enjoyment of civil rights. The adoption of these two main principles has resulted in the attraction of immigrants and capital to our continent and has enabled trade and industry to develop.

The States of Latin America and the United States have met together in pan-American conferences, for the purpose of facilitating inter-State commerce. At these conferences, they first of all discussed, and subsequently attempted to introduce, a uniform system for the regulation of certain questions of great importance concerning transit, such as pan-American railways, the Customs regime, uniformity of consular documents, trade facilities, etc. At the same time, the States of Latin America were of opinion that many questions were not suitable for a general settlement and that they must be left to *inter-partes* agreements, more especially between neighbouring States, since neighbours could make mutual concessions which could not be extended to other States. Lastly, the Latin American States, both in their legislation and in the treaties concluded by them, have always reserved the right to apply their national legislation to transit traffic as regards fiscal and police regulations. The policy described has produced very satisfactory results,—in fact it may be confidently said that the States of America would not be prepared to renounce this policy and would not consent to bind themselves to observe general conventions which were incompatible with it.

I will not occupy your time any longer in attempting to show the merits of a very simple idea which I venture to submit to the Conference, namely that in the Conventions before us we should distinguish between the four classes of questions to which I have referred,—questions which can be settled by general agreement, and those which must be left to continental or regional agreements, and which must be left to be dealt with by each individual State. I am sure that, if certain amendments are introduced into the Draft submitted to this assembly, especially in regard to Article 10, we shall be able to prepare a document to which the majority of States throughout the world may accede.

M. LANKAS (Czecho-Slovakia; speaking in French). — I only venture to take part in the general discussion because I have had the honour to assist, from the very outset, in the preparatory work of the Commission of Enquiry and because I have represented a country which has found it necessary since the Armistice to take a very great interest in transit questions. I feel therefore that I am in a position to lay emphasis on certain articles which are deserving of special attention on your part. With regard to the first qualification which I have referred,—the fact that I took part in all the discussions of the Commission of Enquiry—I am aware, as also are all my colleagues, that the Convention on Freedom of Transit is the result of assiduous effort and of ripe reflection, and that the greater part of the articles are the result of compromises at which it was very difficult to arrive. Any attempt to introduce radical alterations into certain of the articles might endanger the whole Convention,—which, as I recently stated, the Czecho-Slovak Government is prepared to accept in the form in which it appears in the *Green Book* (1).

With regard to the Convention itself, I will for the moment confine myself to touching upon two aspects of it. It appears to me to be at the same time very inoffensive and very important. It is very inoffensive if we compare it with the pre-war situation. We all know that before the war the necessity for freedom of transit was

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(1) *General Conference on Communications and Transit, Preparatory Documents*. This volume, which has a green cover contains the draft texts prepared by the *Commission of Enquiry on Freedom of Communications and Transit* (see note p. 4) and the Report which serves as a preface to them, See p. 278 for the *Draft Convention on Transit*, and p. 283 for the *Report* on the draft.

felt by every State. It was taken into consideration in all commercial treaties; even if such treaties did not always explicitly refer to it, the principle at all events was universally admitted. The railway administrations, far from wishing to deflect transit traffic to another country, made every effort,—as the Swiss Delegate proved in the Commission of Enquiry—to obtain as large an amount of this traffic as they could. The war intervened and completely altered the situation. Unfortunately the methods and customs introduced during the war still persist. We know that the railways of Central Europe are not at the present time encouraging transit traffic. Let us hope that the Convention, which we are now considering, will lead to a return to pre-war conditions.

With regard to the Convention itself, there are three main questions at issue : —  
Am I to have freedom of transit?

For how long am I to have freedom of transit and under what conditions?

What will this freedom of transit cost?

These are the three questions which we had to consider in the Commission of Enquiry.

With regard to the first question, I have already said that I never entertained any doubt but that freedom of transit would be obtained, and that it would be universally granted. In my opinion, however, we must do more than merely obtain and grant formal recognition of the principle of freedom of transit. Article 2 of the Convention explicitly lays down that : *Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit shall facilitate the free transit...* Our task, therefore, is not merely to guarantee freedom of transit, but, what is more, to facilitate it in every possible way.

I would now draw your special attention to the second question : *For how long am I to have freedom of transit and under what conditions?* Will freedom of transit cease just when I need it most,—in other words, in time of war? Mention is made of “emergency”. You will realise that this is one of the most important points in the Convention. The clause dealing with it is, as a matter of fact, the result of a compromise. I think it would be very dangerous to meddle with it.

The last of these three questions concerns the cost of transit. It has been dealt with by our Secretary-General in the *Green Book*. The point is to obtain the best possible terms for transit traffic by selecting the least expensive route. The Commission therefore devoted many lengthy meetings to an endeavour to decide what tariffs was to be applied to transit traffic. I am bound to add that the wording which we selected is again the result of a compromise.

I should like to explain to you our reading of the clause in Article 4 dealing with charges. Mention is made of *reasonable tariffs*. This idea : *common sense* was introduced into the Peace Treaty by the English Delegates. In Czecho-Slovakia we do not use this expression, and therefore we do not readily grasp exactly what it means. We have had some difficulty in explaining its meaning to our fellow-citizens. For this reason, it may perhaps be advisable to explain to you how the Government of the Czecho-Slovak Republic and our railway-administration understand the word *reasonable*, and the standpoint from which they regard the question of tariffs as applied to transit. In our opinion prohibitive tariffs must not be introduced into transit traffic even under the disguise of certain obscure clauses or formulas in the form, for instance, of special tariffs applying only to goods delivered at stations in motor-lorries. It follows therefore that a reasonable tariff is one which opposes no direct or indirect obstacle to transit traffic and applies normal rates, with the possible exception of certain special taxes imposed for the protection of various branches of national industry, and of certain special tariffs which may be fixed below cost price, and the benefit of which the country concerned cannot extend to transit traffic.

This is our interpretation of the provisions of Article 4, and I think that the majority at any rate of the delegations which took part in the work of the Commission of Enquiry regard it in the same light. Would it not, therefore, really be both advisable and reasonable to leave this article unaltered and adopt it as it now stands?

If you will allow me, I would like to define the relationship between our Convention and the Bern Convention. There is a tendency to believe that the Bern Convention is quite sufficient to guarantee freedom of transit, and that this freedom was effectively

guaranteed before the war. I would remind you that, as a matter of fact, the Bern Convention only deals with relations between railways and the public. In addition, the obligation to undertake transport is naturally extended to all States which signed the Convention. This implies, for instance, that I have the right to hand over to the Czecho-Slovak Railway at Prague a consignment of goods, together with a way-bill, for despatch to a station in Roumania, and States situated on the route, if they have adhered to the Bern Convention, are bound to carry out the transport. Another clause, however, of the Bern Convention lays down that this transport obligation is only valid if the normal and ordinary means of transport are sufficient for the purpose. Thus the Bern Convention itself contains a limitation of the transport obligation,—in other words, it establishes a restriction upon freedom of transit. The Bern Convention, therefore, does not suffice to establish freedom of transit. Moreover the application of this Convention, which only deals with transport by rail and with purely technical questions, is subordinated to other legislation, more especially Customs regulations, and Customs regulations often seriously impede freedom of transit.

In conclusion, I venture to express the hope that the Convention on Freedom of Transit will be adopted without any considerable modification, and that the need for such modification will not be felt in the future.

The PRESIDENT (speaking in French). — I beg to thank the Czecho-Slovak Delegate for his interesting statement.

*The meeting adjourned at 1.15 p. m.*

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## EIGHTH MEETING OF THE CONFERENCE

(Monday, March 14th, 1921, at 4 p.m.)

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### GENERAL DISCUSSION (CONTD)

*The meeting opened with M. Hanotaux, President, in the Chair.*

### GENERAL DISCUSSION (Contd)

M. DE WALTER (Hungary; speaking in French). -- On behalf of the Hungarian Government, I beg to thank you for the courteous invitation extended to us to take part in this Conference, which is of very great importance for Hungary, because our railways are destined by their geographical situation to assure international transit between the Serb-Croat-Slovene State, Greece, Bulgaria, Roumania and Turkey on the one hand, and the Western States on the other. The Royal Hungarian Government is convinced of the necessity of assuring, by means of a number of general provisions, reciprocal freedom of transit and the restoration of pre-war international traffic. It is ever ready to lead its co-operation for this purpose. The Royal Hungarian Government has on many occasions given proof that it is actuated by the liberal ideas upon which the proposals submitted to us are based. It has concluded conventions, based on similar principles, with Italy, Poland, Germany and Austria, in regard to railway traffic, and it hopes to be able shortly to conclude an agreement with its neighbours, Roumania, the Serb-Croat-Slovene State and Czecho-Slovakia. In conformity with the preliminary negotiations conducted in Paris in the months of July and October last, the Royal Hungarian Government concluded, in December, a Convention with Roumania and Austria with reference to the running of an express train between Vienna and Bucharest in connection with the Paris—Vienna and Ostend—Vienna trains-de-luxe. This train began running on February 17th last. At the same time the three Governments agreed to re-establish goods traffic as from January 1st last. On account of certain technical difficulties raised by Roumania, the Hungarian Government has not been able to conclude this Convention in its entirety. Apart from the negotiations undertaken by the Government, the Royal Hungarian State Railways have entered into negotiations with the Czecho-Slovak and Serb-Croat-Slovene Railways for the purpose of arranging the technical details connected with the resumption of traffic. So far, however, negotiations on this subject have only led to a partial resumption of traffic; in regard more particularly to the Serb-Croat-Slovene Railways, it has only been possible to agree upon the general policy to be followed in the settlement of outstanding questions.

The dearth of coal preventing the re-establishment of both internal and transit traffic in Hungary, the Hungarian Railways only have coal reserves sufficient for one day, a fact which I have already had the honour of bringing to the notice of the Austrian Reparation Commission at a meeting held in Vienna. Since the Hungarian Railways are obliged to restrict their internal traffic, they cannot provide for transit traffic unless the States despatching the goods place sufficient coal at their disposal to enable them to effect the transport. One possible consequence of this state of affairs would be that the neighbouring States, in their turn, might stipulate that Hungary should provide coal for Hungarian transit traffic, and Hungary, not being able to comply with such a demand, would find her products excluded from international traffic.

I trust, however, that this eventuality will not arise. It follows from what I have already said that freedom of transit is, in practice, inseparable from the question of coal-supply, and that, until this question is settled, any guarantee of freedom of transit is bound to be purely theoretical.

Another very important question is that of rolling-stock, and especially locomotives. Since this question is a subject coming within the scope of the Reparation Commission in Vienna, I shall only touch very briefly upon it.

Finally, I venture to call the attention of this Conference to the fact that the majority of the stations situated on the frontier are not adapted for the development of international traffic, since they are not provided with warehouses, locomotive sheds, or other equipment indispensable for an international transit service. In order to meet the requirements of international transit traffic, it seems essential, in the interests of all, that neighbouring States should, as soon as possible, proceed to select the stations which would best serve as common transit stations, regardless of their situation upon the territory of any particular State.

With regard to the application of transit tariffs, though I have no wish to make any definite suggestion to the Conference, I venture to call your attention to the provisions contained in a treaty concluded between Poland and Hungary.

The Contracting Parties have agreed that no distinction shall be made on the railways between the inhabitants of territories belonging to the Contracting Parties, for the purposes of passenger and goods traffic, with regard to despatch, transport charges, and taxes levied in connection with transport services.

Similarly, and subject to the same conditions, goods consigned to Hungary, or via Hungary to a third State, will not be treated less favourably on Hungarian Railways as regards despatch, transport rates, and taxes levied in connection with transport services, than similar goods of national origin, or similar goods consigned by a third State to a destination in the same direction and on the same line. The same principle will hold good on the railways with regard to goods despatched from Hungary to or via a third State.

This principle will be mutually applied in the case of goods transported across the frontier into the territory of the other party and reforwarded from there by rail. In such cases, no distinction will be made between shipping companies of the two Contracting Parties, especially with regard to transshipment dues.

I am well aware that I am only here as the guest of this assembly; it therefore only remains for me to express to you once more my sincere thanks for having so courteously accorded me a hearing.

M. SERRUYS (France; speaking in French). — I need hardly refer to the spirit in which the French Delegation approaches the question of freedom of transit. If the regime of freedom of transit which France has always applied were not in itself incontestable evidence of the attitude of the French Government, I need only remind you that the first discussion of the question which forms the subject of our debate was undertaken in October, 1919, at the invitation of the French Government. France, however, had no special reason of her own instituting an immediate discussion upon the subject. Provision was made under the terms of the Covenant itself for certain exceptions to the principle of freedom of transit in respect of France, by a clause to the effect that the special requirements of the regions devastated during the war of 1914-1918 should be taken into consideration. France, though she has not renounced her right to benefit by these exceptions, has mainly concerned herself with the effective application of the principle. The Treaties of Peace, moreover, provided France with guarantees regarding transit traffic across the countries of Central Europe, which cannot be modified by any international statute. In view of the fact that she profits by certain exceptions provided for under the terms of the Covenant and by a number of explicit guarantees embodied in the Treaties of Peace, France might well have abstained from taking the initiative in this matter, especially as she is called upon to bear a larger share of the burden of transit traffic than other countries. Certain countries, in fact, owing to their geographical position, derive most of the benefit from transit traffic, while other countries bear the burden. France, situated at the western corner of the continent of Europe, is amongst the latter, and is therefore destined to bear a heavy share of this task, which is certainly made more difficult in

her case owing to the ravages of the war; for this reason she would have nothing to gain by adding to the burden imposed. The action of the French Government, in inviting all the Members of the League, after the signing of the Peace Treaty, to study the best means of assuring freedom of transit, was entirely due to a desire to give evidence of its wholehearted adherence to one of the fundamental principles of the Covenant.

The Draft Convention before you is the direct outcome of the discussion at Paris, and the contents of the *Green Book* are based upon this discussion. A glance at the historical survey contained in the *Green Book* will suffice to show that widely-differing systems were considered at the Conference, and that the opposing theories were brought into comparison in their most extreme form. Upon many points the Draft Convention in the *Green Book* constitutes a compromise between these systems and theories; sometimes, on the other hand, one of the theories under consideration has been adopted in its entirety; again, certain fundamental questions have been completely omitted, thus giving the impression that they were not even considered.

I will cite one example only. There are three methods of giving effect to the obligation undertaken by Members of the League in Article 23 of the Covenant. In the first place, by means of appropriate national legislation on the part of each State; secondly, by means of concerted action in the form of a general recommendation; thirdly, by means of an international convention. The conference of Rome considered these three methods in detail. The *Green Book*, on the other hand, lays the Draft Convention before you without any reference to these various means of applying Article 23, and it does not appear that the question was ever raised as to which would be the preferable method, or whether one or other of these methods should be applied to some particular aspect of the problem as a whole. The conception of a Convention is the only one which has survived. Nevertheless, the scheme as contained in the *Green Book* constitutes a complete and systematic statute for an international regime for transit traffic. It constitutes a code remarkable for its precision and rigidity, and affords a solid groundwork on which to base our labours. I will not cast any reflection upon this Draft Convention by pointing out that these very qualities are to a certain extent calculated to imperil its success; we must however bear in mind that, in the case of a highly-systematized and rigid international statute, which pays no regard to national legislation, nor, above all, to the special conditions prevailing in certain countries, there is a danger that, even if it is unanimously approved, such approval will be purely theoretical. Unanimity was attained at the Hague in 1902, with regard to the unification of legislation relating to bills of exchange and bills to order; but this international Convention has never been ratified. If this Conference concludes an international convention upon transit, under the auspices of the League of Nations, it must be of such a nature that all the signatory States will be able to ratify it. For this purpose, it is both necessary and sufficient that the Convention should be in harmony with the majority of national legislations, that it should, generally speaking, respect their autonomy and, more especially, the contractual liberty of the Signatory Powers; and that, in particular, provision should be made for such exceptions as may be justified either by the economic, topographical and technical conditions prevailing in certain States, or by the stage of development reached by their communications and commerce.

The French Delegation, though thoroughly in favour of the principle of freedom of transit, and also of the widest possible application of this principle, feels bound to recognise that special treatment must be afforded to certain countries,—distant possessions dependent upon Contracting Powers, or isolated territories entrusted to them for administration. The French Delegation for its part considers that adequate account should be taken of the present state of affairs in regard to such territories. This may be done either by enumerating previous agreements which it is advisable to maintain in force, as provided under Article 10, or, in the case of certain countries, by making provision in a special clause for the gradual and progressive application of the provisions of the Convention.

In addition to ensuring that the statute embodying the regime which we are about to introduce will be ratified by all the Contracting Parties, we must, in the preparation of this statute, allow sufficient latitude to render possible the subsequent accession



of other States belonging to any continent. Above all, since the question at issue is the progress of all mankind, the ideas and systems of the Old World must acquire sufficient elasticity to adapt themselves to the ideas and the conditions prevailing in the New World.

Finally, in order to be effective, the Convention which is to form the subject of our discussions must not only be calculated to secure the support of all nations throughout the world; but, further, the support of each must be given singleheartedly and each must be able, either to give an assurance that it will respect the Convention in all circumstances, or make reservations with regard to the circumstances in which the Convention will cease to apply. The French Delegation is keenly desirous that a Convention should be concluded in a thoroughly equitable and loyal spirit; it is confident that a Convention concluded under these conditions would be applied in a similar spirit. The League of Nations provides two distinct guarantees for the attainment of this result,—firstly, a system for the friendly settlement of disputes by means of the Advisory and Technical Committee or some other body duly authorized by the Council of the League and, secondly, a tribunal for judicial settlement, based upon law and equity;—I refer to the International Court of Justice. These general remarks will suffice to explain the amendments which we propose to submit for your consideration. The French Delegation, in presenting these amendments, is consistently following out the idea which led the French Government to summon the Commission of Enquiry at Paris, namely, to facilitate for all States the performance of an international duty, with regard to transit traffic, upon which the peace and prosperity of all nations is very largely dependent.

M. NEUJEAN (Belgium; speaking in French). — As I had the honour to inform you at our first meeting, the Belgian Delegation is extremely anxious for the success of the Draft Convention now before the Conference, and for all possible difficulties or obstacles to be removed from its path. It is in this spirit that the Belgian Delegation approaches the subject of our discussion. We feel compelled to point out, however, that the Draft Convention is incomplete. It accords rights to countries from which transit traffic originates, but affords no corresponding guarantee to countries through which the traffic may pass. This point, to which we attach great importance, was brought up by the Belgian Delegate during the preliminary discussions of the Treaty of Peace, and we still maintain the same view. The Belgian Delegation, however, being extremely anxious to arrive at a reconciliation of views, is prepared to vote in favour of the draft now under discussion, but on the understanding that by so doing it does not in any way modify the interpretation which we have placed upon Article 23e of the Covenant. It appeared to us essential to submit these observations at the outset of the discussion.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French). — Now that we are about to discuss the Draft Convention upon Freedom of Transit, I shall be glad of your indulgence for a few moments in order to explain to you briefly the supreme importance which Persia attaches to this interesting subject. I am afraid that the majority of the delegates at this Conference are still somewhat inclined to associate Persia mainly with its glorious past and with the *Arabian Nights*. Though the time is now far distant when the question was asked: "How is it possible to be a Persian?", it seems to me that, at the present time, the importance of Persia's geographical position, the circumstances which have hitherto delayed her economic development, and the very considerable services which she is called upon and is prepared to render for the welfare and solidarity of mankind, are not adequately understood. I shall not therefore be wasting your time if I attempt to throw a little light upon this part of the world and to brush aside the mirages with which eastern countries are so often enveloped.

I have been instructed to inform you that my Government welcomed with the keenest interest the opening of the Conference for the purpose of considering the important question of communications and transit. My Government is very glad to have been invited to take part in this Conference; for, in its opinion, a united effort

on the part of all nations is the only means of re-establishing normal trade exchanges and at the same time of restoring a healthy circulation, the lack of which was so deeply felt by mankind during the war. Persia has from time immemorial played a very important commercial and economic rôle in the world, not only by reason of her natural wealth, but also and more particularly by reason of her geographical position, which made her the principal trade route for all caravans plying between the West and East, thus bringing the countries of central Asia into contact with those of the Mediterranean and Black Seas. Persia, animated by the remembrance of her past, and freed by the very fact of her admission as a Member of the League of Nations; from the series of treaties, conventions, concessions, acquired rights, etc., which restricted her freedom of action, is firmly resolved to develop her communications and to take part with all the means at her disposal in the economic restoration of the world. She trusts that the obstacles which have hitherto paralysed her efforts and deprived her of the means of free communication with foreign countries will now, under the auspices of the League of Nations, be removed once and for all. The economic development and the exploitation of the natural resources of Persia have been arrested for more than a century by the repressive policy adopted towards her. In consequence of this policy, she has been compelled on several occasions to give up the idea of constructing railways and of granting concessions for the construction of ports, roads, etc., to nationals of other countries; it prevented the transit of foreign goods, destined for Persia, via the Caucasus (the most rapid means of communication), and an attempt was even made to interfere with the postal service between Europe and Persia. The same policy withheld the right of free navigation on the Caspian Sea from Persian vessels, and imposed on Persia a customs tariff which was all to the advantage of the manufactures of one country and to the detriment of the produce of other foreign countries. Persia's position has been seriously affected by the invasion of her territory during the war and she has suffered enormous losses for which she has hitherto received no reparation. It is therefore not surprising that she is now undergoing a grave economic crisis, that she has received a serious setback and lacks modern equipment.

The principal task of the Persian Delegation, therefore, is to follow closely the discussions of the Conference and to keep its Government informed of the resolutions and schemes adopted, in order to enable it to study them and to conform to decisions which will undoubtedly be inspired by the principles of liberty and of equal respect for the rights and interests of all nations. It is also my duty to urge the adoption of a principle which I am glad to say is embodied in the text now before us,—the principle of free transit for goods consigned to Persian markets from all foreign countries by any route, more especially by those routes which are still closed. Our customs legislation, however, makes provisions for free transit, and free navigation upon our most important river, the Karun, has been accorded for the last forty years to all flags. I shall presently have the honour of submitting to the Conference; through the Secretariat, all available figures and data regarding the present condition of our transport system. I shall attach thereto a map of Persia and neighbouring countries, in order to bring out more clearly the peculiar geographical situation of my country,—a situation which encourages the hope that Persia will not be forgotten when the time comes for selecting representatives for the Advisory and Technical Committee.

With regard to the immediate future, Persia, which is rich in liquid fuel and coal seams, is anxious to reconstruct the ancient trade routes utilised for centuries past by trading nations, for the purpose of commerce between Europe and Asia and in order to increase the prosperity of all nations. We Persians whole-heartedly participate in the generous ideas which led to the summoning of the Conference on Communications and Transit; it is our earnest desire that the policy of the open door may be adopted in our economic relations, and that peace may be re-established amongst our neighbours, so that the difficulties now existing may at length disappear.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — Our distinguished President in his memorable speech has shown us with striking clearness just how far we may proceed in our resolutions for the welfare and progress of mankind. Humanly

speaking, the ideal condition of things would undoubtedly be a single and universal State with a single government. Since, however, it is not the task of this Conference to create a *City of the Sun* or a Utopia, we must content ourselves with the relatively humble and incomplete League of Nations, of which we form part. It has sent us hither in order that we may endeavour to find means to render life upon our planet rather more supportable and agreeable, by facilitating communications and trade between the various nations. If in the course of our work we succeed in doing anything; no matter how little, to prevent, or at any rate to hinder, the worst of all evils—war—we may return home satisfied with the results of our work. It is our duty to pursue our endeavours to the utmost limits compatible with the necessity of reconciling our guiding principles,—internationalism and the solidarity of mankind,—with the independence, sovereignty and private interests of the States which desire to form part of this League. This is a very difficult task.

The Kingdom of the Serb-Croat-Slovenes has gone even further in this direction;—more especially Serbia, which has spared no sacrifice to attain the ideals aimed at by mankind. Henceforward dire necessity and bitter experience compel us to confine ourselves within these limits. We are keenly interested in the success of this Conference, and we therefore hope that all the Conventions adopted here will also be ratified by all the Members of the League; failing such ratification they will be inoperative. We regard it as most important to prevent the impression that a number of super-States—to quote the expression used by our distinguished President—exist within this League, an impression which pre-supposes the existence of subordinate States. I am well aware that equality is an ideal which is, humanly speaking, unattainable, and that the scientists who have invented wonderful methods for calculating physical dimensions have not been able to invent any means of calculating moral dimensions—if this were possible, perhaps we should not be assigned to such a humble position amongst the nations. The great nations must have a larger share of influence than the small in the decisions taken by the League of Nations, and also in its organisations. For the attainment of this object, however, there is no necessity to exclude the small nations altogether. It is our duty to approach as nearly as possible to the ideal of equality and to deviate from it as little as possible; above all it is our duty to avoid arousing any suspicion on the part of small nations that they are being treated as inferiors by the great nations. If this suspicion were aroused, the noble institution in which so many glorious hopes are centred could not possibly survive, even amongst those who took part in its creation. Unfortunately, ever since the outset of the Peace Conference at Paris, it has been found impossible to avoid giving this impression, and the small nations have often had to submit to the dictates of the great nations; the latter have decided their fate without even according them the right to take part in such decisions;—I refer to allied nations who have sacrificed all their wealth and shed their blood in a just and holy cause. Some Members of the League of Nations are represented neither upon the Council of the League, nor upon the various committees, and will perhaps never be represented upon the Permanent Communications Committee which we are about to elect. In short, there are nations who have not even a single official on the Secretariat of the League. If the League is to be properly consolidated it is absolutely essential that every Member should be accorded proportionate representation in it, and that, as far as possible, no Member should be excluded from any of its institutions. Any reasons of economy which may be advanced against the adoption of these principles do not constitute a valid objection in the case of an organisation for the promotion of peace amongst nations which have spent hundreds of milliards upon war,—that is to say for the restoration of peace. After passing through so many vicissitudes, it is only natural that we should bear in mind the principle of *nil de nobis sine nobis*. We are firmly resolved to abide henceforward by this principle. This does not mean that our country will not in the future do all in its power to fulfil its duty towards mankind, and that it will not make every sacrifice which mankind can justifiably require of it. Our country feels that it is a part of humanity and that for this very reason it also has duties toward itself. Henceforward, however, it will judge for itself whether the sacrifices required of it are really necessary for the welfare and progress of mankind.

We unhesitatingly accept the principle of freedom of communications, freedom

of transit, free transport by rail and a free regime for sea-ports. The sublime word *Liberty* invariably produces a magical effect upon our country, even when the question at issue is not one of moral or political freedom but of material and economic freedom. Our country will freely accord all these privileges to its neighbours and to all Members of the League, in spite of the fact that, of all countries in the world, ours is the one upon which its neighbours make the greatest call in connection with the transit of their imports and exports, while we ourselves require nothing from them, and also in spite of the fact that the Peace Conference has left us, who possess so many natural harbours, without a single port connecting the interior of our country with the sea by means of a standard-gauge railway. The advantages which we shall in this way afford to our neighbours and other Members of the League of Nations are incomparably greater than those which we shall ourselves derive from the arrangement. Our country, situated as it is between the Danube (which is the principal commercial artery of the Continent of Europe) and the Adriatic, possesses one of the most advantageous situations in the whole world, from a commercial point of view. A large portion of the trade of Czecho-Slovakia, Austria, Hungary, Poland, Roumania and Bulgaria has to pass through our territory. The exports of the great industrial States consigned to these countries must also pass through our territory. We venture to hope that the granting of all these privileges without any equivalent advantages for us will not destroy our budding industry by encouraging the development of a merciless competition.

The League of Nations, moreover, should not forget that, of all countries, ours was most severely tried by the war, and that our communications are in such a condition that all the conventions adopted by this Conference will be useless, as far as we are concerned, unless our means of communication are repaired, and unless those who have destroyed or damaged them carry out the reparation laid down by the Treaties of Peace. I must therefore state that we shall be unable to ratify the Conventions concluded by this Conference unless the Peace Treaties of Versailles, St. Germain, Neuilly and above all that of Trianon, are ratified by all the signatories.

I give notice of a number of amendments—dictated by the preceding considerations—to the various Draft Conventions before us and, in particular, to that upon transit, which we are now considering.

Sir Louis KERSHAW (India). — It may perhaps interest the Conference if I explain very briefly how this Draft Convention is regarded by another Government in Asia. It is perhaps the more desirable that this explanation should be given, since the Commission which prepared the Draft Convention did not contain a representative from India, and the Commission necessarily was not fully acquainted with the special conditions of transit in that country. The main transit routes of India link the sea-ports with a considerable number of countries on its land frontier, with Persia on the west, with Afghanistan, with Russian and Chinese Turkestan, with Nepal, with Thibet, with China and with Siam. In so far as the Draft Convention applies to this trade, I am glad to be able to say that my Government earnestly desires to give effect to the principle of freedom of transit. This, I need hardly point out, would greatly facilitate international traffic with a number of large and growing markets in Asia.

There is, however, one small difficulty, connected with the French and Portuguese settlements in India, which stands in the way of complete acceptance of the Draft Convention. The trade with the French and Portuguese settlements is not of great importance, but if the provisions of the Draft Convention were applied without modification, serious administrative difficulties would be caused, not only to the Government of India, but also to the Governments of France and Portugal. I do not propose now to describe these difficulties, as I hope at a later stage, after consultation with the Delegations of France and Portugal, to be permitted to present for the consideration of the Conference an amendment designed to remove the difficulties. I think that I can go so far as to say that the three Delegations agree in principle that in applying the Convention it is desirable to exclude these small territories. All that is necessary is to devise some form of words to meet the case. I have every confidence

that some formula will be found which will be acceptable to the three Governments concerned and also to the colonies:

M. RESTREPO (Colombia; speaking in French). — As the representative of Colombia I listened with great interest this morning to the remarkable statement which was made by Professor Alvarez, the distinguished representative of Chile, but which referred to the policy of Latin America as a whole. In my capacity as representative of Colombia, I willingly associate myself with him in the statements which he made, in so far as they express the most liberal aspirations of Latin America, and testify to our desire for a unified system of communications and transit, whereby all persons and their goods, all the products of industry, every organisation for mutual aid and every administrative service, will be freed from the restrictions, charges and prohibitions which at present encumber them. I much regret, however, that I cannot associate myself with him in regard to the restrictions and differentiations based upon geographical arguments, which are embodied in certain parts of his statement. Colombia does not desire to have two separate policies for communications and transit,—one governing her relations with American States and the other her relations with Europe, Asia and the rest of the world. She is prepared to go as far as any other country in regard to this matter, thus maintaining the most sacred traditions of her domestic and external legislation, as embodied in acts of world-wide importance, such as the law of April 5th, 1852, establishing complete freedom of navigation for vessels sailing under all foreign flags upon all the rivers and waterways of the country; the concessions granted by the Colombian Government to various United States and French Companies for the construction of the Panama Canal, and the Treaty of 1846 with the United States of America, by which customs duties were abolished in the Isthmus of Panama during the whole period that Colombia actually controlled this territory.

In conclusion I may say that Colombia hopes that the decisions adopted by the Conference will be as comprehensive as possible.

M. HANSEN (Sweden; speaking in French). — In my capacity as representative of a country which, owing to its geographical position and great length, is bound to play an important part in transit traffic, I venture to submit a number of general observations before the Conference proceeds to examine the Draft Convention on Transit.

In the first place allow me to remind you that Sweden, by reason of its length, which exceeds 2,000 kilometres, and also its geographical position, lies between large portions of western and eastern Europe. It is far from Sweden's intention, however, to hamper and place obstacles in the way of communications; on the contrary, she is anxious to develop and facilitate them. Our country has for a considerable period played a very important part in transit traffic, and her importance in this respect has continued to increase during the last few years. As commercial relations with Russia are gradually re-opened, and as the new Baltic States develop their economic resources, the importance of Sweden's position in transit traffic will continue to grow.

Sweden has devoted considerable pains to perfecting her means of locomotion, in order to be in a position to meet the requirements created by recent developments. She is at the moment engaged in an attempt to solve a number of problems of far-reaching importance. We are devoting our efforts at the moment to establishing modern and direct routes between Sweden and England on the one hand, and between Sweden and countries east of the Baltic, on the other. We hope that this improvement in means of transport from west to east and vice versa will also result in the development of our commerce and industry, and will lead to the establishment of closer relations with every part of the civilised world. It is not, however, entirely from this standpoint that Sweden regards the important question now occupying the attention of the Conference. Sweden possesses considerable natural resources, more especially in forests and iron mines. It is to the interest of countries which have not such resources at their disposal that the raw materials essential for their industries should be transported to their destination by the most convenient route. We are therefore prepared to do our utmost to facilitate a comprehensive solution of the important question of free transit.

As the discussion proceeds, I shall venture to make certain comments of a special character and not possessing any general significance, with reference to various articles of the Convention. I felt, however, that it was advisable to indicate by this short statement that Sweden is in full agreement with the generous principles and new ideas which are to be embodied in a concrete form in the Convention on Transit.

M. PERIETZEANO (Roumania; speaking in French). — I crave your permission to make a few brief remarks with reference to the Convention now under consideration, and would, at the outset, request you not to draw any conclusion from what I am about to say to you until you have heard me out. I am afraid that you may accuse me of retrograde tendencies, whereas I simply wish to consider certain points of a scheme which we are all anxious to approve; for this reason I beg you to reserve your judgment.

The first question which arises is: — What exactly is the right of transit and whence is it derived? It is for us to consider whether this right is really sufficiently logical, natural, effective and legitimate to obtain unanimous recognition on the part of an assembly like the present, which includes such a large number of able and distinguished members. I would emphasize the fact that “consideration” does not imply “opposition”. Let us reserve judgment. In the first place I would point out that the right of transit is not the right of way which is provided under the civil code with reference to enclosed property. It is the right of taking the shortest cut through any property whatever in order to shorten the journey, instead of going round by the public road. Such a right does not exist in private law. It is so entirely natural that a person having no exit opening upon the road should be able to compel his neighbours to provide him with one, that this principle is recognised by all the legislative systems of the world,—at any rate by those of civilised peoples. On the other hand, the right of passing through the property of others, because such passage would shorten the journey, and not because there is no other means of reaching the destination, does not exist in private law. Does this imply that nothing which does not exist in private law should not exist in international law? Certainly not. Moreover, there is good ground for considering whether this principle should not be also introduced into private law.

At this point, however, another question arises. It is generally held that individual interest must give way to general interest. This is a remark which is so often made that its meaning is rarely considered, but there is a good deal to be said on the point. There is always a certain amount of conflict between individual and general interest. Would it be true to say that individual interests should be sacrificed in all cases? If this were so, Trotzky and Lenin would be justified, and all rights should be in the hands of the community, the individual retaining none at all.

On the other hand; narrow and rabid individualism, and ultra-egoism which takes no account of general interests,—unreasoning egoism, in fact—are obviously quite as unacceptable as communism. The two extremes meet, as is the case in most problems. If we assume, however, that individual interests should disappear altogether before general interests, and if we are prepared to go as far as rabid communism, the interests of the individual will be completely absorbed in those of the community. A whole series of gradations exists between the one extreme, in which individual are sacrificed to general interests, and the other extreme, in which general are sacrificed to individual interests, and the reconciliation of these two extremes depends upon the skill in these matters of our governments and legislatures. What is the reason of this? Egoism is the cause of disputes, misfortunes, wars and destruction; but it is also the source of competition, progress and civilisation. We must recognise that it has its good points, and I should not care to live in a country in which egoism had completely disappeared, any more than I should care to live in a country in which egoism was supreme. For these reasons, in adjusting the balance between rabid egoism and equally rabid communism, we must consider how far it is desirable to proceed in sacrificing individual to general interests.

What is the end and aim of all this? There are some countries which for centuries have enjoyed the most precious possession which a nation can have,—liberty; they have developed, struggled and suffered, they have sacrificed themselves for the liberation of others. The country which I represent is one of those which has just gained its freedom; though it was already a free kingdom, its liberty was such that I prefer not to

speaking of it. We are therefore a new country,—a country which has only just begun to enjoy liberty in the true sense of the word, and you must not be astonished if, after having suffered for centuries from hypocrisy and deceit, we accord a somewhat timid, possibly even a somewhat hesitating reception to a principle to which you great nations, who have long enjoyed your liberty, are so accustomed that you will perhaps regard us as retrogressive and uncivilised if we retard somewhat the introduction of these liberal principles. We are, nevertheless, fully prepared to accept them, for we feel that they will constitute a real step forward. We too have done our duty and made sacrifices; but these sacrifices would certainly have been in vain without the support and aid of great and generous nations such as England, France, Italy, the United States of America, Japan and all the other countries which took part in the great war from which our liberty has sprung. At this point, I ask myself whether this is really a natural right, whether it is truly just, and whether it is a benefit for us and for all.

When I say “I ask myself”, I must beg you once more to remember that the *sewords* have a twofold meaning. My ideas are based upon my studies in France. I myself am satisfied, but what will be the views of my fellow-countrymen who have remained at home? They have not had the advantage of such study; they have been steeped in lies for fifteen years. I must have an opportunity of convincing them that what I have come here to do is for their good, for they are not so easily convinced as other nations of the merits of these new ideas of liberty, and it will not be easy to persuade them to lay aside the weapon which lies ready to their hand, and with which they are fiercely defending the advantages gained at such a heavy cost. Having said this, I have no wish to arouse your misgivings. On the contrary, I am in a position to say that the Roumanian Government is in favour of freedom of transit. I make this statement expressly, because my recent remarks may perhaps be liable to misconstruction.

But what is transit? It is the right to pass through a country. This right implies equal treatment for all. Brown must not be accorded different treatment from Jones. But need this question of transit become a question of protection and free trade? This is the question to which I require an answer. I have no intention of discussing the problems of protection and free trade, for you are already acquainted with them. In the words of a well-known paradox: “A tunnel is dug,—and passage through it is barred by planting a policeman at the entrance”. But this is only a paradox. When an article is manufactured it is meant for a certain purpose and it is not intended to be used for every conceivable purpose. For instance, a knife is made to cut, but is not made to cut throats. A tunnel is dug for the passage of goods; this does not mean that goods of every possible kind must be allowed to pass through it, and that the mere fact of its existence entails freedom of import and export. Nevertheless, we must deal with this question of protection and free trade. It raises a problem to which reference is made in the Convention on Waterways, and which is also referred to, but to a lesser degree, in the Convention on Railways; no mention at all is made of it in the Convention on Transit, and some explanation is therefore necessary. Must equal treatment be accorded to transit traffic and to imports? Must there be equal treatment for transit traffic, imports and local traffic? Must there be equal treatment for transit traffic, local traffic and exports? These are all widely differing questions. What constitutes equal treatment with reference to transit traffic? Equal treatment implies that the country of transit must remain neutral in that struggle in foreign markets in which other countries are engaged. I must admit that from a strictly legal point of view I do not understand the situation. Why should I remain neutral? At Constantinople, for instance, four or five countries are struggling to obtain the ascendancy. Should these countries despatch their goods via Roumania, and should the latter be compelled to remain neutral, it is obvious that Brown is being accorded advantages as against Jones. It has been said: “If you want to fight, fight fairly with your weapons! Why make use of your geographical position?”

What constitutes the patrimony of an individual? All that nature has bequeathed to him and all that he has himself gained. What constitutes the patrimony of a country? All that nature has given to it, and all that has been added thereto by its own industry. Do not geographical situation, climate, soil, mines, all go to form the natural wealth of a nation? Some nations possess coal mines; we who have none

see them using this coal to warm themselves while other countries have none. Our neighbour Italy has wonderful skies. I have no wish to rob her of them but I would very much like to have similar skies in my own country. How is it that Italy can produce oranges while Roumania cannot do so ?

I shall soon have finished,—I have already taken up too much of your time. The point I wish to make is the following;—In the field of economic competition, why should not a country make use of its geographical position, in the same way as it uses its climatic or topographical characteristics or its mineral wealth,—in other words, all that God has given it ? Why should the price asked for a piece of land situated in Piccadilly Circus be higher than for a piece of land at Land's End ? The reason is the situation of the former. The principle is the same. We are prepared to make sacrifices in an endeavour to attain the lofty and noble ideal which we have set before us. I said just now that Roumania was in favour of freedom of transit. The case is somewhat different, however, with reference to questions affecting the country itself. countries must be prepared to grant each other mutual privileges; in fact these must be a system of give and take. Roumania would have to make a bargain with any Power to which it accorded special advantages. The question of transit through Roumania may well be of interest to some countries and not to others. For instance, what interest can Japan have in transit through Roumania ? In short, transit is an economic weapon; it is a form of protection.

I have no intention of discussing this question at the present time,—such a discussion would lead us too far from the point at issue. We do not require to know whether in the future Roumania will adopt the policy of protection or that of free trade. Some countries, such as Great Britain, have adopted free trade; yet this has not prevented them from attaining the degree of prosperity which they enjoy to-day. On the other hand, France has generally been a protectionist country, but this fact has not interfered with her prosperity.

Roumania is now about to enter the struggle. She has to compete with States formed many centuries ago. It is impossible for her to decide forthwith. Roumania asks you to allow her a short respite in order to enable her to get a grasp of her new position, and to consider whether the benefits which will accrue to the country in general will compensate for the detriment to individual interests. If this applies to equality of treatment for transit traffic, imports and exports, it applies with still greater force in regard to imports, exports, transit and domestic traffic.

Roumania cannot accept the principle of equal treatment for internal traffic and import and export traffic, and for this reason I do not intend to occupy your time with a discussion of the complex problem of the operation of railways, either by the State or by private companies. Both systems have their supporters. It should be stated that, in my country, the railways have been operated by the State for a considerable period. You are aware that in a new country like mine the Government possesses a less degree of moral authority over the electors. It is difficult to combat the efforts of agitators who are always ready to fish in troubled waters. It is obvious that operation by the State is more efficient in countries where the Government is strong. We have, however, adopted this system and we intend to stand by it. We have done so in order to be able to make use of this economic weapon in the development of our country. With this end in view the State makes considerable sacrifices, and often bases its tariffs upon considerations other than the cost of the transport. You must not forget that the spirit of enterprise and individual initiative was non-existent in Roumania fifty or sixty years ago. Since that time our engineers and our principal commercial undertakings have made considerable progress. In 1865 there were only two engineers in Roumania. You will readily understand that, in these circumstances, our country is not in a position to compete with undertakings in England or other countries. Under these conditions it would be quite impossible for Roumania to accept the principle that the rates applied to domestic traffic should also be applied to transit traffic and import and export traffic.

I have yet another reservation to make in respect of equality of treatment for transit traffic. I beg you once more to believe that my reservations have no ulterior motive and are absolutely sincere. I repeat this once again, because I wish you to realise all the scruples which cause Roumania to hesitate before signing any conven-



tion. I emphasise this point for the very reason that Roumania intends to abide by whatever she signs; her intention is not,—as you might be inclined to think,—to create difficulties in order to avoid giving her accession. We are anxious to respect the Convention to the letter, once we have affixed our signature, and this leads us to make certain reservations now, for we realise that we shall be forced to make them eventually. These reservations are connected with the insufficiency of means of transport. One article of the Convention states that account shall be taken of the condition of communications in countries devastated by the war, and also of economic conditions resulting from the war. In this connection, when we come to deal with the articles, I shall ask you to extend somewhat the scope of this provision. There are other considerations to be taken into account, besides the condition to which means of transport have been reduced as a result of the destruction wrought by the war. The demand for means of transport throughout a country must be continually borne in mind, and a country must not be required to neglect its own interests in order to provide for transit traffic. If a country offers such means of transport as it possesses, I fail to see, with the best will in the world, how it is humanly possible to ask it to afford priority to transit traffic over its internal traffic. It is, as a matter of fact, laid down in the Convention that there is no question of granting priority. But I will ask you to go to the opposite extreme, and accord priority to internal traffic over transit traffic, should the necessity arise.

This is particularly essential in Roumania with regard to railway traffic,—I refer to railways because they are more particularly affected by this question. With regard to canals and rivers, everyone uses his own means of transport. On the Danube, those who possess barges can use the river; others cannot. But with regard to railways, the question is quite different. Roumania is now an agricultural country; her products are exported via the mouths of the Danube and the seaport of Constanza. The production of cereals is of course not continuous throughout the year; the harvest takes place at a given period which varies very little throughout the country. The result is such a tremendous accumulation of cereals for export that the whole country is thrown into confusion. For the time being the carrying capacity of the railways,—of all wagons, all means of transport,—is taxed to the utmost. I do not think that the country should be asked to sacrifice her means of transport at such a time, in order to maintain the rights of transit traffic. No doubt you will reply that Roumania cannot be closed to transit traffic for several months of the year, and that it is impossible for export firms, which have continual traffic with the east, to interrupt transit traffic via Roumania for several months, simply because Roumania must transport her cereals. But this is not what I mean; I am suggesting the restriction and not the complete abolition of transit traffic. No matter how congested the Roumanian transit routes may be by the cereal traffic at such a time, transit traffic must be permitted up to a certain point. But naturally this limit will depend upon the shortage of means of transport. To sum up as a result, the opinion of the Roumanian Government is that the right of transit, which is a concession made to general interests at the expense of individual interests, must be confined within certain limits and must not entail the introduction of free trade principles into Roumania, involving the Roumanian market in competition with international markets by allowing the transit of foreign goods across Roumania.

Finally, I would venture to call your attention to a point which concerns not only Roumania but the whole world, and which although it was discussed at another Conference, is certainly bound up with the question of communications; reference must therefore be made to it here. What is known in political economy as circulation of goods involves two distinct operations. Goods may be moved from one place to another without change of ownership, or they may change ownership without moving, or both may happen at the same time. It is obvious that goods cannot be transported from one place to another, sometimes to a considerable distance, and yet always remain under the same ownership. It is equally obvious that goods cannot continue to change hand indefinitely and yet remain in the same place. These two operations are therefore not strictly simultaneous; it does not necessarily follow that whenever goods arrive at a station they will change ownership. Nevertheless, *de facto* circulation, as opposed to circulation *de jure*, could not be effected without a corresponding change of ownership.

We are preparing documents for the despatch of goods from one place to another; the reconstruction of railways and the creation of transit rights are under contemplation, and we are also dealing with the best means for the circulation of goods from place to place. At this point a difficulty arises,—there are factors which impede the passing of goods from the ownership of one person to that of another. If we really wish to take effective steps to ensure the circulation of merchandise from one end of the world to the other, we must also possess the means to enable it to change ownership from one end of the world to the other, I mean a single international currency throughout the world. I was talking just now about the lack of logic involved in digging tunnels and then putting policemen to guard them. The same criticism might be directed against the measures adopted to create transit traffic and the subsequent obstruction of this traffic by means of paper money. At the present time, at the frontiers of all States, officials search all your pockets for money. Goods can never circulate unless they are paid for; even possession of cheques is forbidden. It is curious that at the very time when we are engaged in preparing conventions to facilitate the circulation of goods, very serious hindrances are created by artificial means which prevent the passage of the value of such goods from one country to another,—I refer to the lamentable exchange conditions prevailing at the present time.

This question does not concern us. It was dealt with by another Conference held at Brussels and which, between ourselves, did not accomplish very much. The fact remains that the subject we are dealing with here, and the subject which those other gentlemen were dealing with at Brussels are so closely connected that, unless the first question is settled, our conventions will be useless, because our locomotives will not be able to cross the frontier, and that simply by reason of a piece of paper—the inconvertible bank-note.

In conclusion, I will say a word upon the subject of international waterways. There are special commissions dealing with these questions, more especially with the Danube and the Rhine. I also have a word to say upon another form of transit which is not mentioned at all, because everyone believes that there is no need; nevertheless I intend to refer to it,—I mean transit upon the high seas. No doubt there is no necessity to establish conventions affirming the right of everyone to use the high seas. Allow me to state, however, that we Roumanians cherish the hope that we shall be allowed to pass through the Dardanelles, as freely as, if not more freely than we allow passage through our own country, and we hope, by means of reciprocity, to obtain the right to use the high seas more freely than others are allowed to enter our own country.

With these reservations, the Roumanian Government is prepared to sanction freedom of transit under the conditions laid down. It will no doubt be prepared to go even further in the future, when it has gained more experience, and when its people realise that conditions have changed and that they are no longer being deceived. For allow me to point out that though the Government is well aware that there is no question of any chicanery, the Roumanian nation is more difficult to convince. The Roumanian people are not like us, who have studied history, who are aware that England's word is not the word of Turkey, and that though we have been deceived by the Czars we shall not be deceived by the Republic of France. We know all this, and we have therefore come here of our own free will and are prepared to go even further. But there is reason to fear that our nation, which feels such an urgent need for liberty, will not realise this difference. Once it realises that the Powers which dominate the world to-day will not deceive the peoples, the confidence which it will place in you will be more single-minded and sincere than anything which it could offer to-day, if you were to make an attempt to force it to accede to a convention which it did not feel able to accept of its own free will.

M. Germain ALBAT (Latvia; speaking in French). — The country which I have the honour to represent is a transit State *par excellence*. A very large proportion of goods and travellers proceeding from western to eastern Europe passes through our country,—that is to say, make use of our ports and railways. It is therefore obvious that transit questions will play a great part in the future of our country.

The Latvian Government accepts the principle of freedom of transit, and I am duly

authorised to sign on its behalf the Convention upon Freedom of Transit, which is now before the Conference. There are, however, certain questions of principle to which I must refer. In the first place, there is the question of controlling transit. The scheme submitted by the Commission of Enquiry makes provision for certain legitimate restrictions in regard to rights of general policing, problems of national defence, the protection of public health and customs supervision.

The situation of our country makes it absolutely necessary that transit traffic should be subject to control, and that this control should be strictly enforced; this is especially necessary at the present time and particularly with reference to our eastern frontier. The reasons for this control are well known,—and there is no occasion for me to repeat them.

Finally, I would like to call your special attention to Article 23 e) of the Covenant of the League of Nations, in which special provision is made for areas devastated during the war; this provision applies to Latvia.

M. REINHARDT (Austria; speaking in French). — A glance at the map will suffice to show the nature of Austria's system of communications. Austria also is essentially a transit country *par excellence*. Freedom of transit is therefore of the utmost importance for my country, both from the national and from the international points of view.

The whole policy of the young Republic of Austria is governed by the most liberal principles; it therefore welcomes with profound satisfaction the Convention now under consideration, which is destined to ensure and maintain freedom of transit. Conventions of this kind, however, would be mere scraps of paper if their principles remained in the realms of theory, and if theory were not followed by practice. In order to attain this object, the goodwill of the various countries (which will certainly be forthcoming) is not sufficient, if the technical conditions which are indispensable to transit traffic are lacking. These difficulties, which are due to lack of coal and material and other circumstances, may arise in many countries, and, unfortunately, have already arisen only too often. A satisfactory method of avoiding or at any rate diminishing such difficulties, which often affect certain countries only, would be co-operation between the countries concerned, with a view to the institution of a system of mutual assistance in order to provide a reciprocal guarantee for transport contracts. Is it not desirable that these points should be taken into account in the text of the Convention itself?

If you share my opinion, I will take an opportunity of referring once more to this matter at proper time.

M. Rolf THESLEFF (Finland; speaking in French). — I have asked permission to speak in order to give expression to the great interest which my country takes in the transit question.

In the first place, I wish to state quite frankly that, under present conditions, this question concerns us but little, for the Russian market is of very small importance at the moment. This state of affairs, however, will not continue, and soon the Russian market will inevitably be thrown open to the world. When this time comes, Finland will play a very important part as a transit State. The Gulf of Finland is blocked by ice in winter and, consequently, it is impossible to reach Petrograd by steamer. During several months of the year, other means of communication have to be used, and it is just at this time that a great proportion of the goods will be sent via Finland, because we have two ports which, with the aid of ice-breakers, are accessible all the year round. In addition, our railways are of the same gauge as those of Russia, and transport will therefore be easy and inexpensive. I would add that, in order to facilitate transit traffic, the construction of two free ports and the further development of our railways is under contemplation.

In short, I may say that Finland is very desirous that a definite solution should be attained in regard to the question of transit.

M. HOLCK-COLDING (Denmark; speaking in French). — As representative of Denmark, allow me to say that Denmark rejoices that the principles embodied in the Draft Convention upon Freedom of Transit will in future be applied by the League

of Nations. Denmark has always keenly felt that it was its duty to maintain and develop these principles.

Denmark, by reason of its numerous railways and ferry boat-services, which form a special section of the railway system, and also by reason of its geographical position, has played a great part in transit traffic for more than forty years, and still continues to do so. Our merchant service, which for many centuries was of very great importance, is still being actively developed, and also constitutes an important factor in our transit system. Mention should also be made of the considerable number of ports which are accessible even in winter. In view of our past experience, we have studied the draft Convention with the keenest interest, and are in a position to accept the principles embodied therein.

I take this opportunity of associating myself with the words of M. Lankas, who this morning reminded the Conference that the draft schemes before us are the result of lengthy and mature consideration on the part of the Commission of Enquiry, which included amongst its members a number of distinguished and well-known personalities. In adopting its decisions, the Commission was obviously actuated by thoroughly sound and convincing reasons. It appears to me that still more sound and convincing reasons must be forthcoming before we venture to introduce amendments affecting the principles adopted by the Commission of Enquiry.

M. Charles-Robert PUSTA (Esthonia; speaking in French). — When the roll of countries adhering to the principles of freedom of transit is called, I must answer : present. I can readily associate myself with my colleagues of Finland and Latvia in their remarks, because my country, owing to its geographical position, is called upon to be not merely a passive link, but an active intermediary in trade between Russia and the western world and also because we took care to insert in the Treaty of Peace with Russia a provision regarding freedom of transit, which we intend to maintain and extend in our future relations with that country, no matter what form its government may assume. The Treaty was drafted with this end in view. The Convention before us, therefore, introduced no new feature into our relations with other countries. Esthonia is open to the trade of western countries and to that of Russia. Esthonia, situated as it is upon the Gulf of Finland, can make full use of her excellent ports, which are, I imagine, well-known throughout the world, and the important part which she will play in the future, when her relations with Russia are restored to their normal condition, can easily be foreseen. I therefore fully concur in what has been said by my colleagues of Finland and Latvia, and declare that Esthonia has come hither for the purpose of signing the Convention upon Transit.

M. Lubin BOCHKOFF (Bulgaria; speaking in French). — We are now about to discuss the Convention which constitutes the basis of all the other Conventions contained in the agenda of this Conference. My Government fully appreciates the supreme importance of the Convention on Freedom of Transit and is extremely anxious that this Convention should become part of international law : it therefore instructs me to state that Bulgaria is, in principle, prepared to accept the Draft Convention contained in the *Green Book*. I am also instructed to express the hope that, before the Conference terminates, this Convention will have been endowed with real vitality,— and, signed by all the delegates present, will be ready for ratification by the respective Governments.

In so far as Bulgaria is concerned, I may say that I am empowered to sign all the Conventions contained in the agenda of the Conference.

The PRESIDENT. — I beg to thank the speakers who have stated the views of the respective delegations in the course of the general discussion. Their statements will undoubtedly facilitate our future deliberations. I declare the general discussion at an end.

*The meeting adjourned at 7.25 p.m.*

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**PART II**

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**DISCUSSION IN PLENARY COMMITTEE**

(M. LOUDON IN THE CHAIR)

OF THE

**DRAFT CONVENTION**

ON

**FREEDOM OF TRANSIT**

# FIRST MEETING OF THE PLENARY COMMITTEE

(Tuesday, March 15th, 1921, at 11 a.m.)

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## CHAIRMAN'S OPENING ADDRESS — DISCUSSION OF ARTICLE 1 APPOINTMENT OF RAPPORTEUR FOR TRANSIT QUESTION

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### OPENING ADDRESS BY M. LOUDON, CHAIRMAN

The CHAIRMAN (speaking in French).—Gentlemen, before we proceed to our task, you must permit me to say how highly I appreciate the honour of being called upon to preside over your deliberations,—an honour for which I am indebted to the Council of the League of Nations, and for which I am profoundly grateful. It is an honour which I appreciate the more highly because, although, by holding the office of Vice-President, I become in a measure international, I am nevertheless a good patriot, and I am pleased and flattered that it should be my country,—a country which is pre-eminently one of transit, which, in my person, is called upon to direct your labours, and especially the meetings dealing with the question of transit.

The questions with which we are about to deal were discussed at great length in Paris during the numerous meetings held at the Ministry of Public Works; these meetings were devoted to preparatory work in connection with the Conventions now before us. I may say that the very voices and gestures, as well as the minds, or more than one of the delegates here present, are familiar to me. I will add that the work in Paris was carried on in an excellent spirit: in spite of many differences of opinion, we were finally successful in reaching agreement. The Commission was permeated by a real spirit of conciliation. Gentlemen, I am going to ask you to take part in our discussions here in the same conciliatory spirit. I am the first to recognise the merits of a certain degree of national egoism,—it is a perfectly natural and healthy sentiment. But let us not forget that in our work here we must make some sacrifices in this respect, and that we must not lose sight of the common weal. Let us therefore bring to our discussions a certain element of idealism, without which nothing great or enduring can be accomplished in this world. I appeal to you most earnestly to help me in this task, and I have no doubt that before long our efforts will be crowned with success. As I often had occasion to observe in Paris, the first essentials to this end are conciseness and brevity, and in order to set an example, I will refrain from any further remarks. Now,—to work!

I should have liked to propose that we begin at the beginning by discussing the Preamble, but unfortunately some of the amendments to it have not yet been circulated,—in fact, I am sorry to say that several have not yet even been handed in. In this connection I might add that it is absolutely necessary for all amendments to be handed in at least 24 hours before the meeting. I hope that all are agreed upon this point.

As the text of all the amendments to the Preamble is not yet available, I suggest that we proceed to the discussion of Article 1.

M. TSANG-OU (China; speaking in French).—Many delegations are submitting amendments to every article, but the Chinese Delegation must necessarily conform to

In omitting from this Convention any mention of *mails and postal parcels*, we are not in any way excluding them from the application of the principle of freedom of transit, since this principle is laid down in another convention barely two months old.

M. LANKAS (Czecho-Slovakia; speaking in French).—May I make a few remarks as to the reason which led a majority of the Commission of Enquiry to decide upon the retention of the words *mails and postal parcels*.

In the first place, these words appear in all the Peace Treaties which dealing with freedom of transit, and, as certain of their provisions will undoubtedly be replaced sooner or later by those of our general Convention on Freedom of Transit, the retention in our draft of the words *mails and postal parcels* appeared to us not at all superfluous, but, on the contrary, perfectly harmless, and, in fact, essential.

In the second place, it is important to make a clear distinction between freedom of postal transit and freedom of transit as understood in our Convention. The postal conventions deal with quite another subject from that of the present Convention, and have a different bearing. They recognise, as a matter of course, that freedom of transit will be accorded to goods the transit of which is undertaken by the postal services. Here, however, quite a different question is involved. It should be clearly understood that the countries concerned will facilitate postal transport, and that railway companies, for instance, will place no difficulties in the way of the transmission by the postal services of mails and postal parcels.

I think that these are two different points of view, and for the two reasons which I have just given, I must insist on the retention of the words *mails and postal parcels* in our Draft Convention.

M. HOLCK-COLDING (Denmark; speaking in French).—The Danish Delegation is unable to support the proposal of the French Delegation to delete the words *mails and postal parcels*. We consider that the view of the Provisional Committee as expressed in the *Green Book*, is the right one. In the first place, we do not consider that any difficulty is likely to arise from the inclusion of the words in the general Convention and in the postal conventions. In the second place, as the present Convention is a general convention dealing with transit by rail and waterway, it should surely be applied to every class of traffic without exception, and should become a basis for any subsequent conventions dealing with communications. I think that in the event of any difficulty it would be an advantage to have the possibility of recourse to the provisions of this Convention. I would like to add that I am not quite clear as to the meaning of the words *transshipment by the usual methods*, which are to be found in the British amendment, and I hope that the Drafting Committee will find a better wording.

M. BONNET (France; speaking in French).—I would like first of all to draw your attention to the fact that the Universal Postal Union is not a new institution; it has been in existence for 40 years. Three months ago, after nine weeks of continuous work at Madrid, we drew up some six or seven bulky conventions, the terms of which made detailed provision for the transit of every class of postal traffic, whether letters, parcels or packets. I pointed out just now, and I repeat once more, that in this matter the intervention of the Barcelona Conference would either be productive of no useful result, or else would prove a positive danger,—the former if we simply copied the articles as drafted at Madrid, and the latter if we introduced any amendment. The Czecho-Slovak Delegate furnished me with a powerful argument when he maintained the desirability of mentioning *mails and postal parcels* in this Convention, because the Draft Convention on Transit provides a jurisdiction to deal with disputes arising out of postal transit. The Madrid Convention provided for such a jurisdiction,—a system of arbitration, in fact a complete procedure for dealing with disputes with regard to postal traffic between the various postal administrations. The danger is obvious. Which procedure should be used in cases of this nature,—that established by the Barcelona Conference or that provided for in the Madrid Convention?

The above considerations have led the French Delegation to insist upon the deletion of the words *mails and postal parcels*.

M. LANKAS (Czecho-Slovakia; speaking in French).—May I point out that the French Delegate is mistaken in thinking that I spoke of a jurisdiction. The Madrid Convention, as I understand it, defined the relations between the postal administrations of the different States, whilst our Convention, as the Danish Delegate justly observed, is of a fundamental character, and is to serve as a basis for all other conventions, including postal ones, which deal with freedom of transit. Our Convention has a much wider scope. It has to deal not only with the relations between postal administrations throughout the world, but also with international relations between States themselves, as distinct from their postal administrations.

M. HOLCK-COLDING (Denmark; speaking in French).—May I draw the French Delegate's attention to the fact that our Convention relates, not only to the present but,—like the postal conventions,—to the future, and therefore, in our opinion, both can exist side by side without giving rise to any sort of difficulty.

M. ALBAT (Latvia; speaking in French).—I consider that the words *mails and postal parcels* are neither unnecessary nor dangerous, and should therefore be retained. If the terms of the Madrid Convention should be identical with those of the Barcelona Convention, so much the better for the former instrument, which will then enjoy the authority of the sanctions at the disposal of the League of Nations. Moreover, I see no danger of conflict arising between the two conventions simply by reason of the fact that this Convention speaks of *mails and postal parcels*.

There is a second reason. Certain countries which are represented at the Barcelona Conference did not take part in the Madrid Conference. If the words in question are deleted, these countries will not enjoy the benefit of freedom of postal transit. I request therefore that the words *mails and postal parcels* be retained.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French).—Having taken a personal part in the drawing up of the Madrid Postal Convention, and having signed it on behalf of the Persian Government, I can testify to the clear and convincing nature of the arguments used by the French Delegate, and I am entirely in agreement with his views on the subject. As to the contention that the postal conventions deal with relations between the postal administrations only, I would reply that there would appear to be a misunderstanding on this point. These conventions were drawn up between States, and are subject to ratification by their Parliaments.

Sir Hubert LLEWELLYN SMITH (Great Britain).—After having listened to this interesting discussion, which clearly shows that there are arguments both for and against the French proposal, the British Delegation maintains the view which it has held from the beginning, and which is expressed in the report appended to the Draft Conventions, namely, that it is better for the present Convention not to deal with *mails and postal parcels*. We therefore support the French proposal. We think that, on the whole, the danger of having two overlapping jurisdictions is greater than any advantage which might be gained by the presence of the words in this Convention.

M. BIGNAMI (Italy; speaking in French).—On behalf of the Italian Delegation, I would like to add to the arguments which have been advanced in favour of deleting the words *mails and postal parcels*, that, as regards transport by air, for instance, another convention of general application will doubtless be concluded, and will be cited as authoritative on such matters. For the moment, however, it is perfectly natural that reference should be made to the conventions concluded at Madrid,—between States and not between postal administrations,—on all questions relating to postal traffic.

M. REINHARDT (Austria; speaking in French).—I do not know whether the intention is to establish a convention alone, or whether provision will be made for an annex to form an integral part of the Convention, and containing interpretations of certain of its provisions. On the latter assumption, we could perhaps reconcile the two principles which have just been propounded, by deleting in the actual text any



rence to *mails and postal parcels*, whilst making it clear in the annex that they are to be treated in the same way as any other articles mentioned in the Convention.

M. VON TREUTLER (Germany; speaking in French).—In the opinion of the German Government, the words *mails and postal parcels* should be omitted in view of the fact that this matter has been settled by the Madrid Postal Convention. I cannot therefore do better than second the French proposal.

M. LELY (Netherlands; speaking in French).—Whilst sharing the views of the British Delegation, we do not arrive at the same conclusion. We have still to discuss Article 10, which specially mentions certain conventions, and we have already had proposals to omit this article. Should the Conference retain it, however, we consider that a clause might be added governing the treatment of *mails and postal parcels*, and taking precedence of any other provisions on the subject. For the moment we are in favour of shelving the question until the time comes to discuss Article 10.

M. PERIETZEANO (Roumania; speaking in French).—The retention of the words *mails and postal parcels* appears to me dangerous, not only for the reasons given by the French Delegation, but also for another reason. Generally speaking, the Post Office is a State monopoly in every country: The Madrid Convention, though of course concluded through the medium of the Governments of the various States, is a convention between postal administrations for the regulation of their international postal traffic, and the mention in this Convention of the transit of postal matter through a country, over and above what is laid down in the Madrid Convention, might be construed into authority for one State to despatch sacks of postal matter in transit through another State, as if they were goods, without reference to the postal authorities of that State. An anomalous situation would result and support would be lent to the view that the despatch of postal traffic by the postal authorities of the country of origin was carried on under the Madrid Convention, whilst postal traffic conveyed through a country by rail or water would be governed by the provisions of the Transit Convention. The legislation establishing a state monopoly of the postal services in every country only applies to internal postal traffic; it might therefore be urged that a State can forward its postal matter *viâ* another country without reference to the postal authorities of that country. This would constitute an innovation, for a sackful of letters is not merchandise unless you expressly desire that it should be so regarded. But in such circumstances, the railways would be compelled to accept for transit sealed post office vans, which would pass through the country without any intimation being given to the postal administration of the country.

We should therefore not only reserve this matter for discussion at a later date, but should accompany this postponement by an explanation. As I have shown, there is a marked difference between the two views, and if the Conference agrees, I propose to leave the words, with an explanation either to the effect that the State monopoly in postal traffic extends to transit, or that postal matter may not be sent in transit except through the medium of the postal authorities of the country, or else that mails and postal parcels are to be considered as goods in transit. The choice is left to the Conference, but I will add that, in my own view, postal matter cannot be sent in transit through a country where the Post Office is a State monopoly, without the concurrence of the postal authorities, and a State cannot be asked to allow the passage of a post-office van without the knowledge and co-operation of the local authorities, in accordance with the Madrid Convention. We must come to a decision on this point before deciding to alter or omit the phrase in question.

M. LANKAS (Czecho-Slovakia; speaking in French).—In reply to the Roumanian Delegate's remarks, may I remind the Conference that the question of monopolies is treated differently in different countries, and that the exclusion of monopolised goods from railway transport is dealt with in the Berne Convention.

The CHAIRMAN (speaking in French).—I suggest that we simply vote on the Franco-Italian proposal to delete the words *mails and postal parcels*.

*The amendment is carried by 22 votes to 11.*

M. VALLOTTON (Switzerland; speaking in French).—It is important to avoid any misunderstanding on this point, and I repeat my proposal to insert in the Protocol some form of declaration by the Conference to the effect that the vote merely indicates a wish not to infringe upon the Madrid agreements, and that the principle of freedom of transit for mails and postal parcels remains unimpaired.

M. SIBILLE (France; speaking in French).—The difficulty is lessened by the fact that in the Madrid Convention we find the following provision : *Freedom of transit is guaranteed*. We can therefore surely all agree to the insertion in the Final Protocol of the clause advocated by the Swiss Delegation.

The CHAIRMAN (speaking in French).—Is everyone agreed ?

Before proceeding with the discussion, I would return to the British amendments. The British Delegation have proposed three drafting amendments to Article 1, and ask that these may be referred forthwith to the Drafting Committee. They are as follows :

*Article 1 (Title)*. Omit the words *freedom of* and insert the words *traffic in*.

*Line 2* : after the word *transit*, add the words *by rail or waterway*.

At the end of the Article add : *Such traffic is hereafter termed traffic in transit*.

M. SERRUYS (France; speaking in French).—May I point out that it sometimes happens that amendments which have the appearance of being merely drafting amendments touch upon the substance of the question, and a delegation submitting amendments which it considers to be only points of form sometimes finds that in the course of the discussion these amendments, apparently of form, have assumed the character of amendments of substance. It seems to me somewhat dangerous to draw a distinction between drafting amendments and amendments of substance. In my opinion every detail of a text under discussion, down to the very smallest, should be thoroughly examined, because the full force of even a slight modification in form is not invariably appreciated by the mover of the amendment. I cannot therefore agree that a cut-and-dried distinction should be made between drafting amendments and amendments of substance.

The CHAIRMAN (speaking in French).—Would you have any objection to their being dealt with by the Drafting Committee ?

M. SERRUYS (France; speaking in French).—None; but with regard to these drafting amendments, I should like any explanations which seem to be called for to be given to the Conference.

The CHAIRMAN (speaking in French).—That can be done just as well later on.

The drafting amendments to Article I proposed by the British Delegation are referred to the Drafting Committee.

We will now proceed with the discussion of Article 1. The Italian Delegation has presented an amendment.

M. BIGNAMI (Italy; speaking in French).—The amendment is as follows : —

Line 3, after the word *territories* add the words *or the territorial waters*.

I would point out that in the last paragraph of Article 2 are to be found the words : *it being understood that the crossing of territorial waters is free*.

We are not clear as to the precise meaning of the word *free*, and of the distinction here made between *territory* and *territorial waters*. Questions relating to the latter are governed by international law, and it is obvious that, by proclaiming the principle of freedom of transit across territorial waters, we should be modifying existing international law on the subject. There are, for instance, considerations of national defence

which may on occasion prevent States from according free transit across their territorial waters (for instance, the proximity of a fortified point), and there are yet other reasons. Would it not be well to insert in Article 1, immediately after the word *territories*, the words *or territorial waters*? We regard it as essential that, throughout the text of this Convention, the principle of freedom of transit should be affirmed, not only across the territories of the various States but—subject of course to similar reservations,—across their territorial waters.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Is this not an occasion for the appointment of a small Sub-Committee to consider the precise wording of the reference to territorial waters in this Convention. It is clear that the text cannot stand exactly as it is drafted, if for no other reason than that the English version is quite different from the French. I understand from M. Serruys that the French version is not quite consistent with French law, and therefore some change will have to be made. This is a very difficult and delicate question, but perhaps the Italian Delegate will agree to the appointment of a small Committee to decide as to the form of words which should be used in order—and this is what we all wish—to guarantee that a country, having once accorded free transit across its territories, should not then make that concession inoperative by refusing free transit across the territorial waters giving access to those territories. If a Committee could be appointed, it would save a great deal of the time of this Conference, which would otherwise be taken up in discussing questions upon which it might be difficult to obtain agreement. I refer to the question of the drafting and precise wording of the reference in this Convention to transit across territorial waters. The question whether this should go in Article 1 or in Article 2, or be an entirely separate article, would be left open.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation accepts the proposal made by the British Delegation.

M. SERRUYS (France; speaking in French). — I should like to state that I am in complete agreement with the British Delegation on this question. The French text of Article 2 does not in any way correspond to the English, and further, the concluding sentence in the French version is far from fulfilling the aim we have in view. We must therefore try to find some other way of expressing this doctrine upon which we are all agreed, and Article 2 seems to be the place for it. The essential thing is to ensure that the principle of freedom of transit, which forms the basis of our Convention, is not rendered inoperative by conditions imposed upon transit across territorial waters.

Accordingly, it will suffice to say that transit across territorial waters will be subject to the same conditions as *land transit*, or words to that effect. This phrase could be embodied in Article 2, but I personally see no objection to adopting the Italian proposal in connection with Article 1. If, however, the question cannot be thus easily settled, I shall be happy to agree to the formation of a Sub-Committee for the further study of a problem which has already been discussed at great length at the Paris Conference.

M. ALVAREZ (Chile; speaking in French). — I should like to supplement the remarks of the French Delegate by suggesting that the words *territorial waters* should be replaced by the words *land and sea territories*. I shall no doubt have an opportunity in the Sub-Committee of explaining my reasons for this alteration.

The CHAIRMAN (speaking in French). — I propose the appointment of a Sub-Committee to consider this difficult question, to be composed as follows: Sir Hubert Llewellyn Smith, MM. Serruys, Bignami, Alvarez and Scassi.

Has any one any objection?

*The motion was carried.* (1)

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(1) See p. 49 for the continuation of the discussion on the subject of territorial waters.

M. SERRUYS (France; speaking in French). — May I suggest a slight modification which I think would be appropriate here? The words of the text are : *Persons, goods, vessels, coaching and goods stock*. I propose that special reference be made to baggage which is habitually dealt with on a different footing from goods, and which, moreover, in certain countries, is legally distinguishable from ordinary goods traffic. By “goods” are usually indicated articles of commercial traffic, whilst “baggage” is private property. In certain countries in particular the conditions of insurance are different for baggage and for goods, and I therefore propose that the enumeration should be as follows : —  
*Persons, baggage and goods, vessels, coaching and goods stock.*

The CHAIRMAN (speaking in French). — We will now vote upon the motion of the French Delegation. Are we all agreed?

*The motion was carried.*

The wording will accordingly be as follows : —

*Persons, baggage and goods, vessels, coaching and goods stock.....*

We will now consider the amendment put forward by the Indian Delegation.

Sir Louis KERSHAW (India). — The amendment which stands in my name is the following : — in Article 1 substitute for the words *with or without..... breaking bulk, or change in the means of transport* the words : *with or without..... breaking bulk due to change in the means of transport*.

The object of this amendment is to express what is understood to be the intention of the article. When goods are in transit across a country it is reasonable, indeed necessary, if there is to be real freedom of transit, that breaking of bulk should be allowed,—for example, it is necessary, if goods are transferred from a broad-gauge to a narrow-gauge railway, or from railway to barge or to a vessel, or vice versa. But I understand that nothing more than that was contemplated. If goods are carried in transit across a country in the same receptacle or container, whether it be a railway-truck or the hold of a ship, it was never, I think, intended that breaking of bulk should be permitted. I am confirmed in this view by a passage in the Report of the Commission, which will be found at the top of page 41. The passage (1) is : *Goods in transit are debarred from any process of manufacture, packing or unpacking en route*. I think that the intention is perfectly clear : when there is a change in the means of conveyance, breaking bulk should be permitted, but when the goods go through without any change in the means of conveyance, no breaking of bulk should be permitted. It is indeed conceivable that permission to break bulk in such a case would interfere with the right of a State to take reasonable precautions for its own protection.

M. POLITIS (Greece; speaking in French). — I do not agree with the Delegate for India; I consider that his amendment completely changes the meaning of the article.

There may be a breaking of bulk without any change in the means of transport,—for instance, when there is a change in the width of the gauge, or when for some reason goods are unloaded from a wagon and subsequently reloaded into the same wagon—on the occasion of a customs examination, for example, or in connection with measures for national defence. The intention is to make sure that the wagon contains the actual good declared. In such cases there is a breaking of bulk, but no change in the means of transport. Consequently, I am in favour of leaving the *Green Book* text untouched : *with or without... breaking bulk or change in the means of transport*. These are two entirely different processes.

M. KROLLER (Netherlands; speaking in French). — We are not clear as to the meaning of the amendment. Supposing a vessel comes from India with a 6,000 ton cargo of rice. If she unloads half of it at Marseilles and continues her voyage to England with the rest of it, is she to be considered as in transit as regards the 3,000 tons with which she continues her voyage?

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(1) See p. 287.

Sir Louis KERSHAW (India). — I understand the question to be whether a steamer in transit, which unloads a portion of her cargo at a port, is breaking bulk or not. I certainly think this is an instance of breaking bulk. The discharge of a portion of the cargo constitutes a change in the means of conveyance.

M. KROLLER (Netherlands). — The cargo which goes on to England does not change its means of transport, but remains in the same steamer.

Sir Louis KERSHAW (India). — But the portion which is discharged has been discharged for the purpose of being placed in another means of conveyance, whether another steamer or a railway wagon.

M. KROLLER (Netherlands). — I should like to ask the Indian Delegate whether he really understands the amendment in this way. To a certain extent it is a question of wording. May I repeat the question? A steamer comes from India with 6,000 tons of rice. 3,000 tons of that rice are sold at Marseilles and unloaded there; the steamer goes on to England with the other 3,000 tons. Are the 3,000 tons of rice remaining on board at Marseilles to be considered as in transit or not? In our opinion they are in transit.

The CHAIRMAN (speaking in French). — Will Sir Louis Kershaw reply to the Dutch Delegate's question?

Sir Louis KERSHAW (India). — I confess that when I moved this amendment I had in mind transit across country, and I worded the amendment in this way in order to cover change in the means of conveyance,—for example, from one gauge to another gauge, or from a railway wagon to a river or sea vessel. In the case before us, I should think that if a portion of the cargo were discharged at Marseilles,—say for Switzerland,—this would constitute a breaking of bulk, and would be permitted under my amendment, because it would be *with or without... breaking bulk due to change in the means of transport*. The breaking of bulk has been brought about because the rice must be put on rail at Marseilles for transport to Switzerland, and is therefore permitted. I understood the question was with regard to rice, and I am talking of rice that is subject to a change in the means of transport. If I may say so, it is rather pedantic to make a distinction between the rice taken to Switzerland and the rice taken to England. I do not know whether I am sufficiently explicit, but I do not see how the rice destined for England comes into the Convention at all. It is not in transit anywhere; it makes a direct voyage from India to England.

M. SERRUYS (France; speaking in French). — The debate has become rather confused, and the reason for the amendment has been lost sight of. I understood the motive to be the desire of the Indian Delegate to prevent the process breaking bulk being used as a pretext for re-packing. He wishes to avoid the possibility of any change in the packing or any handling of goods, and to prevent any breaking of bulk for this purpose. From the explanations which he has given me I understand this to be the intention of Sir Louis Kershaw's amendment. He wishes to limit the occasions when breaking bulk is permissible, and in my opinion his amendment has gone too far in that direction by no longer allowing the breaking of bulk except in the case of transshipment; whereas the Greek delegate has quite rightly observed that breaking of bulk may be necessitated in the course of operations other than transshipment.

If we wish to give satisfaction to Sir Louis Kershaw we must keep the text as it is, and say : *with or without transshipment... breaking bulk*, whilst making quite clear in the Minutes that breaking bulk may only be carried out during transit when it is not accompanied by re-packing. For this purpose it appears to me that it would be sufficient to make a reference to the point in the Minutes, without making any change in the text. If we set ourselves to foresee every possible contingency we shall end in drawing up, not a convention, but an international commercial code. I will therefore request the Delegate for India to withdraw his amendment, and to be content

with the reference in the Minutes which I have just outlined. I think everyone will agree upon this point.

Sir Louis KERSHAW (India). — I am satisfied with that proposal. I only wished to draw attention to the point.

The CHAIRMAN (speaking in French). — I propose to call upon Sir Louis Kershaw and M. Serruys to prepare a draft for insertion in the Minutes. (1)

We now come to another amendment which has been submitted by the Serb-Croat-Slovene Delegation, but has not been distributed. I will ask M. Avramovitch to explain this amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the amendment to Article 1 submitted by my Delegation, it is proposed to omit in line 1 the word *vessels* and to add after the word *transport* in line 2, the words : *except vessels of all kinds and rafts*. The discussion which has just taken place serves to show that the confusion has arisen through failure to distinguish between two different things,—the vessel and its cargo.

I will take this opportunity of explaining briefly the proposal we are submitting to the Conference. We are dealing with a draft convention on freedom of transit, not on freedom of navigation. Do not imagine that my Delegation is opposed to the principle of freedom of navigation, but this is not the place to discuss it. We must wait until the discussion of the Convention on the Régime of Navigable Waterways. All I ask is that a convention should not be concluded which, for all our good intentions, would be calculated to give rise to misunderstandings and difficulties in the future. For this reason we wish to omit from this article the word *vessels*. There is no question of freedom of transit in connection with vessels,—they are in a sense an actual obstacle to transit. In the first place, every vessel flies its own flag, implying that it is under the protection of the country whose flag it flies. In the next place, it has its own captain, and, thirdly, it can go anywhere, whereas the means of locomotion which are used for transit traffic,—wagons, coaches and locomotives do not possess these three characteristics. They have no flag and no commander of their own, and their movements are restricted to definitive rail routes. All this is a proof that the present is not the time to discuss the question. If any delegations are desirous of further explanations on the subject, we shall be only too glad to give them.

The CHAIRMAN (speaking in French). — You will realise the difficulty of the present procedure. Unless amendments are put in twenty-four hours in advance, they cannot possibly be discussed.

M. PERIETZEANO (Roumania; speaking in French). — I should like to make some remarks not only on the amendment, but also on the article itself. It is difficult to avoid the handing in of amendments during the discussion. In every parliament it is the custom to propose amendments at the last minute.

The CHAIRMAN (speaking in French). — It is desirable to avoid it. I will ask you to make every effort to submit your amendments to the Officers of the Conference in advance.

M. PERIETZEANO (Roumania; speaking in French). — I have one to propose which I will put in this afternoon.

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(1) In consequence of this decision, and after an exchange of views between M. Serruys (France) and Sir Louis Kershaw (India), the following text was proposed for insertion in the definitive verbatim report : —

“ Though in certain circumstances, breaking bulk may be necessary and must be permitted, as for instance in the event of a change in the mode of transport, it is to be understood that the Governments shall be entitled to take reasonable precautions to verify that the goods are genuinely in transit, and that no substitution or change in their characteristics takes place : to grant authority to break bulk on any of these grounds would be contrary to the intention of the article.

“ The packing or unpacking of goods in transit is forbidden. ”

**APPOINTMENT OF RAPPORTEUR FOR THE QUESTION  
OF FREEDOM OF TRANSIT**

The CHAIRMAN (speaking in French). — I propose that M. Neujean of the Belgian Delegation be forthwith appointed Rapporteur for the question of freedom of transit.

Does everyone agree?

I declare M. Neujean to be appointed. We will appoint an assistant rapporteur at a later date.

*The meeting adjourned at 1.10 p.m.*

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## SECOND MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 16th, 1924, at 11 a.m.)

DISCUSSION OF ARTICLE 1 (CONTD.) — REPORT OF SUB-COMMITTEE ON TERRITORIAL WATERS  
APPOINTMENT OF ASSISTANT-RAPPORTEUR FOR TRANSIT QUESTION

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### DISCUSSION OF ARTICLE 1 (contd.)

M. PERIETZEANO (Roumania; speaking in French). — In order to throw light on the question, we must, before proceeding any further, ask ourselves what the expression *transit* implies. It means the act of passing from one frontier of a country to another without breaking the journey. There is a yet more important question,—to what do we wish to afford this privilege? Entirely different classes of traffic are included in the same paragraph of the article,—a fact which renders it extremely difficult to settle the conditions to be applied to transit traffic. Indeed, the wording of Article 1 is rather amusing. It begins with a reference to the transit of *persons, goods, mails and postal parcels, vessels, coaching and goods stock or other means of transport*. According to this wording it would seem that persons are a means of transport. It is from this sentence that confusion arises, for the transit of goods, persons and vessels is one thing, and the transit of means of transport is another. Means of transport are not transported,—they circulate, which is not at all the same thing. A vessel transporting goods by canal is undoubtedly engaged in transit traffic, if it crosses a frontier, but the vessel itself does not constitute goods in transit,—it is a means of transport. Goods are accompanied by a way-bill—a bill of lading,—whereas a vessel has nothing of the kind. We cannot therefore lay down the same conditions for the transit of persons, vessels and goods, as for the circulation of the means of transport required to convey the former through a country. There is a very marked difference between the two, for whereas transit facilities must be provided for goods, persons and baggage upon all railways and waterways, the same does not apply to the transit of means of transport. In all countries there are routes upon which the various means of transport are subject to monopolies. For instance, railways may be either directly operated by the State or else conceded to private companies. Means of transport can only belong to the company which operates them. There can therefore be no question of allowing the transit of means of transport via routes upon which means of transport are provided by the State or by companies holding concessions. Means of transport may only proceed via routes on which there exists a public service which has monopolised the means of transport. Goods, on the other hand, must be allowed to pass by any route or method of transport. With regard to the affirmation, at the end of the article, that transit is free, the result, if this provision were carried out to the letter, would be that trains with their locomotives could make use of any railway lines, since mention is made of the transit of vessels and *other means of transport*.

A vessel is equivalent to a train with its locomotive, its motive power, its wagons and goods; in fact, a railway train with its engine, wagons and goods may be compared with a vessel. If a vessel, together with its motive-power and cargo, may not pass through a canal, neither may a train make use of a railway. For this reason a distinction must be drawn between a régime of transit applicable to goods, persons and



baggage, and to the régime of transit applicable to means of transport used to convey these goods; due care must be exercised in the Convention to avoid granting to means of transport privileges which should only be granted to persons, baggage and goods. In other words, the same régime cannot be applied to both.

In the case of goods, transit implies a through journey without breaking bulk. This is quite intelligible as regards goods, but are not persons to be allowed to leave their carriages during transit? The question is absurd. This confusion between persons and goods arises from the fact that an attempt has been made to deal with entirely different things under the same heading; for the transit of persons, baggage and goods is an entirely different thing from the circulation of means of transport upon routes where the means of transport are monopolised by the State or by the companies to which concessions have been granted.

There results the following definition, which is of considerable importance; transit constitutes that part of the complete journey which has both its starting-point and its place of destination outside the country of transit. How am I to know whether goods are in transit unless I know their complete journey? Goods in transit are always accompanied by a way-bill; when they arrive at a frontier for the purpose of proceeding direct to any other frontier, they constitute goods in transit. I suggest therefore that for persons, goods and baggage, the details of the whole journey, as specified in the way-bill, should serve as an indication. You will notice that I am now talking absurdities too, for I have included persons, baggage and goods in the same category. But there are no way-bills for persons, and it has never occurred to anyone to ask whether persons entering a country by one frontier intend to leave by another. Persons have always been allowed to travel freely in all countries; no-one has ever troubled to enquire whether travellers were in transit or not. It is therefore superfluous to state once more in the Convention that the transit of persons is free. When persons enter a country there is no need to make certain that they will leave it again. With goods and baggage, however, it is quite different. This is where the customs laws come into play. The tariff applied may vary according to whether the goods are in transit or destined for some point in the interior of the country. When the goods enter the country, therefore, we must know whether they are in transit or whether they are to remain in the country. It is true that there is a way-bill, but anyone who has had anything to do with the operation of railways will know that the consignor is entitled to make subsequent alterations in the way-bill. What we have to consider is the way-bill at the time when payment for the transport contract falls due, for it would be impossible to trace for several months goods which had in the first place been imported. As you can imagine, such a proceeding would lead to serious complications in the keeping of the accounts. I repeat once more that the way-bill, at the time of payment of the transport contract, is the only means which will enable us to judge whether the transaction which has taken place is one of transit, importation or internal transport. But the system of way-bills is only applied to goods and baggage. Vessels are subject to an entirely different régime. I have proposed an amendment to the effect that after the words *of the whole journey* there should be added the words *as provided by the way-bill which serves as a basis for payment of the transport contract*. I have also suggested the deletion of the words *mails and postal parcels* (this has been agreed upon), and of the words *vessels, coaching and goods stock, or other means of transport*. With regard to these means of transport, there is no longer occasion to concern ourselves with a way-bill. There is no necessity for a vessel to be in transit according to the exact definition of the term. For instance, a vessel may enter a country by canal and may leave it by the same route. This is exactly the same as if it crossed the country; it is still a transit operation.

The question of the circulation of means of transport on national routes is entirely different from the question of goods.

M. LANKAS (Czecho-Slovakia; speaking in French). — In the first place, may I make a general observation? I am under the impression that many delegates have not had time to devote much study to the *Green Book*, nor to the provisions of the various Treaties of Peace. I think that if they were well acquainted with them, their criticisms would not be so severe. However that may be, I believe that a much more

detailed explanation of the preliminary work of the Commission should be given, and that by this means these gentlemen, who did not all take part in the Conference at Paris, would realise what an exhaustive study we made of all these questions. Some of them would learn that subjects which are dealt with here as though they were new, were referred to time and again during that Conference. All the questions raised to-day have already been considered there. As I think I said at the time of the general discussion, the greater part of the provisions which we adopted are the result of compromises, which were reached after all manner of formulas had been tried. For instance, with regard to the definition of transit, allow me to inform the Roumanian Delegate that all the remarks which he has made to-day (and I must admit that they were most apt and interesting) were made time and again during the Paris Conference. The question of the method to be adopted in defining transit was raised during that Conference. We racked our brains to decide whether we could approach transit from the point of view of Customs, and whether a definition of goods arrived at in this way would suffice.

With regard to the question of way-bills, it is very difficult to ascertain at first sight whether any particular despatch is a transit or an import transaction, for, as you know, many goods are re-forwarded *en route* and are sometimes warehoused. I do not, however, wish to labour this point; what I wish to impress upon you is that the formula submitted to you is really the outcome of prolonged effort. For my part, I am certain that it would be difficult to find a better one,—unfortunately we must be content with a somewhat indefinite and general formula. Moreover, the *Green Book* states that the Advisory Committee will define the exact scope of this definition for us.

With regard to the other questions, I think we shall have time to return to them at a subsequent meeting.

M. SERRUYS (France; speaking in French). — I will deal very briefly with the Roumanian proposal, which in certain respects is extremely interesting. It comprises four points. The first is a general question of drafting. It is proposed to draw a distinction between persons, baggage and goods on the one hand, and means of transport on the other. This method of expressing the idea has its merits, but personally I shall not support it, because it would entail a re-casting of all the articles of the Convention. I do not think that the Roumanian Delegation will press the second point,—the question of territorial waters; it has been submitted to a committee. The third point is connected with way-bills. Way-bills would be an interesting means of distinguishing between different classes of traffic, and determining the points of departure and destination. That, however, would raise the important question of through bills of lading,—the very form of the proposal implies that there would always be a through bill of lading. This is a matter which I would not wish to see introduced in this article, because it is too wide a problem and should not be dealt with here. Lastly, there is a fourth point which also seems to me of considerable importance: *the same shall apply to vessels, coaching and goods stock, and other means of transport, over routes which are not a monopoly of the State or of a company holding a concession.* Allow me to say that I do not understand this reservation. Is the idea that transit via routes on which a State or private monopoly exists to be forbidden?

M. PERIETZEANO (Roumania; speaking in French). — Yes.

M. SERRUYS (France; speaking in French). — Then in certain States where a monopoly of railway exists, passage will be forbidden.

M. PERIETZANO (Roumania; speaking in French). — Passage will be forbidden to what?

M. SERRUYS (France; speaking in French). — To wagons.

M. PERIETZEANO (Roumania; speaking in French). — No, to means of transport. A wagon which is not unloaded at the frontier is totally different from goods in transit. With your consent we will make the distinction.

M. SERRUYS (France; speaking in French). — Then that is an entirely different theory from the one which served as a basis for the drawing up of the Convention. There will be transshipment at every frontier.

M. PERIETZEANO (Roumania; speaking in French). — No, no.

M. SERRUYS (France; speaking in French). — In that case I should be very glad if the Roumanian Delegate would explain the last point of his proposal. At present I do not understand it.

M. PERIETZEANO (Roumania; speaking in French). — That which distinguishes means of transport from wagons passing the frontier without transshipment is the ownership of the wagon. Is a loaded wagon which passes through a country in transit, itself to be regarded as in transit? No, it is lent by a railway in one country to a railway in another. At whose disposal is it? At the disposal of the railway over whose lines it is running. If it breaks down *en route*, the goods are transhipped and the wagon is used for some other purpose. In a word, we cannot say that the wagon is in transit. It is lent by one railway to another railway in order to avoid transshipment. It does not belong to the consignor, it belongs to the company undertaking the transport, and it is on this understanding that it is repaired and lubricated. I therefore maintain that means of transport, whether vehicles or other forms of conveyance, are not in transit on routes over which such means of transport are subject to a monopoly,—in other words, upon railways which are State monopolies or by concessionary companies, nor yet upon canals where traction and means of circulation are similar monopolies.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I wish to convey a respectful but serious warning to the Conference regarding the grave danger of destroying the value of this Convention by overloading this clause with minute and detailed reservations. We have before us several proposals,—including one submitted at the close of our last meeting by the Serbian Delegate, in regard to which no decision has been taken, and we now have several further suggestions made by the Roumanian Delegate.

Let me first take the one which relates to the through way-bill. The French representative has already shown the danger of that proposal, but if you turn to Article 5, you will find the following express provision :—

Each Contracting Party shall have the right to take reasonable precautions to ensure that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit and to avoid danger to the safety of any route or means of communication.

That, surely, is sufficient to cover any reasonable precaution. We could not possibly admit in the body of the Convention a statement to the effect that way-bills are essential and shall be regarded as conclusive.

I will now take the other amendment. I need not speak about territorial waters, as that has already been discussed and settled by a sub-committee, subject to confirmation by the Conference. We have, however, a proposal by the Serbian Delegation to omit the word *vessels* altogether, and we now have a proposal from the Roumanian Delegate to omit the words *mails and postal parcels, vessels, coaching and goods stock, or other means of transport* in regard to routes which are the subject of a monopoly. I cannot help thinking that the proposal of M. Avramovitch was intended to meet cases in which part only of the through journey is carried out by water; he was afraid that this definition would entitle a vessel flying a foreign flag to penetrate at the end of its voyage into a purely national river, in order there to discharge its cargo and re-load it subsequently on to a railway, the cargo being thus in transit, whereas the vessel would not be in transit at any stage of its voyage. If this is what he has in mind,

I feel that we can reassure him, since that is not at all the effect of this clause. The vessel itself has to be in transit in order to enjoy the benefits of this clause. That is the opinion given to us by legal experts, and if there is any doubt whatever about it, I have no objection to the point being made quite clear in the Minutes.

With regard to the Roumanian proposal, which, in spite of the explanation just given, I still fail to understand, I will say that, if this proposal is intended to place any additional obstacles in the way of the free circulation of railway wagons for the purpose of through journeys, then I am against it : and if that is not its object, then it is useless. I beg the Conference not to adopt any of these amendments.

M. POLITIS (Greece; speaking in French). — I wish to support the view maintained by my colleague M. Lankas.

I was under the impression that the object of the General Conference was to approve the work done by the Commission,—serious work in which nearly all the delegations took part. I could readily understand that delegations which had not followed the debates, and had not perhaps thoroughly understood the decisions taken, might require an explanation; but I cannot understand why those who took part in our work should come here to demolish it.

M. SERRUYS (France; speaking in French). — I venture to interpose in the discussion once more because, in regard to the fourth point to which I referred when summarising the extremely interesting statement of our Roumanian colleague, there is a minor distinction to be drawn,—one upon which my British colleague has already touched.

The Roumanian Delegate states that wagons and other means of transport used for the purpose of transit through a country are not themselves in transit. This distinction is a perfectly natural one; but with regard to the regulations applicable to wagons used in transit traffic, special conventions are in force between various countries. This is not the object of our Convention. We can meet the wishes of the Roumanian Delegate by drafting Article 2 as follows :—

Subject to... shall facilitate the international transit of persons, baggage, goods, including vessels, coaching and goods stock or other means of transport in transit...

This would imply that the wagons in questions are destined for delivery outside the country. If the text is thus amended, the views of our Roumanian colleague will be met. For us to reach agreement, we had only to explain his meaning.

I should now like to devote a few words to the general observation made by both M. Lankas and M. Politis.. We all appreciate the excellent work done by the Commission which met in Paris. Nevertheless I do not think that we have come here simply to ratify that work, but rather to deal with it in second reading. If this were not so it would not be worth while to hold this Conference. Those who are responsible for this work are also to a certain extent responsible for the assembling of the Conference, which is being held in order to lay before us, with the necessary degree of deference to our judgment, and also before themselves (and this implies an equally necessary reservation), a work which we are engaged in studying in second reading, before it leaves the hand of experts to be submitted to the various Governments. I was anxious to make this statement as being calculated to prevent interruptions and to simplify our discussions to a considerable extent.

The CHAIRMAN (speaking in French). — I beg to thank M. Serruys for his remarks, which are entirely endorsed by the Officers of the Conference.

M. TSANG-OU (China; speaking in French). — The Conference appears to have reached agreement with regard to the text of Article 1 of the Draft Convention. I should like, however, to submit for the verdict of the assembly certain explanations which appear to me to be necessary on the subject of the words *breaking bulk, transshipment, vessels, coaching and goods stock and other means of transport*. If the Conference

agrees with me, I shall move that the article be referred to the Drafting Committee for completion.

Supposing we agree that the process of dividing consignments in transit, either by transshipment, breaking bulk or warehousing, be considered as a part of the total journey, it is to be clearly understood that this division of consignments is to be governed by the time-limits and conditions laid down by the Customs, and that the goods will not undergo any transformation and will not be unpacked during their stay.

The word *vessel* (*bateau*) shall be understood to apply to trading vessels, and shall exclude war-craft and vessels used for police purposes or for the transport of war material.

The words *coaching and goods stock* (*voitures*) shall be understood to mean empty vehicles; international agreements with regard to the transit of passengers and goods by rail continue to apply to loaded coaching and goods stock.

The words *other means of transport* are difficult to understand. The report attached to the Convention must be read (1) in order to understand that rafts and haulage are included under this head. On this point, my proposal is as follows:—

In regard to the breaking up of consignments the words *other means of transport* shall not prejudice towage services or other means of traction or transport of which a *de jure* or *de facto* monopoly is held by the State or by a private company.

This implies that a tug or a raft employed in transit traffic must not take part in any operations involving breaking bulk, in order that competition with local ship-owners may be prevented.

In my opinion the word *frontier* as used in this connection should mean the political frontier of a State and those of its adjacent dependencies which are under the same Customs régime, because the word *frontier*, in the sense in which it is used here, applies more especially to Customs.

Should the Conference be of my opinion, I will move that these proposals be submitted to the Drafting Committee for inclusion in the Report serving as commentary. False interpretations will thus be avoided.

The CHAIRMAN (speaking in French). — The British and French Delegates have mutually agreed not to insist upon the insertion of the words *in transit* after the words *means of transport* in line 2 of Article 1. They have, however, agreed that a short reference to the point should be inserted in the Minutes.

Does anyone else wish to speak on the Roumanian amendment? We will now proceed to take a vote upon this amendment.

M. WINIARSKI (Poland; speaking in French). — It appears to me that the Roumanian proposal is connected with the Serbian proposal. At all events the taking of a vote upon the Roumanian proposal will prejudice the decision to be taken on the amendment submitted by the Serbian Delegation.

M. PERIETZEANO (Roumania; speaking in French). — I move that it be submitted to a drafting committee.

The CHAIRMAN (speaking in French). — It would be better to take a separate vote on each of these amendments.

I will now take a vote on the amendment submitted by the Roumanian Delegation

*The amendment was rejected.*

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is prepared to accept the Draft Convention upon Freedom of Transit subject to certain amendments which, in its opinion, are indispensable.

With regard to Article 1 the Delegation would like to make certain reservations,

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(1) See p. 287.

not so much in respect with the text of the article itself as in connection with the commentary which appears on page 41 of the Secretary General's noteworthy report (1).

The words *other means of transport* refer in particular to rafts, tugs with or without tow, and any means of transport by rail or waterway which may be involved in the future.

This question of towage is important, not only from the standpoint of economic interests but also from the legal and technical standpoints. The real object of conventions on transit is the transit of persons, baggage and goods. No difficulty was experienced in including coaching and goods stock, because such vehicles can be regarded as packing in a movable form; the same, however, does not apply, for instance to the transit of locomotives, unless they are regarded as merchandise. The reason is that a locomotive does not merely make use of railways in a passive manner like a wagon,—a locomotive plays a certain part in the operation of the railway system, it is a cog in the machinery of transport. Railways can only be responsible for the work of their own agents. Though vessels which have no means of propulsion may be compared with wagons,—in other words, with packing, the same is not true in regard to tugs. The Polish Delegation is not for the moment considering towage upon international rivers. Its reservation applies only to towage upon national waterways, to which, as a rule, damage or obstruction is more easily caused. The Polish Delegation ventures to call the attention of the Conference to the fact that this question is dealt with in a provision which does not seem to agree entirely with the commentary upon Article 1 of the Draft Convention on Transit. At the end of the Preamble of the Draft Convention on the International Régime of Navigable Waterways we find the following sentence :

This paragraph does not preclude the establishment of public services for towage or other forms of traction carried on as monopolies.

Perhaps it would be better not to deal with questions of this kind in several separate international agreements. The same consideration led the Polish Delegation to support the French and Italian amendments to the effect that mails and postal parcels should be excluded from the present text, on the ground that they form the subject of another convention. The same considerations lead me to state that, in the opinion of the Polish Delegation, river towage should be dealt with solely in the Convention on Navigable Waterways. We propose that anything that could possibly influence the question of river towage should be eliminated from Article 1. This is all that I intended to say to you yesterday, but since then the action of the Serb-Croat-Slovene Delegate has introduced a new factor. His proposal goes further and has a more general scope; should the Conference adopt it, the desires of the Polish Delegation will also be fully satisfied. The question at issue is one of method,—to eliminate from this Convention on Transit anything which might in any way prejudice questions forming the subject of other conventions.

M. NEUJEAN (Belgium; speaking in French). — The Belgian Delegation is opposed in principle to the deletion of any part of the enumeration contained in Article 1, more especially in regard to towage. We are of opinion, however, that if this question of towage is to be discussed, this should not be done in connection with Article 1, but with Article 5, which contains a series of restrictions.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yesterday I ventured to point out the difference between means of transport and goods or persons transported. Under Article 23 (e) of the Covenant, provision must be made to secure and maintain equitable treatment for commerce; but in providing this guarantee care must be taken to prevent confusion between the means of transport and the goods transported, that is, the cargo and the passengers. We said yesterday that we were prepared to admit the principle of freedom of navigation, but that from the point of view of transit we should like this question to be excluded from the Conven-

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(1) See p. 287.

tion. The Polish Delegate adopted the same attitude in regard to towage as did the Roumanian Delegate. We should prefer this question not to be submitted to a vote at this stage, and we would request that it should be passed to a sub-committee, where it could be subjected to a more detailed examination, and any misunderstandings could be removed. It has never been our wish to abolish freedom of navigation, but we desired that the question should be submitted to a sub-committee specially appointed to adjust this matter.

I had intended to make a few general remarks. I shall, however, content myself with a reference to what the French Delegate, M. Serruys, said just now in regard to the points under discussion.

M. SERRUYS.(France; speaking in French). — We have before us two distinct proposals which we must be careful not to confuse. The first is the Serbian proposal, the object of which is to cut out of the article anything referring to navigation. I do not understand this; it would be a death-blow to the Convention on Transit if navigation were excluded, since it is in some respects an integral part, and is absolutely necessary from a geographical standpoint in any convention on transit. I therefore move that this proposal should not be considered, and that the question should not be submitted to a sub-committee. With regard to the Polish proposal, it expresses perfectly justifiable scruples on the part of that Delegation,—scruples which are also felt by the Roumanian Delegation. The point of this proposal is to prevent confusion between means of transport used in the transit of merchandise, and means of transport used in deliveries abroad and which must therefore obviously be regarded as goods. Tugs conveying trains of vessels, and railway locomotives, may not benefit by the advantages set apart for this class of transport. This, however, is not a question which we can deal with in drawing up this article, because if we try to insert all these points in the text, we shall be forced to call a third conference, and no one, I imagine, desires that. Some means, therefore, must be found to satisfy the scruples of the Polish Delegation, and I suggest that this should be done by means of a final protocole explaining the exact purport of the article in question on this point. This important question will thus be in its proper place.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I entirely agree with the point of view of M. Serruys, with one small exception, namely, that I am not sure that the Final Protocol is the best place for expressing any reservation that may ultimately be adopted on the subject of towage. I am inclined to think that the suggestion of the Belgian Minister to discuss the matter in connection with Article 5, might be preferable; but whatever happens, I am sure Article 1 is not the place for it. I think the question of the treatment of towage is a somewhat complex one. Would it not be worth while to appoint a small sub-committee specially to deal with this subject? I agree with the Polish Delegate that it is a matter requiring consideration, but we must be sure of what we are doing, because, in the Preamble of the Draft Convention on Waterways, to which reference has been made in this discussion, you will observe that it is assumed that the countries which reserve the right of towage will be under an obligation to provide towage services. A situation might arise in which transit would become entirely illusory, because no one would be allowed to have his own tugs, nor would any other tugs be supplied.

The matter obviously needs a little consideration, and I suggest that a sub-committee might possibly be appointed to deal with it. I feel it would serve no useful purpose, however, to refer the Serbian amendment to a sub-committee, because if navigation is to be excluded from the Convention many of us would feel that we had come here in vain.

The CHAIRMAN (speaking in French). — The Officers of the Conference consider that the Committee has received sufficient explanation with regard to the Serbian amendment, but if the Committee expresses a desire to this effect it shall be referred to a sub-committee.

M. SERRUYS (France; speaking in French). — It is not the Serbian amendment which should be submitted to a sub-committee, but the Polish proposal in so far as it covers the same ground as the Serbian proposal.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — My proposal and that of the Polish Delegation are inseparable, as also that of the Roumanian Delegation, for they all deal with the same subject,—the question of towage on international and national rivers. I therefore ask the meeting not to separate these proposals, but to group them together and refer them to the Sub-Committee.

The CHAIRMAN (speaking in French). — I will now put to the vote the motion to refer the Polish amendment upon towage to a sub-committee.

*The motion was carried, 31 voting for.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — I presume that in any case the results arrived at by this Sub-Committee will not be inserted in Article 1. The question as to the place in which this text is to be inserted will be dealt with at a later stage.

The CHAIRMAN (speaking in French). — We will now put to the vote the motion to refer the Serbian proposal to the same Sub-Committee.

*The motion was lost.*

The CHAIRMAN (speaking in French). — We will now take a vote on the Serbian amendment itself.

*The amendment was rejected.*

#### REPORT OF THE SUB-COMMITTEE ON TERRITORIAL WATERS

The CHAIRMAN (speaking in French). — The question of territorial waters was submitted to a Sub-Committee (1). M. Serruys will now inform us of the result.

M. SERRUYS (France; speaking in French). — The Report which I have the honour to submit on behalf of the Sub-Committee was adopted unanimously. The question is one of great importance. Steps had to be taken to prevent the object of the Convention on Freedom of Transit being defeated by means of regulations for transit across territorial waters. To this end a clause had to be inserted somewhere in the Convention to the effect that the Contracting Parties authorise transit across territorial waters for the purposes of the Convention. We encountered very considerable difficulties. The definition of the term "territorial waters" by different States varies according to whether the question at issue relates to customs, police, fisheries, etc... On this point it cannot be said that there exists any international law, since the only principle recognised by international law is that this is a purely national question. It is impossible for us to undertake here the study of one of the most complex and difficult questions of international law. We can only recommend as a solution something in the nature of a compromise. In arriving at this solution we have been very careful to respect the autonomy and responsibilities of each individual State, and I hope that many of the adjustments in the terms of the Convention will be carried out in the same spirit. We have, moreover, obtained a collective undertaking on the part of the various States to refrain from impeding transit traffic. The formula which was unanimously adopted is as follows :—

In order to ensure the application of the provisions of this Article (this clause is to be added as an Annex to Article 2), the High Contracting Parties will allow transit in accordance with the customary conditions and reserves across their territorial waters.

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(1) See p. 36.



The CHAIRMAN (speaking in French). — I am very grateful to the Rapporteur for his statement.

M. DUCHENE (France; speaking in French). — The French Delegation would like to refer for a moment to the remarks made by the Chinese Delegate a short time ago with regard to the meaning of certain words, such as *breaking bulk*, *transhipment*, *wagons* and *vessels*. The French Delegation has noted these remarks, and considers that they are of value, as constituting very useful definitions of the phrases mentioned by the Chinese Delegate. We consider, however, that these remarks should simply be inserted in the general report to be issued after the work of the Conference has been completed and in the special commentary on the Transit Convention.

The CHAIRMAN (speaking in French). — We will now vote upon the text submitted by the Sub-Committee on transit across territorial waters. The Sub-Committee proposes that the words *it being understood that the crossing of territorial waters is free*, at the end of the first sentence of Article 2, should be deleted, and that the following should be inserted as a second paragraph: *in order to ensure the application of the provisions of this Article, the High Contracting Parties will allow transit in accordance with the customary conditions and reserves across their territorial waters.*

*The amendment was adopted, 35 voting for.*

M. SERRUYS (France; speaking in French). — From the point of view of phraseology I should like the words *Partie contractante transitaire* in the French text to be altered; there are objections to this phrase. We might simply translate the phrase used in the English text, which is much better, — *the Power across whose territory the transit takes place*. I think, moreover, that for the sake of clearness we should insert *with or without breaking bulk or change in the means of transport*.

In conclusion, I should like to mention a very small detail. I am very sorry to occupy the Committee's time with such insignificant points, but this one will have a certain degree of importance when the time comes for preparing a definite text. I should like to substitute *persons, luggage, goods* for *persons, goods, luggage*, because luggage accompanies persons.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I understand that although we are now going to vote upon this article, it is still subject to amendment by the Drafting Committee.

The CHAIRMAN (speaking in French). — I will now read Article 1:—

ARTICLE 1. — *Definition of Freedom of Transit.* — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport shall be deemed to be in transit across the territories under the sovereignty or authority of one of the Contracting States, when the passage across the said territories, with or without transhipment, warehousing, breaking bulk or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting State across whose territory the transit takes place.

When we have voted upon this Article, it will be referred to the Drafting Committee for any necessary rectification.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I should like to know whether the Article upon which we are about to vote applies equally to railways, waterways and roads. I had submitted an amendment to exclude roads from its application.

The CHAIRMAN (speaking in French). — We can discuss this question in connection with Article 2. At the present moment we are only dealing with the definition of transit.

M. BIGNAMI (Italy; speaking in French). — I should like to point out that one delegation desired a change in the heading of this article. It does not deal with freedom of transit but merely with transit.

The CHAIRMAN (speaking in French). — That is quite true.

Are there any further remarks?

We will now vote on Article 1, which I have just read.

*Article 1 was adopted, 32 voting for.*

The CHAIRMAN (speaking in French).— We have now to appoint the members of the Sub-Committee on towage (1).

The Officers of the Conference propose the appointment of the following :

MM. NEUJEAN (Belgium);

General MANCE (Great Britain);

MM. CHARGUERAUD (France);

MEDINA (Uruguay);

SEELIGER (Germany);

WINIARSKI (Poland);

TSANG-OU (China);

Admiral PRIKA (Serb-Croat-Slovene State).

Has anyone any objection?

The Sub-Committee will be composed as above (2).

#### APPOINTMENT OF ASSISTANT-RAPPORTEUR FOR TRANSIT QUESTION

The CHAIRMAN (speaking in French). — I call upon M. Tsang-Ou, the Chinese Delegate.

M. TSANG-OU (China; speaking in French). — Subject to the approval of the meeting, I propose, as assistant-rapporteur for the question of transit, General Mance of the British Delegation, who has devoted more labour than any of us to the Transit Convention; he may be said to be the father of it.

The CHAIRMAN (speaking in French). — I am very glad to see that the Chinese Delegate's proposal is adopted by acclamation.

*The meeting adjourned at 1.5 p.m.*

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(1) See p. 49.

(2) See p. 125 for the Report of this Sub-Committee.

# THIRD MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 16th, 1921, at 4.30 p.m.)

## DISCUSSION OF THE PREAMBLE AND ARTICLES 2, 3 AND 4

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### DISCUSSION OF PREAMBLE

The CHAIRMAN (speaking in French). — M. Freire d'Andrade, the Portuguese Delegate, wishes to rise to a point of order.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I wish to request that the Preamble should be discussed before we discuss Article 2. The Preamble indicates the scope of the obligations which I am about to assume, and I should like to have a thorough grasp of its contents before voting upon the articles.

Only this morning I raised the question whether the Draft Convention also applied to transit by road; this point is not at all clear in the various articles before us, and has been the subject of at least three amendments, from the British, Chilian and Portuguese Delegations respectively. I should like the meeting to believe that what I say is not due to any desire on the part of Portugal to create difficulties with regard to transit through her territory,—on the contrary, our legislation is extremely favourable to transit traffic. For instance, the rates charged in the port of Lisbon for transit traffic are only half those charged for national imports. Our neighbours in East Africa are aware of the sacrifices which we have made in order to facilitate their transit traffic. The roads through Angola and Mozambique have been open to them for some years. We would wish, however, to adopt this course wherever it may be possible and necessary without giving a formal undertaking *in respect of roads*, such as is embodied in the Preamble.

Another very important point is that of the Italian amendment (1), in which the Portuguese Delegation entirely concurs; on this point I am also stating the views of our Venezuelan colleague, who, owing to indisposition, has been unable for some days to take part in our meetings. This amendment is to the effect that, according to Article 23 of the Covenant, any resolution which we may adopt cannot affect the terms of existing or future international conventions. The Conference must come to some decision with regard to this amendment to the Preamble, in order that we may know whether this very necessary restriction is to be adopted. For this reason, Mr. Chairman, I beg you to grant my request.

THE CHAIRMAN (speaking in French). — The proposal of the Portuguese Delegation is exactly what I had intended to suggest to you myself,—that is to say, that we should begin with a discussion of the Preamble.

As has just been stated, several amendments to the Preamble have been submitted. One of the most important of these is that of the Italian Delegation. I call upon M. Bignami, the Italian Delegate, to speak.

M. BIGNAMI (Italy; speaking in French). — In our amendment to the Preamble we propose to insert after the word *prejudice* the words *to existing international conven-*

(1) See following page.

tions or to those subsequently concluded which in the opinion of the Council of the League of Nations are not contrary to the spirit of this Convention...

The Italian Delegation would point out that, as is stated several times in the Commentary, the various conventions which this Conference is to draw up are to be prepared in conformity with the terms of Article 23 (e) of the Covenant, which states that :

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League...

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special interests of the regions devastated during the war of 1914-1918 shall be borne in mind.

In our view it is essential that in this Convention on Transit, which is to be the basis of the other Conventions, the amendment proposed by us, which reproduces the exact terms used at the beginning of Article 23, should be added to the Preamble. Several delegations have pointed out that by introducing a reservation of this nature we may perhaps nullify the effect of these Conventions. That is not our view, as will be seen by a reference to Article 20 of the Covenant, which reads as follows :—

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

Each Power is already under an obligation to carry out the provisions of Article 10 of the Draft Convention on Transit. This article refers to the relation between this Convention and existing or subsequent special agreements relating to transit, and it begins with the very same words as the article from the Covenant which I have just read to you :—

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude any similar agreement in the future, in the absence of such a combination of special economic, topographical and technical considerations as might justify exceptional agreements of this nature.

Nevertheless, the following remain in force...

As many conventions as you like may be appended here. With regard therefore to conventions containing conditions which conflict with the principles to be embodied in our conventions, every Power can maintain in force agreements already concluded by placing them under the ægis of Article 10. There is therefore no need for us to concern ourselves with the fact that some existing conventions may contain provisions which conflict with those to be formulated by us. With regard to the future, we have merely to refer to Article 20 of the Covenant, which I have already quoted ; but in our view, it might be better in order to establish complete harmony, to add the following after the word *prejudice* : ... *to existing international conventions or those subsequently concluded, which, in the opinion of the Council of the League of Nations, are not contrary to the spirit of this Convention...* We should thus make quite sure that, for the future, there would be no possibility of concluding conventions contrary to the spirit of that which we are now preparing. The essential point is this :—it may well happen that the Governments of certain States forget to mention certain existing international conventions which may not harmonise with the conventions now in course of preparation. Should this occur, such existing agreements must be regarded as void.

Our view, in short, is that the terms of Article 20 of the Covenant must not be lost sight of, and our amendment is simply intended to explain that what we are about to do is based upon this article. In our opinion, Article 10 might well be omitted, provided that the two amendments which I have read to you are inserted in the Preamble.

M. ALVAREZ (Chile; speaking in French). — I entirely agree with the amendments proposed by the Italian Delegation. In our opinion,—and I think that this is beyond dispute,—Article 10 of the draft submitted to the Committee is contrary to the terms of Article 23 of the Covenant of the League of Nations. In our view, therefore, the

Italian Delegation is entirely justified in moving this amendment. The Chilian Delegation had intended to raise this question in connection with Article 10, but since the Italian Delegation has anticipated us, we have no objection to supporting the present proposal.

The Chilian Delegation had made another proposal, but I will refrain from putting it forward until the Committee has come to a decision with reference to the Italian amendment.

The CHAIRMAN (speaking in French). — I think I should remind you that the Italian Delegate has really handed in two amendments. The first consists in the addition, after the word *prejudice*, of the words *to existing international conventions or those subsequently concluded...* and the second consists in adding ... *which in the opinion of the Council of the League of Nations are not contrary to the spirit of this Convention.*

M. VALLOTTON (Switzerland; speaking in French). — On behalf of the Swiss Delegation I ask that this question, which presents considerable difficulty should be referred to another sub-committee. In my opinion we can postpone a decision upon the Italian proposal. I do not think that we can transpose a portion of Article 23 of the Covenant and embody it in another convention. When a text states that a certain course will be adopted, subject to the provisions of some other conventions, this reservation applies to the measures to be taken, and I consider that, in spite of the value of the Italian proposal, we should not adopt it because, by so doing, we should appear to be interpreting the Covenant, and this is not within our competence. It is for the authors of the Covenant to consider whether any reservations which may have to be made should be expressly included in particular conventions. In short, I consider that the Italian proposal is calculated to place us in a very difficult position, and that, before continuing the discussion further, it should be dealt with by a sub-committee.

M. SERRUYS (France; speaking in French). — The question which has just been raised is one of the most important which has been before the Committee since the beginning of our labours. The object of the Italian proposal—and it is a very sound one,—is to avoid dealing, either in the Preamble or in Article 10, with various important questions affecting a large number of States, and relating to the definition of their contractual status with regard to other States. Two facts, however, transpire from the statements which have been made. In the first place, there is a connection with the Covenant, and there is a difference of opinion with regard to this connection; in the second place, there is a connection with Article 10, and a difference of opinion also exists with regard to this.

With reference to the Covenant, the Italian Delegate has told us that his proposal exactly reproduces the terms of Article 23 of the Covenant, and that Article 10 of the Draft Convention is merely a copy of Article 20 of the Covenant. M. Vallotton, on the other hand, states that the provisions of Article 23 cannot be interpreted in this way, and M. Alvarez states that Article 10 of the Draft Conventions is contrary to the spirit of the Covenant.

Here we have two diametrically opposite views. Various interpretations are also given with regard to the connection between these articles. If I understand M. Alvarez aright, he has told us that Article 10 of the Draft Convention refers to bilateral conventions, and Article 23 of the Covenant to international conventions. Having regard to the atmosphere of uncertainty prevailing in connection with these points and also their extreme importance, I think that we should refrain from any premature decision upon them. In my opinion, therefore, we should not refer the matter to a sub-committee, for I consider that it is the Committee itself which should deal with a question of such importance and examine any views and solutions which may be advanced. A few persons who are merely in a position to draw up a brief report, cannot satisfactorily deal with a question of such importance. I am very much in favour of sub-committees in regard to technical questions, but not in regard to questions upon which each one of us has to state his views and pronounce an opinion. Since the solution of this question may, to a certain extent, be dependent upon that decided upon for the preceding articles, I recommend that, instead of referring the matter to a sub-committee, the

Preamble should be taken together with Article 10 for the purpose of this proposal. In my opinion, it is impossible to separate the two things.

My proposal, therefore, is that the Italian amendment should be separated from the Preamble, and consideration of it deferred until we consider Article 10. If we decide that Article 10 is to be retained, we can then adapt the Italian proposal accordingly. If, on the other hand, we consider that the Italian proposal constitutes the best method of dealing with the question raised by Article 10—and at first sight I am rather inclined to favour this view—I wish to avoid committing myself until I have been able to form an opinion with regard to any obligations brought to light during the discussion of the subsequent articles. I therefore request that this question should be separated from the Preamble and reserved until we come to examine Article 10.

M. VALLOTTON (Switzerland; speaking in French).—I am prepared to accept the French Delegate's proposal.

M. TSANG-OU (China; speaking in French).—I would remind the Committee that Article 10 was inserted in the Convention as a result of a statement of the position. On the other hand, Article 12 was inserted in order to some extent to counterbalance Article 10.

Since the Italian amendment raises the question of the terms of Article 23 of the Covenant, I should like to know why we have alluded to paragraph 1 of Article 23, but have made no reference to paragraph (e), which deals with equitable treatment for commerce. I am therefore in entire agreement with the French proposal, because in my opinion Articles 10 and 12 and the Preamble are quite inseparable.

Sir Hubert LLEWELLYN SMITH (Great Britain).—The British Delegation would be very glad if this question could be discussed in conjunction with Article 10, as proposed by the French Delegation. May I suggest that this proposal should be put to the Committee, in order to end the discussion?

M. MATSUDA (Japan; speaking in French).—The Japanese Delegation has put forward certain amendments to Article 10 (1). Should the Committee decide to deal with the question raised by the Italian Delegation when the time comes to discuss Article 10, I will state our views with regard to the Italian amendment when that article is brought up for consideration.

The CHAIRMAN (speaking in French).—I propose, then, that the discussion on the Preamble be postponed until we come to Article 10.

M. BIGNAMI (Italy; speaking in French).—I accept your suggestion, Mr. Chairman.

THE CHAIRMAN (speaking in French).—The Italian Delegation agrees that the discussion on the Preamble should be postponed and taken in connection with that on Article 10. If no-one has any objection, this course will be adopted.

## DISCUSSION OF ARTICLE 2

We now come to Article 2, which reads as follows :—

Subject to the stipulations contained elsewhere in this Convention, the measures taken by the High Contracting Parties for the regulation and execution of traffic in transit across the territories situated under their sovereignty or authority, shall facilitate the free transit of persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, by rail and waterway, by the routes most convenient for international transit, it being understood that the crossing of territorial waterways is free. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit or destination, or ownership of goods, mails or postal parcels, coaching and goods stock, or other means of transport in transit.

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(1) For the Japanese Amendment to Article 10, see p. 96.

We will now read the French amendment, which proposes that Article 2 should be worded as follows :—

Subject to the stipulations contained elsewhere in this Convention, the measures taken, in conformity with their own laws, for the regulation and execution of traffic in transit, by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods, luggage, vessels, coaching and goods stock or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

M. SERRUYS (France; speaking in French).—The object of the amendment proposed by us is perfectly clear. It is to substitute one phrase for another in the text submitted to us. The text before us says *and by the routes most convenient*. This is somewhat ambiguous. Briefly, it appeared to us that there would be a sufficient guarantee if we were simply to say *routes convenient*. As a matter of fact, if we adopt the expression *routes most convenient* we should be acting rashly and—I would add—should be opening the door to disputes, whereas what we all desire is that transit should be conducted by convenient routes,—it does not matter which routes, so long as they are convenient. Then, having eliminated this possible cause of dispute by putting *routes convenient* instead of *routes most convenient*—we fail to grasp the meaning of this superlative—we would, in addition, introduce a further idea, *all routes in use convenient*. What does this expression signify? It means, not merely, the routes convenient at the time of signature, but at any time when transit may be required. We wished to introduce an idea expressed by the British Delegation which at that time seemed untranslatable, that is to say, *for the time being*. I think the text suggested by us contains two improvements on this point; it gives an explanation and also provides a guarantee.

M. LANKAS (Czecho-Slovakia; speaking in French).—I notice that the French amendment further contains the words *in conformity with their own laws*. I do not think that the French Delegate has explained the object of this amendment.

M. SERRUYS (France; speaking in French).—That is a mere question of drafting, whereas the rest is a fundamental question. It merely carries out a principle which has been clearly established since the outset of our work; it emphasises the fact that these measures will be taken, not in virtue of an international text, but on the responsibility of each particular State,—which may then be called upon to justify its action before a court of justice. I consider that it is absolutely necessary to emphasise the fact that each State is responsible for the measures taken for the regulation and forwarding of traffic, and that each State may be allowed complete legislative authority in this respect, without interference. The motive which led us to suggest *routes convenient* rather than *routes most convenient* also induced us to make certain other slight alterations, upon which we can, I think, readily agree.

M. LANKAS (Czecho-Slovakia; speaking in French).—In my opinion this phrase has more in it than that. I think it might be construed to mean that each State remains entirely free to take such action as its legislation admits, whereas I interpret the Convention as meaning that each State is bound to make its own legislation conform to it. In these circumstances I think that the addition proposed by the French Delegation is inadvisable, not to say dangerous. Much to my regret, I am unable to accept it.

M. HOLCK-COLDING (Denmark; speaking in French).—I should like to make one small point with regard to the original wording of the article. In the tenth line appear the words *ou de la qualité des propriétaires, des marchandises (or the ownership of goods...)*. The French text contains a comma which in my opinion perverts the meaning. Similarly, on page 40 of the *Green Book* (French text), at the beginning

of the last paragraph but one (1) appear the words *qualité du propriétaire* (ownership). The same mistake appears in the amendment handed in by the Japanese Delegation, which also refers to the *qualité des propriétaires, des marchandises*; it will be seen that the same comma occurs. I notice, however, that in the amendment proposed by the French Delegation the comma is struck out of this phrase. I think the sense would be clearer if there were no comma between *des propriétaires* and *des marchandises*.

M. ALVAREZ (Chile; speaking in French).—The motion handed in by the Chilean Delegation relates to the form only and not to the substance of the article. We propose to delete, in Article 2, the words *across the territories... or authority*, the word *the* in the phrase *shall facilitate the free transit*, the words *of persons... international transit*, and also the last sentence of the article. The Chilean Delegation considers that this portion of the article is merely a repetition of that which is laid down in Article 1 and elsewhere in the Convention. In our opinion, this part of the text confuses the issue, or at all events overloads the article.

M. SERRUYS (France; speaking in French).—My reply to both M. Lankas and M. Alvarez is that they have misunderstood the meaning of the phrase to which M. Lankas very rightly called my attention, for I had failed to comment on it.

The fact that we have introduced the words *in conformity with their own laws* does not imply that we have the remotest intention of ever making use of our own legislation as a means of thwarting the carrying out of the Convention. Assuming that we sign a convention, and that our legislation in any way conflicts with the terms of this convention, there is only one thing for us to do, and that is to bring the former into harmony with the latter. We consider, however, that any measures taken by us are taken on our own initiative and in conformity with our own laws. Our intention was to avoid the possibility of external intervention on the ground that such and such a measure was not in conformity with the intentions of the *Green Book*; and certain views advanced here prove that the reservation which I have made is not entirely superfluous. In short, our intention is to avoid the possibility of being told that some measure, adopted in conformity with our sovereign rights and legislation, is not in accordance with the terms of some book, text or discussion, etc.

Whenever it can be said that such and such a measure taken by us is not in conformity with the terms of the Convention, there will be one thing, and one only, for us to do, and that is to make our legislation conform to the Convention. No one here has the least intention of quibbling in order to violate the spirit of the Convention. In my opinion, however, it is well to state that, though we are bound to make our laws conform to the terms of the Convention, we are entitled to adopt measures based on the laws of our own country, provided we conform to the spirit and the letter of the Convention. This, and this alone, was my motive for suggesting the insertion of the phrase in question.

M. NEUJEAN (Belgium; speaking in French).—I am very glad to hear the explanation given by M. Serruys, but I cannot avoid sharing to some extent the scruples of the Delegate for Czecho-Slovakia. The phrase *in conformity with their own laws* either means nothing else or, constitutes a condition restricting freedom of transit. If a restriction is intended, the Belgian Delegation cannot accept it. If the phrase is superfluous, why put it in, since it arouses a feeling of uneasiness? I would add that, if the intention is to emphasise respect for national law and sovereign rights, this principle is affirmed in the Preamble, and all kinds of guarantees are provided to ensure its maintenance. I would therefore urge the French Delegation to withdraw this phrase which, in my opinion, constitutes an element of real danger.

M. SERRUYS (France; speaking in French).—I realise that there may be some doubt as to the meaning of these words; I simply inserted them with the intention of reserving the rights of all who sign this Convention, and of enabling them to adhere to it fully and completely without any scruples on the ground of national interests. By

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(1) See p. 287.



the insertion of these words, I intended to safeguard the interests protected by national procedure, if not by national law. But since it is merely a question of procedure, and since the effect of the article will be exactly the same, I have no objection whatever to withdrawing these words. They merely imply a recognition of the right of each State to use its own judgment in taking the necessary measures. I realise that certain delegations, to whose opinion I attach the greatest possible weight, because I know that it is authoritative, prefer that these words should not be inserted in the article. For my part I am perfectly willing to withdraw them.

The CHAIRMAN (speaking in French).—If no one else wishes to speak, I will put Article 2 to the vote, with the new wording proposed by the French Delegation. I will read the amended text once more :—

ART. 2. — Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit, by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods, luggage, vessels, coaching and goods stocks or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

*The text was adopted, 30 voting for.*

The CHAIRMAN (speaking in French).—We will now deal with the amendment handed in by the Brazilian Delegation. I call upon M. Barboza Carneiro of the Brazilian Delegation to explain his amendment.

M. BARBOZA CARNEIRO (Brazil; speaking in French).—The amendment proposed by the Brazilian Delegation consists in the addition of the following paragraph to Article 2 :—

States whose means of transport benefit by the advantages accorded under this article undertake not to establish preferential transport tariffs in favour of their nationals and to the detriment of nationals of the countries through which the transit takes place.

The Brazilian Delegation asks that this question should be referred for consideration by a sub-committee, which, should it see fit, would also consider the best form for a text to safeguard to some extent the rights of countries of transit, to be proposed to the Committee for insertion in the Convention.

The Brazilian Delegation, therefore, proposes that, before discussion in Committee, its amendment should be referred to a sub-committee composed, subject to their consent, of the Belgian, British, French, Italian, Japanese and Netherlands Delegations.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It appears to me that this is a very important matter which seems scarcely ripe for treatment by a sub-committee at the present stage. If I have rightly understood the Brazilian Delegate in an informal talk which we had upon the matter, he has in his mind a difficulty which is entirely worthy of our consideration. At first sight, he appears to be proposing a remedy very much more extensive than the evil with which he wishes to deal,—a remedy which is probably outside our competence and which, as I think I can explain to him, would not, in effect, remove the particular grievance which he has in mind. I suggest that some of the delegates who are interested in this matter should meet, not as a sub-committee of this Committee, but as individuals, and talk things over. Until the matter has been brought a stage further, it is surely not right to propose a technical sub-committee, which would be quite in the air as to the course to be pursued. I therefore recommend that this matter should be postponed and discussed informally, so that something suitable for reference to a sub-committee can be laid before the Committee.

The CHAIRMAN (speaking in French). The Officers of the Conference consider this to be an excellent suggestion. If there is no objection, the discussion of the Brazilian amendment will be postponed (1). There still remain two amendments to Article 2,—those of the Serb-Croat-Slovene and Roumanian Delegations. The Officers of the Conference are of opinion—and I hope that you will agree—that, in view of the decisions taken with regard to Article 1, there is no occasion to vote upon these two amendments.

M. PERIETZEANO (Roumania; speaking in French). — In my opinion the Brazilian amendment should be considered at the same time as Article 4, which refers to charges.

The CHAIRMAN (speaking in French). — The Brazilian Delegation has proposed it as an amendment to Article 2. At the suggestion of the British Delegate, the delegates concerned in the question will discuss it amongst themselves, as the question is not yet ready for discussion, and the amendment will be considered at a later date. If there is no opposition I will consider the discussion of the Brazilian amendment to be postponed.

Does anyone else wish to speak on Article 2?

*Article 2 was adopted in the form in which it was read.*

### DISCUSSION OF ARTICLE 3

The CHAIRMAN (speaking in French). — We now come to Article 3, the text of which is as follows :—

*Duties.* — Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport in transit, shall be exempt from any special duties in respect of their entry, exit, or transit; nevertheless, on goods in transit there may be levied duties intended solely to defray legitimate expenses of supervision and administration incurred on account of such transit by the Powers over whose territory it takes place. The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes.

I call upon M. Matsuda, the Japanese Delegate, who has an amendment to propose.

M. MATSUDA (Japan; speaking in French). — The amendment proposed by the Japanese Delegation is to the effect that the following addition should be made at the end of Article 3 :—

No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit, or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport in transit.

The same clause is contained in Article 2, and it appeared to us advisable to insert it in Article 3 in order to avoid any possible misinterpretation. I think that the Committee will agree with us on this point. I would add that, if the Committee so desires, I should be satisfied if this interpretation were inserted in the Minutes.

The CHAIRMAN (speaking in French). — Before proceeding with the discussion on the Japanese amendment, I suggest, if the Japanese Delegate agrees, that we begin by dealing with the amendments referring to the actual text of the article.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I may say in passing that we are entirely in agreement with the views of the Japanese Delegation with regard to their amendment, but I think that the amendment which I have handed in should be dealt with first.

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(1) For continuation of this discussion see p. 183.

In line 3 of Article 3, after the word *nevertheless* we wish to take out the word *goods* and insert *such traffic*. It is quite a small point, but I think it must be admitted that the cost of supervision of transit may be appreciable in regard to persons as well as in regard to goods, and, therefore, we ought not to be limited entirely to goods in this matter. For example, I think that most countries make a charge for visas for passports. Charges of that kind ought to be covered, and I therefore propose to say *traffic* instead of *goods*.

Then, in line 6, we propose to insert the words *not exceeding an allowance reasonably required for this purpose*, in order to place a limit on the charges that may be made. I see that there is an Italian amendment which is practically the same. I imagine that the wording of all our amendments will be finally considered by the Drafting Committee, but it seems to us that in order to be clear on this point, we shall need a limit of this kind. It is not enough simply to say that the duties must be intended to defray legitimate expenses; they must not only be intended to defray, but they must not be more than are reasonably necessary to defray.

The necessity for these words is increased if you accept the third amendment which we have to propose, and which I observe is also proposed by a large number of other delegations, that is to say, the omission of the words *the sum total of the duties levied under this head... must not in any case, exceed that of the duties charged on free imports*. I think it must have occurred to many of the delegations that this is a somewhat artificial rule, to which the practice of many countries does not, and perhaps cannot, be made to conform.

I should add that the remaining words at the end of Article 3 to the effect that the sum total of these duties *may, however, be reduced, or even abolished, on certain routes* appear to us either unnecessary or dangerous. I am inclined to think that those who have put in these words must have had in mind the adjustment of railway charges under Article 4. We could hardly admit that transit duties to cover the expenses of supervision should be different on different routes. We therefore propose to omit the last sentence and insert the other amendments which I have read.

M. BIGNAMI (Italy; speaking in French). — The British Delegate has just stated that the Italian Delegation had handed in an amendment on exactly the same lines as that of the British Delegation. In our amendment we propose to omit the last sentence of the article beginning with the words *the sum total*, and to substitute the words *the sum total of the duties levied under this head shall be reasonable and may, moreover, be reduced or even abolished on certain routes*.

The reasons for our amendment are as follows. The establishment of a definite ratio between duties on transit traffic and imports appears rather an arbitrary measure calculated to restrict the freedom of action of the country through which the transit takes place, in respect of the free importation of its requirements, without producing any tangible result. Moreover, the option of abolishing the normal duties on certain routes renders the uniformity of the régime entirely illusory, and almost amounts to definite recognition of a differential régime. I do not know whether the Committee will accept the substance of these two amendments; if it does so, the Italian Delegation will have no objection to the adoption of the British proposal to the effect that both amendments be referred to the Drafting Committee.

M. SERRUYS (France; speaking in French). — The French amendment contains one feature in common with the amendments handed in by the British and Italian Delegations. All three are intended to avoid the establishment of a completely arbitrary relationship between transit and importation dues,—a point which has been fully brought out by the Italian Delegate. This relationship is based upon an economic doctrine which I, for my part, cannot accept. I am therefore inclined to think that it would be well to substitute for the last sentence something to the same effect as the British proposal. In my opinion, however, the text is not yet sufficiently clear. In short, what we require is a text taking into account all the features of the British and Italian proposals and also, up to a certain point, the features of the French proposal. I therefore think that it should be left to us to prepare a joint text for this part of Article 3 in time for the next meeting. I think that we shall reach an agreement without

difficulty, but it is not easy to improvise a wording during the meeting. I am quite sure that we shall be able to arrive at a unanimous agreement, and I request that the matter may be held over.

In order not to take up too much of the Committee's time, I would like to take the present opportunity of referring to the Japanese proposal. In principle, I see no objection to it, but in view of the fact that the article will have to be considered once more from the point of view of drafting, I should like to ask the Japanese Delegate whether his proposal could not also be referred to the Drafting Committee, more especially since, in its present form, it cannot be inserted in any part of the article.

The CHAIRMAN (speaking in French). — The Chilian Delegation has submitted an amendment which is now superfluous. The same applies to the amendment of the Serbian Delegation, which is ruled out in consequence of the vote taken this morning. I now come to the amendment handed in by the Roumanian Delegation.

M. PERIETZEANO (Roumania; speaking in French). — We are prepared to accept the amendment put forward by the Italian Delegation.

The CHAIRMAN (speaking in French). — I would suggest that the question be referred to a Sub-Committee composed of the originators of amendments,—that is to say, the British, Italian, French and Japanese Delegates. Would the Roumanian Delegate also like to be a member?

M. PERIETZEANO (Roumania; speaking in French). — Yes.

The CHAIRMAN (speaking in French). — Has anyone any objection? The Committee therefore decides to refer Article 3 to a Sub-Committee (1), composed of Sir Hubert Llewellyn Smith (Great Britain), MM. Bignami (Italy), Serruys (France), Matsuda (Japan), and Perietzeano (Roumania).

Sir Hubert LLEWELLYN SMITH (Great Britain). — The paragraph at the end of the French amendment is of an entirely different nature; I do not know whether it should be dealt with by our Sub-Committee.

M. SERRUYS (France; speaking in French). — The object of this amendment is to reserve an unrestricted right to apply legislation with regard to taxation on turnover, which I do not think is confined to France. The amendment is as follows :—

It is understood that this provision does not affect the imposition of revenue duties in connection with transactions which may take place during the warehousing or transportation of goods in transit.

Indeed it sometimes happens that goods imported for transit and warehoused, are sold whilst in the warehouse. This transaction is, in certain countries,—and especially in France,—subjected to a tax. In France this tax amounts to 1.10% of the turnover. You will notice that this is not a transit due; it in no way affects the scale of transport charges; it is simply a revenue tax imposed on merchandise in connection with which a commercial transaction has taken place. Transit, therefore, is not affected, but we must reserve the right to impose this tax. I attach no importance to the inclusion in the Convention itself of the text which I proposed. I shall be quite content if due note is taken of it in the records of the meeting. What I wish to avoid is the possibility of any misunderstanding with regard to this article. We are, if I may say so, drawing a hard and fast line between transport charges on the one hand, and, on the other, taxation in connection with transit and all revenue duties relating to commercial transactions. This distinction must be drawn, because it affects not only French legislation but also that of other countries. I do not necessarily ask for a change

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(1) See p. 69, for the Report of this Sub-Committee.

to be made in the article itself,—if you consider that a note in the records of the meeting will suffice, I am quite ready to agree.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We fully support the proposal made by the French Delegation to the effect that something of this kind should appear in the records of the meeting. We are unwilling to load the text of the Convention unduly.

The CHAIRMAN (speaking in French). — We are agreed; M. Serruys' reservation will be noted in the records of the meeting.

#### DISCUSSION OF ARTICLE 4

The CHAIRMAN (speaking in French). — We now come to Article 4. An amendment has been proposed by the British Delegation; I think that here again it is a question of drafting. The Swedish amendment comes next.

M. HANSEN (Sweden; speaking in French). — The amendment proposed by the Swedish Delegation involves the substitution of the words *tariffs which shall be reasonable according to the general principles governing the tariffs applied on the railways in question* for the words *tariffs which shall be reasonable*.

Our motive for advocating this change is that, in our opinion, no *reasonable railway tariffs* exist. The methods employed in fixing tariffs vary in almost every country. Tariffs are essentially dependent upon the volume of traffic, and upon the revenue which it is desired to obtain from operation. Even when we have adopted these two principles, the fact remains that *technical principles* (for instance the proportion, fixed between the mileage rate applied to *long* and *short* distances) differ in the more important countries such as England, France and the United States, and it is impossible to say that any one of these methods is the only right one.

From another point of view, the object of the Transit Convention is not at all to lay down general rules to be followed by the various countries in fixing these tariffs, but simply to ensure that *transit traffic* is accorded treatment as favourable as that accorded to internal or export traffic. We therefore share the opinion recently expressed in the Committee by the Czecho-Slovakian Delegate, M. Lankas, who mentioned in particular that normal internal rates should also be applied to transit traffic, and that the only exceptions authorised applied to rates introduced for the benefit of certain special industries.

In our view, the wording which we have proposed expresses these points better than the existing text; but it is, of course, possible to select another wording.

M. DE WALTER (Hungary; speaking in French). — I would point out that the amendments proposed respectively by the Greek, Swedish and Hungarian Delegations are interconnected. The Swedish Delegation suggests the application of tariffs, in accordance with the principle of general scales of tariffs,—in other words, general tariffs. The Greek Delegation proposes the application of internal tariffs; this also implies a system of general tariffs. In the report which I submitted at the Eighth Meeting (1), I explained that Hungary, in all agreements concluded up to the present time, had adopted the principle of absolute and reciprocal equality with regard to the application of tariffs. This involves the reciprocal application by any State, under identical conditions, upon the same route and in the same direction, of the same rates for traffic despatched by any other State which accords reciprocal treatment, as for national traffic.

In this connection I agree in principle—but in principle only—with the two amendments proposed by the Greek and Swedish Delegations, because I am also of opinion that the expression *convenables* used by the French Delegation, or *raisonnables*, which appears in the Draft Convention, is capable of such a wide interpretation that it would

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(1) See p. 11.

almost inevitably lead to disputes. For this reason I should like to propose a wording for this clause similar to that contained in the Convention concluded between Italy and Hungary, and on the lines of the suggestion which I ventured to make during the Eighth Meeting,—namely, *the application of identical tariffs under identical conditions, over the same route and in the same direction.*

The second Hungarian proposal is merely the logical outcome of this principle of equality, which necessitates the categorical exclusion of any possibility of creating conditions favourable to a country's own traffic and detrimental to that of other Contracting Parties. Such conditions would make the general application of this principle impossible, and would provide each State with the means of affording special privileges to its own traffic. I refer to conditions such as that the goods must be of home origin, that they must be delivered direct to the station of despatch, and that the raw or semi-manufactured material of privileged classes of goods must be wholly or in part despatched by national routes.

M. POLITIS (Greece; speaking in French). — The Greek Delegation bases its policy on the following principles :

(1) That the policy of protection or free trade employed by the various countries must be exclusively carried out by means of customs tariffs, bounties or direct subsidies, and not by means of transport tariffs;

(2) That the establishment of tariffs, as regards both their rates and the method of their application, is a domestic question to be settled by each country, and cannot therefore be subjected to any form of control on the part of other countries, without affecting the sovereign rights of the country in question;

(3) That transit traffic, no matter what its origin, destination or nationality, must be treated on a footing of complete equality.

In the light of these principles the Greek Delegation considers that :

(1) The first part of Article 4, which lays down that *reasonable tariffs* shall be applied to transit, should be omitted; it is a provision which does not mean much, but which, nevertheless, when it comes to be applied, may well give rise to serious difficulties;

(2) A new paragraph in the following terms should be added at the end of the article :—

The participating States undertake to apply to transit traffic their domestic tariffs in force on the same routes.

This addition is the logical outcome of the deletion of the first part; if it were not inserted we might be suspected of wishing to apply prohibitive tariffs, which is not our intention at all. In order to avoid the possibility of such an interpretation, we must of necessity undertake in such circumstances to apply the internal tariff,—it being understood, of course, that this applies to goods of the same nature travelling by the same route and in the same direction.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation cannot accept the amendment of the Greek Delegation. We have ourselves submitted an amendment to Article 4, which is intended to make due allowance for certain conditions peculiar to each State in the application of tariffs.

Article 4 states that :—

*The High Contracting Parties undertake to apply..... tariffs which shall be reasonable..... and proceeds as follows : ..... as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes.*

We propose to add ..... *and to the necessity of giving preferential treatment to special products.*

I consider that a Convention of this kind should prevent States from fixing unduly high tariffs for transit traffic, but that it should not entirely prohibit States from occasionally fixing lower tariffs for their own goods without being obliged at the same time to grant the same tariffs to goods passing through the country. I will cite an example, taken of course from my own country, Italy.

As you know, Italy is a country of great length, and there is a great difference in agricultural and industrial development between the northern and southern parts of the country. For this reason we naturally make every effort to develop the industry and agriculture of the southern portion of Italy for reasons both of economic policy and justice. It was said just now that the development of certain industries could be assured by a simple alteration in the customs duties; but, nevertheless, greater advantages can be obtained in a more equitable manner by means of transport charges. In our endeavours to develop the southern portion of Italy, we are at times obliged—and in fact are doing so at the present moment—to adopt in certain particular cases tariffs which are below the cost of transport. For instance, this occurs in connection with the transport of oranges, lemons and other home-grown foodstuffs. Would it be fair to grant to similar goods of foreign origin which arrive at Genoa and cross Italy for the very purpose of competing with our produce in foreign markets, the same greatly reduced tariffs which, as I have already said, are below cost price?

We naturally attach very great importance to our amendments. We consider that in these circumstances it is only right that a country should be entitled to fix very reduced tariffs for its own goods, without being obliged to grant the same tariffs to goods in transit. Of course, there should be an obligation not to fix the tariff too high, and we notice that, with this very object, the word *reasonable* has been inserted here. In our opinion, therefore, the following phrase should be retained : ..... *tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes.* We also desire the addition of the words : *and to the necessity of giving preferential treatment to special products.*

By laying down that tariffs must be reasonable, the misuse of tariffs on the part of certain countries may be prevented, but it would be quite unfair to forbid a country like Italy, which has special requirements, to adopt very low tariffs which are justifiable on grounds of equity and economic policy.

M. WINIARSKI (Poland; speaking in French). — “I was under the impression that the object of the General Conference was to approve the work done by the Commission,—serious work in which nearly all the delegations took part. I could readily understand that delegations which had not followed the debates, and had not perhaps thoroughly understood the decisions taken, might require an explanation, but I cannot understand why those who took part in our work should come here to demolish it.”

M. Politis, for whom I have a very great regard and even affection, dating from the time of joint labours at Paris, will forgive me for repeating the words which he used this morning (1) in connection with a proposal similar to that which has just been made. Of course our text is by no means infallible,—it is not a text *ne varietur*—but it is only right to point out that we had interminable discussions upon this point also, and that the text before us is the result of ripe reflection and, as always, of a compromise.

The Polish Delegation is not altogether satisfied with the word *reasonable* in the text. We must bear in mind that a tribunal will have to enforce respect for this word and to decide disputes. The use of this word will lead to very lengthy proceedings before the tribunal of the League of Nations; but since we have been unable to find a more suitable word, it will perhaps be better to retain it. We must also remember that the question before us involves interests which, though not always reconcilable, are nevertheless legitimate and worthy of respect. Perhaps I should remind you of the ancient distinction drawn in Roman Law, and say that the acceptance of the formula proposed by the Greek Delegation will amount to a *damnum emergens* for the countries traversed, and that its rejection will constitute a *lucrum cessans* for States which wish to send their produce across the territory of another.

I will not repeat all the arguments in favour of adopting the text proposed. The Polish Delegation entirely agrees with the views expressed by the Italian Delegate.

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(1) See p. 45.

M. SERRUYS (France; speaking in French). — I should like to summarise the refeatures of a debate various which, owing to the variety of the subjects referred to, is becoming rather confused. We have before us a number of proposals which vary in degree only, and, on the other hand, we have a number of proposals which are fundamentally different. One view, which was advanced in its most logical form by the Greek Delegation, is that transit tariffs should be the same as internal tariffs. This view is also advanced by the Hungarian Delegation in a somewhat different form; there are differences with regard to certain points, and the method of application is very slightly modified, but the principle is the same. Then there is the view advanced by the Swedish Delegation, which is very circumspect, but amounts to the same thing, since it lays down that *tariffs which shall be reasonable according to the general principles governing the tariffs applied on the railways in question should be adopted*. This implies tariffs which, though they will not be internal tariffs, will closely resemble them. This is the proposal advanced in a rigidly theoretical form by the Greek Delegation, in an applied and consequently somewhat different form by the Hungarian Delegation, and in a faintly similar but somewhat attenuated form by the Swedish Delegation.

All these proposals embody the same principle,—the tariffs to be applied are internal tariffs. As the Polish Delegate has stated, this policy was discussed at great length during the Conference at Paris. It was rejected for a number of reasons, but I will merely quote those which are most obvious. One reason was that, as a general rule, the situation varies greatly in the different States, and it is impossible to lay down a general rule in the matter. It is contrary to the interests of some States to apply their domestic tariffs, to certain classes of products, for example; and to the arguments advanced by the Italian Delegate I could add others, drawn from the present situation of my own country. As a result of the devastation which has taken place, we have to reckon with the fact that certain industries which were formerly concentrated, are now decentralised. In the textile industry, for instance, formerly the various processes of combing, spinning and weaving were generally concentrated in different towns; now, in consequence of this devastation, the spinning industry is dead, and in order to revive it we are contemplating the introduction of special tariffs for certain classes of goods. The matter is under investigation, and comes under the same heading as the example quoted by the Italian Delegate. Here is an instance in which an internal scale of tariffs, lower than a transit scale, is justified; but the converse may also be justified. Entirely different circumstances may therefore arise and, by establishing a general rule, we should fail to take into account all possible contingencies, and these it is which are at the root of the different economic situations prevailing in different countries. The application of a rigid general rule would therefore be *summum jus, summa injuria*. I think that we must avoid in any form the theory of the compulsory application of internal tariffs to transit traffic. I would here like to point out to the Italian Delegate that he appears to be arguing on the assumption that the proposal of the Greek Delegation is already embodied in the Convention. He is, in fact, asking permission to do something which the Convention does not forbid. His amendment, therefore, though it is of great interest and constitutes a valuable guide for the Committee in its work, appears to me superfluous.

There is another amendment, the grounds for which have not yet been explained, but which may be of great use because it establishes a new point of view. I refer to the amendment of the Roumanian Delegation. Though I do not know the exact form in which it will be submitted, I should like to ask you to consider on what lines we should proceed, assuming that we decide to discard the idea of assimilating transit tariffs to internal tariffs. We must try to find a more precise text for Article 4, especially in regard to one particular point,—the word *reasonable*, which is not altogether satisfactory. Some have thought that this word would leave the door open to arbitrary measures, and that it would render possible the imposition of very different rates, varying according to internal conditions, such as the abundance of the coal supply, the condition of routes, etc. But obviously these conditions must be taken into account in the various countries. The French Delegation has suggested a slight alteration introducing the word *equitable* in place of the word *raisonnable*. The word *equitable* implies an element of proportion, some kind of a standard, and, above all, a profound sense of justice, which, in my opinion, will be the best guarantee for the



successful application of our Conventions. Moreover, we selected the word *équitable* because it embodies the idea of equity, and for the maintenance of this principle two guarantees are provided. There will be some organisation selected by the Council of the League of Nations to effect a friendly settlement of minor disputes, and there will be the Court of International Justice. If, therefore, we use the word *équitable*, we can be sure that these two bodies will, by means of their opinions, or judgments pronounced *ex æquo et bono*, completely satisfy our requirements, and I am of opinion that the substitution of the moral idea embodied in the word *équitable* for the conception of logic conveyed by the word *raisonnable* is the only amendment which the text requires.

M. HOLCK-COLDING (Denmark; speaking in French). — I should like to give you a practical idea of what is taking place in my own country. Owing to the special requirements of agriculture, we adopt the following procedure : — We apply to goods coming from another country the same tariffs as to similar goods travelling the same distance between two points in our own country; but our Minister for Agriculture refunds a portion of the charges to the farmer receiving the goods. In this way the railway rates remain unchanged, and the special interests of our farmers are protected.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation is prepared to accept the French Delegation's proposal. We naturally look to the substance rather than the form. It is, of course, understood that nothing in the Convention will hinder the application of tariffs on the lines suggested in the amendment moved by the Italian Delegation. I should like this statement to be inserted in the records of the meeting and in the General Report.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation entirely agrees with the change of wording which has been suggested by the French Delegation, and which, we are happy to find, meets with the approval of Italy, namely, the substitution of the French word *équitable* for the word *raisonnable*. We fully accept that change, but I would point out that the English translation of *équitable* is *reasonable*. The English word *reasonable* is not the same as the French word *raisonnable*, and I suggest that the word *reasonable* should remain in the English text, because it corresponds with the word *équitable* in the French text. I would further point out that one change which has been proposed by the French Delegation, and which corresponds to an amendment also moved by the British Delegation, is the changing of the word *favour* to *facilitate*. I hope that that will be adopted. I also hope that after this very interesting discussion, it will be possible to come to an agreement with regard to Article 4 before we leave this evening.

M. HANSEN (Sweden; speaking in French). — I support the proposal of the Italian Delegate that a statement conveying the intention of the amendment should be embodied in the records of the meeting and in the General Report.

M. DE WALTER (Hungary; speaking in French). — As I have already stated, Hungary works on the principle of complete equality. It was this which led me to submit my proposal, and I hope that the Committee will understand it aright. Should the Committee not accept it, it will, at all events, have been placed on record.

M. PERIETZEANO (Roumania; speaking in French). — The question will have to be divided up, for though we are in entire agreement with the proposal made by the French Delegation, we wish to add at the end of the article the words *except in case of nationals of the country of transit*.

The CHAIRMAN (speaking in French). — We will now vote upon the French amendment to Article 4, which reads as follows : —

The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport on the routes administered by the State, or under concession, irrespective of the points of departure or destination, tariffs

which shall be reasonable (French text, *équitable*) as regards both their rates and the method of their application, having regard to the conditions of the traffic including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible.

*The French amendment was adopted, 31 voting for.*

M. PERIETZEANO (Roumania; speaking in French). — This morning I was perhaps too brief, and this neglect on my part has led to the unanimous rejection of my amendment, though the idea upon which it is based is bound ultimately to triumph. I do not bear any grudge, however, and I will not take my revenge by occupying more of your time than is necessary.

Article 4 lays down that dues may only be levied upon routes operated by the State or under concession. I am not sure what this implies. Does it only refer to routes upon which transport traffic proceeding under its own power is prohibited, or does it include routes which may be used by vessels or barges proceeding, for example, under their own power? In France, Belgium and many other countries, there are canals used, not only by national vessels, but also by other craft proceeding under their own power. If a State has constructed these canals, and provides for their upkeep and supervision and for a service of information (when I say supervision, I do not mean supervision in the sense of Article 2, which refers to the supervision of goods in transit, but rather supervision for the prevention of possible accidents), I should like to know whether this State may make the use of such routes subject to the payment of dues. I incline to think that it should. Whenever a State has spent money on the construction or upkeep of canals or has organised a staff to deal with them, it should be able to levy dues. Of course, we are only dealing with routes operated by the State or under concession. I am sure that you have no wish to prevent States from spending large sums on the cutting of canals.

I proposed the following addition to Article 4 : —

Similarly, a reasonable scale of dues intended to cover the expenses of construction, upkeep, supervision, lighting, etc., in addition to charges collected for services rendered, such as lockage, life-saving, etc., shall be levied upon every means of transport which is permitted to pass over routes not subject to monopoly.

For instance, if goods are transported by rail from A to B, the dues collected are divided into two portions. The first portion represents the actual cost of transport, the second represents expenses in connection with the construction of routes, general expenses, etc. With regard to river transport, in my opinion, dues intended to cover the expenses of upkeep or buoying should be maintained.

M. NEUJEAN (Belgium; speaking in French). — Tolls are not dues.

M. PERIETZEANO (Roumania; speaking in French). — I know that these charges are called tolls, but they are none the less dues, though not supervision-dues under the terms of Article 2. If you prefer not to mention tolls, that is another matter. We must, however, be clear on the point. I have submitted my proposal because in my opinion tolls cannot be abolished.

M. SERRUYS (France; speaking in French). — The Roumanian amendment is very interesting, but I do not think it relates to this article. It deals with tolls. But tolls are not transport rates; they are charges which are also collected upon goods not in transit. Moreover, this question of tolls should not be dealt with under Article 4, — it should have been dealt with under Article 3, which relates to charges and dues of this nature. In order to clear up the matter, — and I think this could be done in a very few minutes, — I would suggest that the Roumanian Delegate be made a member of the Committee which is to meet to-morrow to decide upon the text of Article 3. By this means I think that we could decide the proper place for this question...

M. PERIETZEANO (Roumania; speaking in French). — It is for the Committee to say whether it wishes to retain or to abolish tolls.

M. SERRUYS (France; speaking in French). — Tolls are levied on goods in transit as well as on internal traffic.

M. PERIETZEANO (Roumania; speaking in French). — If that point is settled, the rest is easy.

M. SERRUYS (France; speaking in French). — There is still one more question of some importance to be dealt with, but we must come back to it later; this is not the time to discuss it. I refer to the addition to line 13. I do not propose to open the discussion now, but the question is of some importance. The last sentence of Article 4 begins: *No charges, facilities or restrictions...* The word *restrictions* has led to a confusion of ideas amongst certain delegations with the members of which I have conversed. This word relates to tariffs. It does not preclude any reservations which certain States may make with regard to traffic on certain monopolised routes, nor does it preclude the reservation of flag rights. The article relates solely to tariff scales. As this is a very important point, I think that this fact should be definitely stated in the Final Protocol.

The CHAIRMAN (speaking in French). — If no-one has any objection to offer, I shall take it as agreed that a statement embodying M. Serruys' remarks is to be inserted in the Final Protocol.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I rise merely in order to ask for an explanation. Is it understood that the Roumanian proposal is to be discussed by the Sub-Committee on Article 3? I should like to say it has nothing whatever to do with Article 3. I consider that it refers to Article 4.

M. SERRUYS (France; speaking in French). — As a matter of fact, I do not think that the Roumanian proposal is directly connected with either Article 3 or Article 4, and it does not deal with dues specially connected with transport traffic, since it also refers to internal traffic. Neither does it relate to the cost of transport, since there is no question of transport tariff scales. In these circumstances, perhaps the Roumanian Delegation would be satisfied if the Committee took note of its proposal and recorded a statement in the Minutes to the effect that *Articles 3 and 4 do not refer to tolls, and that each country retains complete liberty of action in this respect.*

M. PERIETZEANO (Roumania; speaking in French). — I have no wish to labour the point, more especially as Roumania has hardly any canals and therefore the question of tolls hardly arises in her case. I had in mind other States, and more particularly France, when I raised the question.

The CHAIRMAN (speaking in French). — As the Roumanian Delegation is now satisfied, if no-one else wishes to speak I will put Article 4 to the vote. It reads as follows:—

The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, on the routes administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable (*équitable* in the French text) as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

As you will see, this version of Article 4 is composed of the French amendment and of the last sentence appearing in the *Green Book*.

*Article 4 was adopted in this form.*

*The meeting adjourned at 7.45 p.m.*

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# FOURTH MEETING OF THE PLENARY COMMITTEE

(Thursday, March 17th, 1921, at 6.30 p.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 3 AND DISCUSSION OF ARTICLE 3 (CONTD.)

*The meeting opened with M. Loudon, Vice-Président of the Conference, in the Chair.*

## REPORT OF SUB-COMMITTEE ON ARTICLE 3

The CHAIRMAN (speaking in French).—You will remember that the Committee detailed a Sub-Committee to deal with the question of the last paragraph of Article 3 (1). I call upon the British Delegate to report on behalf of the Sub-Committee.

Sir Hubert LEWELLYN SMITH (Great Britain; rapporteur).—The Sub-Committee was composed of representatives of the French, Italian, Japanese, Roumanian and British Delegations. After considering the various amendments to Article 3 proposed by the above Delegations and certain others, we unanimously agreed to adopt a new text for Article 3, which I will now proceed to read.

ART. 3. — *Duties.* — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding article.

I think that the Committee will see that all the points to which the various delegates attached importance are provided for in that form of words. There is one point, however, which was raised by the Roumanian Delegate in discussion yesterday, namely, the question of tolls (2), and this Sub-Committee was asked to look into it. What we have to report—quite provisionally—is that the question of tolls has reference rather to Article 4 than to Article 3; but if the Committee so wishes, the Sub-Committee will be glad to continue its work and devote further study to the question whether any alteration or addition to that article is necessary in respect of tolls.

M. SERRUYS (France; speaking in French).—The question of tolls was very carefully considered, and the Sub-Committee was of opinion that whilst the question could be deferred until the discussion of Article 4, it was obvious that an exchange of views ought to take place. The question must either be excluded altogether from the Convention or else incorporated in it, but in any case some solution must be found. A statement must be included in the records, in the Report or in the Final Protocol, to the effect that the question of tolls is not within our competence; otherwise, we must consider it and devise some solution for it; it is out of the question to allow any doubt on the point to remain.

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(1) See p. 61.

(2) See p. 67.

M. PERIETZEANO (Roumania; speaking in French).—In my opinion the question of tolls must be dealt with in the Convention, but I agree with the French Delegate when he says that it requires careful study and an exchange of views, and I therefore support M. Serruys' proposal that the question should be postponed, and entrusted either to the Committee on Article 3, or to some other Committee, for the preparation of a text. It is for you to decide this matter, but I think I shall succeed in convincing you that the question must be dealt with. This also applies to my amendment to Article 4 relating to differential treatment for national shipping. I propose that both these questions be referred to a Sub-Committee, either that which dealt with Article 3 or any other which you may care to appoint (1).

M. Demetrio RIBEIRO (Brazil; speaking in French).—I entirely agree as to the régime to be introduced, and I fully understand the necessity for it. Nothing could be fairer. There may, however, be countries in whose budgets are included entry and exit duties representing a considerable sum. Such countries would require a certain amount of time, in order to adapt themselves to the new régime. I should like to enquire whether it would not be possible to allow them a reasonable time-limit to adjust their budget to it; this period should be at least one year, since, as a rule, budgets of all countries are drawn up for that period. The Committee would in this way not be obliged to revoke its decision, and the States concerned would be enabled to approve the provision without delay.

The CHAIRMAN (speaking in French).—I suggest that the Brazilian Delegation's proposal should be referred to the Sub-Committee on Article 3. Both M. Ribeiro and M. Tsang-ou will be members.

M. TSANG-OU (China; speaking in French).—The Chinese Delegation supports the Brazilian proposal, and also shares the views of the Roumanian Delegation on the subject of tolls.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French).—I propose that the following portion of the original text should be retained : —

The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes.

Sir Hubert LLEWELLYN SMITH (Great Britain; rapporteur).—This passage was omitted in our draft, because we came to the conclusion that, as regards these duties and charges of supervision and administration, it was desirable to establish the principle that they should only be applied—and this is also proposed in the Japanese amendment—under the conditions of equality set out in detail in Article 2. You will observe that one of these conditions of equality in Article 2 is that there should be no differentiation dependent upon the points of entry into or exit from the territory. That condition appeared to obviate the possibility of any difference on different routes. On the other hand, if the Committee considers that permission ought to be given to vary the charges for supervision according to routes, we should then have to make some reservation with regard to our last sentence, which states that *the dues must be imposed under the conditions of equality laid down in the preceding article*. It would then be necessary to stipulate that such dues or charges *may be reduced, or even abolished on certain routes, but that in all other respects they shall be applied under the conditions of equality laid down in the previous article*.

That, however, raises a point which is more than a mere matter of drafting, and I cannot speak for my colleagues on the subject. The adoption of this course would meet the views of the Japanese and Serbian Delegations. In my capacity as rapporteur perhaps I should refrain from expressing the view of the British Delegation on this question.

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(1) See p. 112. Report of Sub-Committee.

M. MATSUDA (Japan; speaking in French).—If you will allow me, I should like to make a few remarks with regard to the draft prepared by the Sub-Committee. Possibly the Serbian Delegate has not fully grasped the Japanese proposal. We should like to add to Article 2 the enumerations *persons, goods, vessels, etc...* This enumeration is embodied in several articles. In our view our amendment would not affect the meaning of the original text of Article 3. The new version drafted by the Sub-Committee this morning is to the same effect, and I think, therefore, that our proposal will be acceptable to the various delegations. In a word, the text proposed this morning calls for the same interpretation as the motion proposed by the Japanese Delegation.

M. WINIARSKI (Poland; speaking in French).—In my opinion, the passage which the Serbian Delegate proposes to retain in the form in which it appears in Article 3 is not contrary to the principle of equality of nations, or to that of equality of treatment, because this differentiation is not based on difference of nationality, origin or point of departure, but on technical conditions which may vary on different routes. It seems to me that the retention of this passage, which is omitted in the most recent version, would be calculated to facilitate transit to some extent.

M. HOLCK-COLDING (Denmark; speaking in French).—I think the amendment proposed by the Sub-Committee involves a weakening of the text of the *Green Book*. The *Green Book* lays down at the end of Article 3 that *the sum total of the duties levied under this head, which must not in any case exceed...* I should like the Sub-Committee to explain the reason for this change.

Sir Hubert LLEWELLYN SMITH (Great Britain; rapporteur).—I do not know whether, as rapporteur, I am acting correctly, but if I may express the views of the British Delegation, I would say that we have no objection to the re-introduction of the words which have been omitted, provided it be made quite clear that the reduction or abolition of these duties or charges on certain routes must be on the ground that the cost of supervision is lower on those routes. That would avoid a certain inexactitude which has crept into the text through our having laid down that the rates of the duties shall correspond as nearly as possible to the expenses which they are intended to cover. That seems to imply that if the difficulties of supervision on one route are much greater than on another, it might be possible to establish different charges.

If it meets the views of the Committee, the British Delegation would be in favour of a wording such as the following: *Such dues may be reduced, or even abolished on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.*

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I accept this wording.

M. SERRUYS (France; speaking in French). — In my opinion this wording is somewhat unwieldy, coming as it does at the end of the paragraph; I would suggest that the Drafting Committee should bring it into agreement with the rest of the paragraph. On the question of principle, however, I agree.

The CHAIRMAN (speaking in French). — If the principle is accepted by the Committee, we will instruct the Drafting Committee to find a more accurate wording for this passage.

M. PERIETZEANO (Roumania; speaking in French). — To my mind the question is rather more important than a mere matter of drafting. It is fraught with all kinds of consequences.

What after all is the point at issue? It is this, — whether dues may vary on different routes. Let us consider the arguments in favour of this, and the consequences which may ensue. As soon as we know what we want, it will be easy to find a wording.

We wish to be able to levy different dues on different routes. But does not this contradict what we have laid down further on? There would indeed be equality of

treatment for the various nations, but only on the same route. I will take an example from my own country. In order to cross Yugo-Slavia, should I have to make a *détour* to the northwards, and cross the frontier at a point where the dues were more reasonable? This would really be equivalent to making Roumania pay heavier dues than the other neighbouring countries. Yugo-Slavia would contend that she was making no distinction between nationalities, and that we could, if we liked, enjoy the same rates as other countries. Yet you appear to imagine that such a state of affairs does not constitute differentiation between nationalities! Under such a system it would be possible to make a particular country pay dues to any amount desired, by arbitrarily fixing the dues chargeable on a certain route which it is bound to use, — which it cannot avoid using. And, after all, for what reasons? We are told the reasons are technical. Let us consider them.

In my experience of the operation of roads, railways and canals, these differences have never been taken into account in the fixing of dues. Do we have different rates on the railways according to whether the journey is uphill or downhill? Yet it is obvious that the cost of traction is not the same in the two cases. Has the question whether ten kilometres of track are on a rising gradient or on the level ever been raised in order to make the due vary with the cost of traction? Certainly not. Nevertheless, transport over 50 kilometres on a mountain railway involves a much more expensive operation than 50 kilometres on the level. But, you say, the dues are fixed at an average rate. And will you not constantly be saying: "There are more thieves on such-and-such a route than on another, and we must therefore employ three policemen per kilometre instead of two." In the words of a Roumanian proverb, that would be cutting hair with an axe. We all agree that these dues will be very small. But is it really necessary to go into such detail as to make them vary according to the route? I see in such a scheme only a means of cloaking a system of differential treatment.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The same terms would be applied to all.

M. PERIETZEANO (Roumania; speaking in French). — Thank you for allowing me favourable rates by some route in the North of Serbia! I am not going to make a *détour* around Serbia in order to use such a route. When I leave Roumania I propose to cross the frontier where it suits me best. All you have to do is to impose unfavourable rates upon the routes which by reason of the geographical position of my country I am compelled to use. I do not suggest that you intend to do so; I am merely considering the possible consequences of such a measure. I maintain that the establishment of different dues on different routes will practically undo what we have already accomplished. I will go further. I cannot see any reason for such a course, because it has never occurred to anyone, in classifying rates on routes possessing very different characteristics, to take into account differences between mountain and ordinary railways, or between ascending and descending routes. With regard to dues of minor importance, the introduction of varying rates is a matter of complete indifference unless the intention is to introduce differential treatment, and for this reason it is inadmissible.

M. WINIARSKI (Poland; speaking in French). — I cannot use the example quoted by the Roumanian Delegate, because he has only considered one particular route. But I think that the British Delegate has alluded to the difficulties which might ensue from the establishment of different administrative régimes. The position in a State which operates all the railways within its territory is very different from that in a State in which all the railways are worked by private companies. I therefore consider that this clause serves a useful purpose, and I ask for its retention.

M. POLITIS (Greece; speaking in French). — If we accept the principle that these dues in each port, or at each point of entry, are to be equivalent to expenditure actually incurred, it is quite impossible to stipulate that they should be identical at all points of entry into any one country. I will take an example.

In Greece there are two ports, amongst others, which are available for northbound traffic, — the Piraeus and the Port of Volo. The customs authorities of the Piraeus have granted a concession to a contractor for the loading, unloading and packing of goods. The same has been done at Volo, but with this difference, that whereas the Piraeus contractor receives a commission of 10 % in return for his work, the contractor at Volo only receives 5 %. It will therefore be necessary to fix the dues at Volo at 5 % and at the Piraeus at 10 %; it is impossible to fix an equal rate for both ports. Doubtless the same rate should be applied indiscriminately to all countries in each port, but it is quite out of the question to collect the same dues in both ports.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think the arguments advanced by the Roumanian Delegate really constitute a justification of our proposal. He has himself said that there is a great difference in the working expenses of railways, according to whether the line is laid in mountainous or flat country. The British Delegate has given us one example; I will take another. We must not forget that the General Convention on Communications and Transit will apply not only to railways, but also to navigable waterways. I remember that in the Commission of Enquiry the Netherlands representative, M. van Eysinga, endeavoured to obtain what we are now seeking; he wished navigable waterways not to be all dealt with alike, because there are some upon which no dues are collected.

Like the British, French, Greek, Polish and Netherlands Delegates, and for the same reasons, we request that the last lines of the original text of Article 3 of the Draft Convention should be added to the amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I must confess that I am more than astonished, — I am thunderstruck at the course which the discussion has taken. I feel it incumbent upon me to remind you that there is a certain green document which will throw some light on the matter. The passage to which I refer is the following (1) :—

The very small amounts involved in these duties made it possible to attempt, at the end of the article, a derogation from the principle of equality in order to facilitate the arrangement of special exemptions, more particularly between neighbouring States.

The statements made by various delegates impel me to trace the origin of this passage. We said to ourselves that the phrase *freedom of transit* implies that there are to be no customs duties on transit traffic, and no special dues to burden the transit of goods, either at the point of entry or exit. We then remembered the existence of certain statistical dues, and we agreed that these dues should be admitted. Subsequently it occurred to us that there were sundry minor dues, such as dues for supervision and administration, and we came to the conclusion that, as they had nothing to do with customs duties, and were only for very small amounts, they should be authorised. This was done. The next question was whether transit traffic might perhaps be hampered by the misuse of these dues. In order to prevent this, it was suggested that a maximum should be fixed for such dues as were collected, even when goods were imported free. It was pointed out that in some cases these dues would not be collected, and that, as the Serbian and Netherlands Delegates justly observed, the result would be inequality of treatment. But these dues, it was thought, were so small that there was no reason to fear that the principle of equality would be affected, and it was conceded that in certain cases, — for instance, when goods entered a country by a different port or used another route, — these dues need not be charged or might at least be reduced. That is the history of the passage.

If we set ourselves to apply the principle of equality too strictly, or if we concede so much as the possibility that freedom of transit may be affected by the collection of such dues, we are entering upon a course which I, for one, am not prepared to adopt. In my opinion, therefore, there is no reason why we should not accept the amendment proposed by the Serbian Delegate, and retain the passage at the end of Article 3 in the *Green Book*.

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(1) See p. 288.



I must apologise for having taken up so much of your time, but I was so overcome with astonishment that I felt bound to speak.

The CHAIRMAN (speaking in French). — I will now put Article 3 to the vote in the form proposed by the Sub-Committee.

*The motion was carried, 29 voting for.*

I will now put to the vote the additional clause proposed by the British and Serbian Delegates.

*The motion was carried, 25 voting for.*

The CHAIRMAN (speaking in French). — The wording of Article 3 will therefore be as follows :—

ARTICLE 3. — *Duties.* — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding article. Such dues may be reduced or even abolished on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.

*Article 3 was adopted in this form.*

M. SERRUYS (France; speaking in French). — It is of course understood, Mr. Chairman, that we accept the principles laid down in this article, but that it will be referred to the Drafting Committee for a revision of the wording.

*The meeting adjourned at 7.45 p.m.*

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# SEVENTH MEETING OF THE PLENARY COMMITTEE

(Friday, March 18th, 1921, at 11 a.m.)

## DISCUSSION OF ARTICLES 5 AND 6

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### DISCUSSION OF ARTICLE 5

The CHAIRMAN (speaking in French). — We now come to Article 5, in regard to which amendments have been submitted by the French, British, Italian and Uruguayan Delegations.

Mr. MANCE (Great Britain). — To this article the British Delegation has proposed several small amendments, one of considerable importance.

Firstly, the British Delegation proposes to omit the words *dans l'un et l'autre cas*, in the fourth line of the French text. These words do not occur in the British text, and the English text of this article, as drawn up by the Provisional Committee, was the original one.

Secondly, in line 4 of the British text, we propose to add after word *health* the word *morals*, in order to cover certain cases which are not altogether covered by *public health*, such as obscene literature or the importation of alcohol, which are not dealt with by other conventions.

In line 5, after the word *plants*, the British Delegation proposes to add the words *or of fraud*. This amendment is prompted by the same motives as the amendment of the French Delegation; its object is to prevent a State from being compelled to afford transit for such objects as forged notes or forged postage-stamps, and it is also intended to defeat evasions of the customs regulations. This might perhaps not be met entirely by the provision on the measures to be taken to ensure that goods are *bona fide* in transit. I will give an example. In our country—and I fancy in other countries—there are regulations limiting the size of packages containing various goods, which are easy to smuggle. We have a regulation that tobacco entering the country, whether for transit or for import, must be packed in packages over a certain size, and we have brought forward this amendment in order to avoid any obligation to accept small packages which might be introduced for fraudulent purposes.

In line 8 of Article 5, after the word *transit*, we propose to insert the words *and that persons in transit are in a position to complete their journey*. That is simply intended to cover the case of transmigrants who arrive without a through ticket, or without the funds necessary to complete their journey. I think that everyone will agree that the Convention is not intended to allow the admission of such persons in transit.

The final amendment is the addition of the following new paragraph :—

Nothing in this Convention shall affect any measures which any of the participating States are, or may be required to take, by virtue of any general international conventions or of any such conventions which may hereafter be concluded under the auspices of the League of Nations, with respect to the export or transit of opium, arms or any other class of traffic.

General conventions of this nature concluded under the auspices of the League of Nations are covered, so far as the Members of the League are concerned, by Article 9,

but there may be signatories to this Convention which are not Members of the League, and it is therefore necessary to include some provision of this kind.

M. SERRUYS (France; speaking in French). — A series of proposals of very different kinds have been laid before us with reference to this article. I intend now to explain the purport of the French amendment, in order that you may be in a position to appreciate its scope and intentions. I shall then proceed to deal with the questions arising out of the British amendments submitted by General Mance.

The French amendment is two fold. We propose the insertion after the words ... *or security, or with a view to the prevention of diseases of animals or plants*, of the words *or to ensure fair competition, in conformity with the intentions of Article 23 (e) of the Covenant*. Our object is to prevent certain the creation by certain countries of a false impression with regard to the origin of certain goods by sending them through a transit port, thus endowing them with an assumed nationality. Many States exercise a certain degree of control with regard to this matter, in order to prevent a practice which is absolutely contrary to the spirit of commercial honesty and fair dealing contemplated in Article 23(e) of the Covenant. Our amendment therefore is a considerable improvement, and I regard it as an opportunity clearly to establish the connection between the Convention before us, which is merely a convention on transport, and the further measures which we propose to take to purify the conditions of international trade. I think, however, that the reference to Article 23 is superfluous and would merely burden the text unnecessarily. We might only retain the words *or to ensure fair competition*. This is the first part of the French amendment.

The second element in the amendment aims at establishing a reservation—which appears essential—regarding certain international Conventions which are now in course of preparation relating to international rivers. International rivers are under a special régime which is to be more liberal than that to be applied to national rivers. In conformity, therefore, with what has already been laid down, we propose to say that *this provision shall not apply whenever transit is carried out by vessels proceeding by waterway under customs seal*. We might even have said *by international waterway*. The object of this reservation having been made clear, I shall, however, be quite content if it is recorded in the Minutes and the question shelved until the time comes to consider international rivers, or the special statute for each river under the terms of the General Convention on International Rivers. I have therefore no objection to withdrawing the second portion of the amendment, provided it be mentioned in the Minutes.

I now come to the various British proposals. The first is to delete of the words *dans l'un et l'autre cas*. I agree with the British Delegate as regards the omission of this phrase.

The other British amendment relates to a reservation to be added to the Article. I have not quite grasped the purport of this passage, and I should be glad if General Mance would explain to us the exact significance of this addition to Article 5.

Sir Hubert LLEWELLYN SMITH (Great Britain). — What addition?

M. SERRUYS (France; speaking in French). — The question which I wish to ask is as follows : Does this addition only relate to the Conventions referred to in Article 23 of the Covenant? You say that :—

Nothing in this Convention shall affect any measures which any of the participating States are, or may be required to take, by virtue of any general international Conventions or of any such Conventions which may hereafter be concluded under the auspices of the League of Nations, with respect to the export or transit of opium, arms or any other class of traffic.

Such conventions or agreements are provided for under Article 23 of the Covenant; they are obligations undertaken by the Members in accordance with the terms of Article 23. If the object of this provision is as I have stated, I should like the text of the British amendment, the substance of which is extremely valuable, to be altered in such a way as to indicate clearly that our intention is to carry out these obligations by every means in our power, and that we are not merely bound by the terms of a convention. In short, I should like the wording to indicate clearly that the conventions

referred to include, not merely those which are now to be concluded, but any which may subsequently be concluded in order to carry out the intentions of Article 23 (e) of the Covenant. In fact, what we have to do is simply to confirm in this Convention an obligation already undertaken. In view of this fact, I am fully prepared to accept the first two portions of the British amendment.

There is a third British amendment,—the proposal to add moral grounds to grounds of public health or security; I should prefer the word *hygiène* to the word *santé* in the French text. I am convinced that we are all anxious to prevent the transit of any articles calculated to encourage immorality, but the word here suggested is *morals*—in the plural—and it seems to me that the idea implied is somewhat vague. Could we not find a more definite term? Provided this be done, and subject to any necessary amendment in the wording, I am prepared to accept the British amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene; State speaking in French). — I should like to know the meaning of the amendment to Article 5, which reads as follows : ... *and that persons in transit are in a position to complete their journey.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — With your permission I will, in the first place, reply to the questions put by the Serbian Delegate. Under the Convention, a State is compelled to give free transit to passengers. Passengers arrive, let us say in the United Kingdom, with the intention of proceeding to America. Their intentions are perfectly *bona fide*, and therefore they are passengers *bona fide* in transit; but they arrive without the money for a through ticket to America and are clearly unable to continue their journey. We consider that any country is entitled to refuse to treat such persons as passengers in transit. Let me give another example. The United States of America, as the destination of the persons in question, may have an immigration law requiring that every immigrant who arrives should have a certain sum of money on his person. These people are not in possession of the requisite sum, and it is therefore evident that, if they are sent across in transit to America, they will be returned to the United Kingdom. Our amendment is intended to meet such cases.

I should like to thank M. Serruys for the support he has given to the British amendments, and I may say that we are entirely in favour of the French amendments to Article 5, as he has explained them. We should also prefer the last paragraph of Article 5 in the French text to be discussed, as M. Serruys has proposed, when we come to the Convention on Waterways, rather than now, and to be inserted if necessary in the Minutes. For the same reason I am of opinion that, in order to avoid overloading the text, the words *in conformity with the intentions of Article 23 (e) of the Covenant* should be omitted,—not that there is anything in that to which the British Delegation objects, but simply in order to lighten the text.

M. Serruys has asked for an explanation of the purport of certain of the British amendments. He has asked what exactly is implied by the addition of the word *morals*. The word *morals* in English law has a fairly definite meaning. I am not sufficiently conversant with French to know the exact French word by which it would be best translated. I will give you an example. There are certain alcoholic spirits, the supply of which to native races should, by common consent, be limited. Conventions dealing with the matter are already in existence. The British Delegation is not satisfied that the question of what are known as “trade spirits” would be adequately safeguarded by the word *health*.

With regard to the addition to this article which we proposed in order to cover international Conventions on the export or transit of opium, arms or any other class of traffic, M. Serruys has asked me whether this clause is intended to refer only to matters dealt with under Article 23 of the Covenant. Opium and arms certainly come under this head; but M. Serruys asks whether there is any other particular class of traffic which is not covered by Article 23. My reply is that only one thing occurs to me,—fish caught in contravention of the North Sea Fisheries Convention. Clearly a State should not be compelled to afford transit for such fish.

There is one more thing that I should like to add. General Mance, speaking for the British Delegation, moved an amendment for the addition of the words *or of fraud*. We did not intend to move this amendment, because we thought it was covered by

the words *loyauté commerciale* (fair competition) in the French amendment. I should like to suggest that the Drafting Committee consider whether these words are sufficiently wide to cover cases of fraudulent traffic, such as false coinage, forged notes, etc. Perhaps it would be better to use the words *déloyauté commerciale* (unfair competition). In any case this is purely a question of drafting.

M. SERRUYS (France; speaking in French). — I am perfectly willing to accept the amendment,—or rather the slight adjustment,—consisting in the insertion of *dé* before *loyauté*. The British amendment adopts the negative form : ... *or for the prevention of fraud*; I have adopted the positive method : ... *to ensure fair competition*,—that is to say, competition the fairness of which is open to doubt. In the preceding passage we do not say *on grounds of disease* but, *on grounds of health*, and again, not *on grounds of public insecurity* but *on grounds of public security*. However, except from the point of view of symmetry, I have no objection to the phrase *unfair competition*. The expression conveys clearly the meaning intended. Our object is not elegance, but clearness. I am prepared, therefore, to accept Sir Hubert Llewellyn Smith's proposal. I would also thank him for having explained the purport of the addition proposed by the British Delegation. It deals with three subjects,—opium, arms and fraudulent traffic in fish caught in contravention of territorial water rights. Now that its purport has been thus clearly defined, I am able to accept in its entirety the British amendment, which indeed raises some interesting points.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I referred to the Fisheries Convention.

M. SERRUYS (France; speaking in French). — I know the Fisheries Conventions, especially the one relating to the North Sea Fisheries, to which several States were parties and which amongst other agreements has once more been put in force by the Treaty of Versailles.

M. PIERRARD (Belgium; speaking in French). — I very much regret to have to state that the Belgian Delegation cannot accept the amendment moved by our French colleagues, and approved by the British Delegation. To my mind the limitation added to Article 5 by the insertion of the words *or of unfair competition* is calculated to deprive the nations here assembled of many of the advantages which they expect to derive from the Committee on Transit, as we understand it. Is there any international criterion for fair competition? Some countries have concluded conventions amongst themselves, but there are others which have not acceded to them. Is the country of transit to be free to decide whether goods passing through its territory bear the taint of unfair competition? It seems to me that this amounts to making the country of transit entirely master of the situation; it would be free, on one pretext or another, to nullify the advantages which we expect to derive from the Convention on Transit. Suppose for instance, that a State A affords protection to certain branches of its industry which are in competition with those of a State B, a country of transit. State B, on the pretext of unfair competition, might prevent the goods of State A from reaching a State C situated on the other side of it. In my opinion, such an act would be inadmissible.

With regard to the question of morals introduced in the British amendment, I much regret that I am also unable to accept that. I will give you an example. Some time ago we had in Belgium a somewhat prudish Minister who forbade the circulation of certain French publications in Belgium, and since he was Minister for Railways, he stopped them at the frontier. As a matter of fact, France protested against this. But supposing that the Netherlands Minister of Railways were less particular than the Belgian Minister, and had no objection to the entry of these publications into Holland, what right would our Minister have to prevent them from passing through Belgian territory? This example will show you clearly the dangers attending the introduction of such ideas into a convention dealing with freedom of transit. My conception of transit is as follows: State A prepares goods for despatch to State C. They are placed in a case or closed box of some kind. To my mind, State B, through which

the goods pass, is not entitled, according to the terms of this Convention, even to know what is contained in the box passing through its territory, unless there are objections such as those mentioned in this very Article 5, which, in my opinion, is sufficiently explicit.

Mention has also been made of counterfeit coinage. But this does not affect the country of transit; it is a matter for the importing country. The latter may take any measures which it considers necessary to prevent such counterfeit coin or forged notes from passing its frontier; it is not for the country of transit to take such measures.

In speaking I have been actuated by purely liberal motives. I have no ulterior motive connected with the interests of my own country. I am speaking as the advocate of freedom, and in so doing I am following the example set by my Minister, who stated, at the outset of the Conference, that in his opinion the terms of the present Convention were not liberal enough.

M. SERRUYS (France; speaking in French). — In the first place, I desire to pay tribute to the liberal ideas of my honoured opponent; I share them to the full. But in my opinion the present question is not one of liberal views but of health, and we for our part could not possibly accept a régime which, on the pretext of improving the conditions of international transit and endowing it with a greater degree of freedom, would actually encourage the abuse of such freedom. We cannot, for instance, be required to allow the passage through our territory of goods bearing a fraudulent French trade-mark, and to allow the sender to make use of the fact that the goods have passed through France in order to create the impression that they are of French origin. That would constitute an abuse, and the intention of the British Delegation, in substituting the word *unfair* for the word *fair*, was to make this fact clear. It is far from my intention to endeavour to lay down rules with regard to competition; but we will not countenance in our territory certain kinds of traffic which would involve unfair competition with our own products. The Belgian Delegate knows perfectly well to which traffic I refer. In my opinion it is out of the question that a Convention drawn up under the auspices of the League of Nations should sanction and promote practices of this kind.

M. VALLOTTON (Switzerland; speaking in French). — The present discussion is no novelty to those who had the privilege of passing a few days in the Boulevard Saint-Germain some months ago. The question was brought up for discussion at that time. If our French colleague had been present at the early discussions he would be aware that his proposal is the result of a misunderstanding, as also is that of the British Delegation; it was indeed, unless I am mistaken, rejected at the time. We unanimously agreed to exclude from the right of free transit certain classes of goods, the importation of which is prohibited on grounds of *public health or security*. Whether these words are well-chosen is a matter for discussion. At all events, the intention is quite clear; it is to respect the police regulations of countries of transit, and also any international Conventions concluded by them,—in particular international laws and conventions relating to fair competition, especially the Madrid Agreement with regard to false marks of origin.

On behalf of the Swiss Delegation, I entirely endorse the remarks made by the Belgian Delegate. Switzerland, like Belgium and other countries, even including those from whom we differ at the moment, does its utmost to safeguard fair competition, especially with regard to marks of origin. I myself have for 25 years ceaselessly striven to protect trade-marks and to prevent the use of false marks of origin. We are all, therefore, agreed as to the substance of the matter. The question is merely one of method. Assuming we are all agreed that obvious fraud and breaches of international engagements must be absolutely prevented, are we to allow, not a judge, but a customs official,—as a rule a man without education,—to stop goods in transit and to delay, more or less intentionally, the transit of goods of a neighbouring country? For what purpose? To prevent our neighbours from sending goods in transit to a third State? That is the point.

The question must be probed further. The point at issue is not the significance of the two words *public health* and *security*; the real question is to decide whether this

the words *loyauté commerciale* (fair competition) in the French amendment. I should like to suggest that the Drafting Committee consider whether these words are sufficiently wide to cover cases of fraudulent traffic, such as false coinage, forged notes, etc. Perhaps it would be better to use the words *déloyauté commerciale* (unfair competition). In any case this is purely a question of drafting.

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Mention has also been made of counterfeit coinage. But this does not affect the country of transit; it is a matter for the importing country. The latter may take any measures which it considers necessary to prevent such counterfeit coin or forged notes from passing its frontier; it is not for the country of transit to take such measures.

In speaking I have been actuated by purely liberal motives. I have no ulterior motive connected with the interests of my own country. I am speaking as the advocate of freedom, and in so doing I am following the example set by my Minister, who stated, at the outset of the Conference, that in his opinion the terms of the present Convention were not liberal enough.

M. SERRUYS (France; speaking in French). — In the first place, I desire to pay tribute to the liberal ideas of my honoured opponent; I share them to the full. But in my opinion the present question is not one of liberal views but of health, and we for our part could not possibly accept a régime which, on the pretext of improving the conditions of international transit and endowing it with a greater degree of freedom, would actually encourage the abuse of such freedom. We cannot, for instance, be required to allow the passage through our territory of goods bearing a fraudulent French trade-mark, and to allow the sender to make use of the fact that the goods have passed through France in order to create the impression that they are of French origin. That would constitute an abuse, and the intention of the British Delegation, in substituting the word *unfair* for the word *fair*, was to make this fact clear. It is far from my intention to endeavour to lay down rules with regard to competition; but we will not countenance in our territory certain kinds of traffic which would involve unfair competition with our own products. The Belgian Delegate knows perfectly well to which traffic I refer. In my opinion it is out of the question that a Convention drawn up under the auspices of the League of Nations should sanction and promote practices of this kind.

M. VALLOTTON (Switzerland; speaking in French). — The present discussion is no novelty to those who had the privilege of passing a few days in the Boulevard Saint-Germain some months ago. The question was brought up for discussion at that time. If our French colleague had been present at the early discussions he would be aware that his proposal is the result of a misunderstanding, as also is that of the British Delegation; it was indeed, unless I am mistaken, rejected at the time. We unanimously agreed to exclude from the right of free transit certain classes of goods, the importation of which is prohibited on grounds of *public health or security*. Whether these words are well-chosen is a matter for discussion. At all events, the intention is quite clear; it is to respect the police regulations of countries of transit, and also any international Conventions concluded by them,—in particular international laws and conventions relating to fair competition, especially the Madrid Agreement with regard to false marks of origin.

On behalf of the Swiss Delegation, I entirely endorse the remarks made by the Belgian Delegate. Switzerland, like Belgium and other countries, even including those from whom we differ at the moment, does its utmost to safeguard fair competition, especially with regard to marks of origin. I myself have for 25 years ceaselessly striven to protect trade-marks and to prevent the use of false marks of origin. We are all, therefore, agreed as to the substance of the matter. The question is merely one of method. Assuming we are all agreed that obvious fraud and breaches of international engagements must be absolutely prevented, are we to allow, not a judge, but a customs official,—as a rule a man without education,—to stop goods in transit and to delay, more or less intentionally, the transit of goods of a neighbouring country? For what purpose? To prevent our neighbours from sending goods in transit to a third State? That is the point.

The question must be probed further. The point at issue is not the significance of the two words *public health* and *security*; the real question is to decide whether this



Committee intend to raise its voice in protest against the present tendency to multiply at every frontier the customs formalities and red tape which constitute such an obstacle to transit traffic.

We have assembled here with an excellent programme and the loftiest of sentiments, which Switzerland and Belgium share to the full. Do we intend to carry out this programme faithfully, not only in word, but in deed? Our first act should take the form of a protest against the customs abuses which, on the pretext of safeguarding fair competition, prevent Switzerland, for example, from sending goods in transit to another country, or Spain from exporting her home produce. I have no particular country in mind,—I simply take these examples at random. Are we to provide the customs authorities with powers in excess of those required for the task which they are normally called upon to fulfil,—that of collecting duties legally due to a State which allows goods to enter its territory for disposal there? We cannot accept the principle that the customs authorities in countries of transit should, on various pretexts, be allowed to do what the French Delegation itself is not prepared to accept in the case of navigable waterways, for it recognises that vessels under seal must be left intact.

I am not a railway expert, but I think I may state that for the most part transit traffic on railways is carried on under the same conditions as in the case of vessels. Why should wagons be opened when the country of transit, as the guardian of public order, can always seal them on entry into its territory, in order to prevent any consequences detrimental to commercial freedom or public morals within its territory? I wished to put the matter in this light because, in my opinion, this is the point of view from which it should be regarded.

The CHAIRMAN (speaking in French). — In order to avoid an unduly long discussion upon this point, I suggest that a Sub-Committee composed of MM. Serruys, Vallotton, Pierrard, Sir Hubert Llewellyn Smith, MM. Lankas and Fernandez y Medina should be entrusted with the further examination of the question.

M. VALLOTTON (Switzerland; speaking in French). — Before this Sub-Committee meets, it would be well for us to consider the Italian amendment on monopolies; I have a few points to submit in regard to foodstuffs which are subject to monopolies.

The CHAIRMAN (speaking in French). — We will continue the discussion. I call upon the Italian Delegate to submit the Italian amendment.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation proposes to add in Article 5, after the word *plants*, the words *or owing to the existence of State monopolies*.

It sometimes happens that States prohibit the importation of certain goods which are subject to monopolies, in order to safeguard these. The proposed amendment lays down that States will be entitled to prohibit the transit of such goods. The Italian amendment is necessary in the interest of States holding monopolies which they have to protect against possible infringement on the part of the consignors of certain classes of goods connected with these monopolies.

M. KROLLER (Netherlands; speaking in French). — The Netherlands Delegation considers that all reservations with regard to existing or subsequent Conventions should be taken in conjunction with Article 10 and considered by the same sub-committee. As regards the reservations made by the Italian Delegation, the Netherlands Delegation is unable to accept them. Let us take a few practical examples. In several States tobacco is subject to a monopoly. If we accepted this reservation, the transit of tobacco through a State holding a monopoly would be impossible, and Dutch tobacco would be unable to pass through Germany on its way to other countries. This would be an impossible position. We cannot accept the principle that the mere existence of a monopoly justifies the prohibition of transit.

M. SCASSI (Greece; speaking in French). — I think that the amendment with regard to monopolies would interfere very seriously with international trade, and that

its adoption would be a distinctly retrograde measure. The trade of a great many countries would be adversely affected by the introduction of this measure. For instance, in Greece, matches are a monopoly; would Greece not have the right to import English matches via Italy? Greece grows tobacco, and carries on a large trade in it. Would she no longer be able to send her tobacco to Switzerland or Holland in transit through the intermediate countries? I could quote many other examples. On these grounds the Greek Delegation asks for the rejection of the amendment.

THE CHAIRMAN (speaking in French). — I will ask the Italian Delegate to explain his amendment.

M. BIGNAMI (Italy; speaking in French). — On behalf of the Italian Delegation I would point out that the right to prohibit the import and transit of goods subject to monopoly is reserved in many international treaties. What we desire is that States where certain goods are subject to monopoly shall have the right to take special measures to prevent abuse of the system. Account must also be taken of goods which may have a detrimental effect on morals, and the entry of which should be prohibited, as provided in the British amendment. The fact that we wish to prevent abuses does not imply that we wish to prevent transit traffic. So far as I am aware, Italy has never prohibited the transit of goods subject to monopoly. At all events, a question of this kind should be dealt with by the sub-committee which will consider the French and British proposals, and whose object should be to prevent abuses in either direction.

M. LÁNKAS (Czecho-Slovakia; speaking in French). — The Sub-Committee appointed to consider the Italian amendment should be guided, in my opinion, by the principle that at all costs the taking of any retrograde step must be avoided. I very much fear, however, that to include in our Convention a provision intended to protect monopolies which exist in certain States would be to reverse the engine. Moreover, the embodiment of this principle in a clause of general application would lend itself to abuses and would constitute an obstacle to freedom of transit. A State which has a monopoly and wishes to ensure that goods in transit do not remain in its territory, is protected by the following clause: *Each Contracting State shall have the right to take the measures necessary to ensure that goods which are the subject of a monopoly do not remain within its territory.*

The British proposal which was read to us: *Nothing in this Convention shall affect...*, also seems to me dangerous. I should like to know whether the Conventions referred to include both general and bilateral Conventions. To my mind it is out of the question that freedom of transit should be blocked by bilateral Conventions, even if concluded under the auspices of the League of Nations.

Lastly, the Czecho-Slovak Delegation strongly urges that the amendment submitted by the French Delegation: *This provision shall not apply whenever transit is carried out by vessels...* should be inserted either in the Convention on Freedom of Transit or in the Convention on Navigable Waterways, for in our opinion this is an extremely practical suggestion. When a portion of a vessel is sealed, it is unnecessary to examine it in order to ensure that the goods are really in transit.

The CHAIRMAN (speaking in French). — If no-one else wishes to speak, I propose to submit Article 5 and all the amendments to it to a sub-committee.

M. BOCHKOFF (Bulgaria; speaking in French). — Bulgaria is a country which produces and exports a large quantity of tobacco. I therefore share the views of the Netherlands and Greek Delegations, and oppose to the Italian amendment. I move that this question, which is one of principle and not merely one of drafting, should be discussed in plenary committee.

M. SCASSI (Greece; speaking in French). — It is not a mere question of drafting, and the discussion should be continued here.

The CHAIRMAN (speaking in French). — The Officers of the Conference maintain their proposal to submit the matter to a Sub-Committee, composed as follows:—

MM. Serruys (France);  
Vallotton (Switzerland);  
Pierrard (Belgium);  
Sir Hubert Llewellyn Smith (Great Britain);  
MM. Kasama (Japan);  
Kröller (Netherlands);  
Fernandez y Medina (Uruguay);  
Scassi (Greece);  
Lankas (Czecho-Slovakia);  
Bignami (Italy);  
Carneiro (Brazil).

Is there any objection?

M. TSANG-OU (China; speaking in French). — I do not wish to be a member of the Sub-Committee, but I should like to ask the Brazilian Delegate to lay before it a short statement of the views of the Chinese Delegation on Article 5, and I would ask the Sub-Committee to take these views into account as far as possible.

The CHAIRMAN (speaking in French). — The Sub-Committee will be only too pleased to receive the statement.

*It was decided to refer the question to the Sub-Committee.*

#### DISCUSSION OF ARTICLE 6.

The CHAIRMAN (speaking in French). — We now come to Article 6. The French Delegation proposes the deletion of the words : *Notwithstanding the provisions of Article 2 et seq., and mails and postal parcels.*

M. SERRUYS (France; speaking in French). — The matter is merely one of drafting. The word *notwithstanding* pre-supposes a contradiction between these clauses, whereas the intention is merely to limit the application of the provisions referred to. The best course would be to adopt the article in principle, and then to refer it to the Drafting Committee, to be worded in such a way as to convey the meaning intended.

The CHAIRMAN (speaking in French). — The words *mails and postal parcels* will be deleted in conformity with the decision taken on the other articles.

The British Delegation has moved an amendment for the deletion of the word *concerned* (intéressées) and the insertion of the words *on the ground of its own interest in the traffic.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — Although this is rather more than a drafting amendment, it is not a question to which the British Delegation attaches great importance as a matter of principle, nor is it one on which it would insist in the face of any serious opposition; but it has been represented to us that the words *a valid reason* are somewhat vague, and that it might be better to define the scope of this exception by restricting the right of intervention to those High Contracting Parties who have a direct interest in the transit traffic in question.

M. SERRUYS (France; speaking in French). — The French Delegation frankly admits the importance of the point raised by the British Delegation. We have to decide whether a State may benefit by facilities granted to another State, on the ground that it is interested in the traffic in question. What kinds of interest are meant? I should like the matter to be more clearly defined. Let us take the instance of a

State which is not a Member of the League of Nations; would that State be entitled to say that it was interested in the transport traffic of a Member State and that the terms of the Convention should consequently apply to it? If this were so, there would, in my opinion, be no distinction between Member and Non-Member States. Further, in what does such participation consist? Is financial participation meant, and are we going to broach the vast question of the nationality of companies? For instance, would a State be in a position to say that it or one of its nationals controlled a shipping company belonging to another State which had signed the Convention? Would this ground be sufficient to entitle it to receive all the advantages conferred by adherence to the Convention? Moreover, what is to constitute control? Control would sometimes be of a financial, sometimes of an administrative nature, and sometimes simply a question of the ownership of shares. These points must be definitely settled. Of course we must not impose too many restrictions; nevertheless, we must allow no possibility of misunderstanding. I very much fear, however, that the word *interest* is liable to misinterpretation, and that it would be a source of many misunderstandings which would seriously impede the application of the Convention. If we desire to extend the scope of such intervention, we must differentiate between signatory and non-signatory States. If we say that "a signatory State, by taking shares in, or, in a word assuming control of a company belonging to a non-signatory State, can confer upon that State the advantages derived from the Convention", confusion will inevitably result.

As you will realise, such a course would involve a considerable element of danger,—though I am not sure if I have expressed myself clearly. If my remarks are not quite clear, it is because the proposal laid before us is itself not very clearly defined, and I should be glad of a further explanation on some points.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation does not attach much importance to this amendment; if it raises any difficulty we are willing to withdraw it.

M. SERRUYS (France; speaking in French). — I am very grateful to Sir Hubert Llewellyn Smith. His action will remove a slight misunderstanding.

The CHAIRMAN (speaking in French). — The British amendment is withdrawn: The Roumanian Delegation has handed in an amendment to insert after the word *concerned* the words *provided the non-contracting State be prepared to accord reciprocity*.

M. PERIETZEANO (Roumania; speaking in French). — In my opinion, a non-contracting State which participates in the advantages of transit traffic must be required to accord reciprocal conditions.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to have a fuller explanation of what reciprocity means here,—whether it means reciprocity on any particular transit route. If it indicates special reciprocity, I am satisfied; but if general reciprocity,—that is to say the granting to a non-contracting State of all the advantages conferred by the Convention,—I think that would be going too far, and we should not be prepared to agree to such a proposal.

M. PERIETZEANO (Roumania; speaking in French). — It is for the Committee to decide how far we are to go. In my opinion there should be complete reciprocity.

M. KROLLER (Netherlands; speaking in French). — I do not think it advisable to introduce the question of reciprocity at this point; moreover, it was discussed at great length in Paris. It was there decided that two contracting States might establish a transit route for goods traffic through the territory of a non-contracting State. The interests of the latter would not be involved. The traffic would be conducted solely in the interests of the two contracting States; and the non-contracting State would not come into the question. I hope my explanation is clear.

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation is in entire agreement with the views expressed by the Netherlands Delegate.

The CHAIRMAN (speaking in French). — Does the Roumanian Delegate press his amendment?

M. PERIETZEANO (Roumania; speaking in French). — I will not press the point further, but I desire that it should be put to the vote.

The CHAIRMAN (speaking in French). — I will now take a vote upon the Roumanian amendment.

*The Roumanian amendment was rejected.*

Does anyone else wish to speak?

I will now put to the vote Article 6 in the form in which it appears in the *Green Book*.

*Article 6 was adopted.*

M. SERRUYS (France; speaking in French). — The French amendment proposing the deletion of two or three words at the beginning of the article should surely be reserved. It is understood that the Drafting Committee will bear our proposal in mind in drafting the final text of Article 6.

The CHAIRMAN (speaking in French). — That is understood.

M. BOCHKOFF (Bulgaria; speaking in French). — I should like to ask the Chairman why my proposal with regard to the discussion of the Italian amendment to Article 5 has not been taken into consideration. A similar case has already arisen in connection with a proposal by the Serb-Croat-Slovene Delegation to delete the word *vessels etc.*, in one of the articles. This question was not referred to a sub-committee,—it was discussed and voted upon at a plenary meeting of the Committee.

The CHAIRMAN (speaking in French). — The question raised by the Bulgarian Delegate will be discussed in plenary session when the Sub-Committee has submitted its report.

*The meeting adjourned at 1 p.m.*

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# SIXTH MEETING OF THE PLENARY COMMITTEE

(Friday, March 18th, 1921, at 4.30 p. m.)

DISCUSSION OF ARTICLE 7 — POSTPONEMENT OF DISCUSSION OF ARTICLES 8 AND 9 — DISCUSSION OF PREAMBLE AND ARTICLE 10 — REFERENCE TO SUB-COMMITTEE OF ARTICLES 10, 11 AND 12.

*The meeting opened with M. Loudon, Vice-President of the Conference in the Chair.*

## DISCUSSION OF ARTICLE 7

THE CHAIRMAN (speaking in French). — We will now continue the discussion upon the Draft Convention on Transit.

We have come to Article 7, which reads as follows :—

ARTICLE 7. — *Scope of Application of the Convention.* — The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of national emergency; it being nevertheless understood that the principle of Freedom of Transit shall be maintained as far as possible.

An amendment has been handed in by the French Delegation proposing that Article 7 should be drafted as follows :—

Exceptions may be made, in special cases, to the terms of the preceding article in virtue of measures of a special or general nature which any of the High Contracting Parties might be compelled to take for the safety of the State or the vital interests of the country, it being understood that the principle of Freedom of Transit shall, as far as possible, be observed.

I call upon M. Serruys to explain the purport of the French amendment.

M. SERRUYS (France; speaking in French). — I should like briefly to indicate the motives which actuated the French Delegation in submitting this amendment. We felt some astonishment at the form in which Article 7 was drawn up. I think that the somewhat indefinite manner in which this article was expressed is due to the fact that the French text was a translation from the English. We are unable to explain the exact significance of the words : *the present Convention shall not be taken as affecting in any way measures for national security...* Does the statement that a Convention is not to be regarded as affecting a certain part of the initiative or activities of a State imply that the Convention does not apply, or is suspended? It appears to us very difficult to draw any conclusions whatever from this text. The English expresses the meaning intended, but the French translation does not. We have therefore attempted to prepare a clearly-worded article conveying the exact intentions of the *Green Book* in a more precise form. In our opinion it should be understood that the Convention remains in force throughout the exceptional circumstances referred to, and that any deviations from the provisions of the Convention which may be justified in the event of an emergency must be treated as exceptions to the general rule. Moreover, we considered that the true nature of these exceptional emergencies should be correctly described, namely, emergencies affecting the vital interests of a State. I should like to point out that, as a matter of fact, the Commentary of the

*Green Book* is clearer than the actual text in this respect. In the text only national security and the safety of the State are mentioned, that is to say, circumstances endangering an existing administration, whereas the Commentary also contemplates (1) a breakdown in communications or famine, which cannot properly speaking be brought under the same heading as the safety of the State.

We have therefore ventured to submit to you a text which lays down that in such circumstances, no matter how exceptional they may be, the Convention remains in force, and that any special measures constitute deviations from the terms of the Convention. With regard to guarantees for the observance of the Convention, our text provides that a departure from the terms of the Convention may only be made in the event of emergencies affecting the safety of the State or the vital interests of the country; and also that the principle of freedom of transit must be observed to the utmost possible extent. Such is the exact purport of the version submitted by us, and in my opinion it does not affect the substance of the article.

M. VALLOTTON (Switzerland; speaking in French). — Without committing myself with regard to the principle embodied in the French amendment, I consider that at all events the word *maintained* should be replaced by the word *observed*.

M. SERRUYS (France; speaking in French). — I agree.

The CHAIRMAN (speaking in French). — There is also an Italian amendment referring to the same article, proposing the addition of the words :

*either for purposes of national defence or after the words on its own territory.*

M. BIGNAMI (Italy; speaking in French). — Article 7 in its present form only contemplates the taking of measures for national safety in the event of national emergency. Provision must also be made for cases in which a State finds it necessary to take certain steps, for instance, in connection with the construction of works for national defence, or to stop transit traffic for purposes of national defence. There are some States—Italy for instance—which have attained freedom and independence after a century-long struggle; such States cannot afford to compromise their safety by accepting the principle that a State may only take measures for national security in certain circumstances. It is for this reason that the Italian Delegation has submitted the above amendment.

M. PIERRARD (Belgium; speaking in French). — I am impelled to speak by the same motive which led me to the platform this morning. I should feel certain misgivings if the words *affecting the vital interests of the country* were inserted in Article 7. After the explanation given by M. Serruys, which will appear in the Minutes, I think that we can come to an understanding; but who is to decide what are the vital interests of a country? The country itself?

M. SERRUYS (France; speaking in French). — Obviously.

M. PIERRARD (Belgium; speaking in French). — In that case vital interests may include commercial or economic interests.

M. SERRUYS (France; speaking in French). — No.

M. PIERRARD (Belgium; speaking in French). — I am afraid that in practice this may happen. If definite guarantees were provided as to the spirit in which this provision would be applied, we might be able to accept it; in my opinion, however, reservations of this kind amount to restrictions upon freedom of transit.

M. SERRUYS (France; speaking in French). — I am very glad that the difficulty has been thus clearly stated by the Belgian Delegate. This article is one of the most

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(1) See p. 291.

important in the Convention. I may as well say frankly that were the tone of the discussion to indicate that some of the delegations were endeavouring to restrict the freedom of action—I will not go so far as to say sovereignty—of certain States, the difficulty would assume very serious dimensions.

M. Pierrard has put a question which astonishes me;—Who is to decide what are the vital interests of a State? To my mind there can be only one judge—the State itself. Moreover, is there not definite assurance that any decisions which it might take with regard to its own interests in connection with transit will be subject to a certain degree of control? Do you not realise that this Convention contains certain new features? The six articles which you have adopted constitute a transit statute which lays down complete equality, and involves the general and unanimous consent of the Signatory Powers to the establishment of principles which may at times be irksome to them, and which in any case entail limitation of their contractual freedom. At the end of this Convention, provision is made for the acceptance by these Powers of a procedure of conciliation, and also for recognition in advance of the principle that when disputes arise they are to be dealt with, not according to the methods formerly employed, but according to the new method,—of which I am an enthusiastic supporter—by which a dispute is brought before the tribunal of international opinion and, if necessary,—should it become aggravated—is submitted to the Court of International Justice. Do you not think that after we have undertaken these two obligations, firstly, to comply with a principle of universal application and, secondly, to accept international jurisdiction, we are entitled to expect confidence to be reposed in us and also to have a free hand in safeguarding what I have termed the vital interests of States.

What do we mean by vital interests? This is the second question put by the Belgian Delegate. Vital interests include the safety of the State and national defence; they may be of a political or of an economic nature, or they may be both political and economic at the same time. We cannot foresee all possible contingencies. You have mentioned famine and transport crisis; there may be other circumstances which are dependent not merely on yourself but also on your neighbours. Are we to restrict these interests to such narrow limits, regardless of the evidence of history? I, for my part, am not at all inclined to agree to a renunciation of this kind.

M. Pierrard asks me to provide guarantees. These guarantees are contained in the first articles of the Convention, and in the jurisdiction which you have set up. We tell you in all good faith that we wish to make an exception with regard to vital interests, and that we wish the decision to rest with us as to the necessity for taking measures for their protection. You will still, however, be able to resort to the various jurisdictions provided for in the Convention. Will not that content you? Must we enumerate here all the various circumstances in which a State may decide that its vital interests are involved? That would be a problem of such difficulty that I for my part would not venture to deal with it.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In Article 7 we approach a question in which there is necessarily a certain conflict between our common desire, on the one hand, to maintain the freedom of transit in all possible circumstances, and, on the other hand, not to infringe upon national sovereignty and the right of each country in the last resort to declare what are its vital interests and to take the measures necessary to safeguard them.

Before dealing with M. Serruy's amendment, may I suggest to the Italian Delegate that his amendment, with which the British Delegation is entirely in accord, would be covered by the more general amendment of M. Serruys, and therefore perhaps we could carry on our discussion entirely on the basis of the French amendment. I see in this amendment only one danger, and that is the possibility that a State might presume upon its terms in order to claim that certain measures taken for economic or commercial purposes, quite distinct from the protection of vital interests, were taken under the powers conferred by this article. Such a State might say: "We are sole judges of what are our vital interests, and therefore there can be no operation of the jurisdiction established by this Convention." I am sure that M. Serruys never intended to create such a possibility. In his last speech he clearly explained that our



safeguard consists in the jurisdiction set up by this Convention. I think on reading his amendment that he is right, for I observe that, at the end, it is stated that the principle of freedom of transit must be maintained or—to follow the wording of M. Vallotton—observed. That is a question of fact, and I conclude that recourse should be had to the jurisdiction, not on the question as to whether an interest declared to be vital is vital or not, but whether the action taken is *bona fide* in defence of national interests. If M. Serruys would allow me, I should like to make this even more clear by means of a very slight alteration in the wording. If, instead of the words *may consider it necessary* the Committee would agree to the insertion of the words *is obliged*, I think the sense would be made even clearer. This, in my opinion, is all that is required in order to restrict the exceptions to the narrowest possible limits, and that is, I think, the desire of us all.

M. SERRUYS (France; speaking in French). — I should like to say that the alteration suggested by the British Delegate meets my views exactly, and I am therefore perfectly ready to accept it.

M. LANKAS (Czecho-Slovakia; speaking in French). — The amendment proposed by the French Delegation is worthy of careful study, more especially from the point of view of landlocked countries. As the representative of one of these, I am bold enough to say that I am somewhat afraid of this French amendment. Such experience as I have of high politics and diplomacy has convinced me that interests may very easily and very speedily become vital interests, and I am uneasy regarding the scope of these words *vital interests*. We considered this question in the Commission of Enquiry, and we all came to the conclusion that what was given with one hand should not be withdrawn with the other. We were afraid of a tendency to impose too many restrictions. Perhaps in practice undue advantage will not be taken; nevertheless, we are afraid that more may be read into these words than is intended, since they are not sufficiently definite, and that they will too often be pleaded as authoritative. For this reason the Commission of Enquiry decided to lay down something more concrete, and to indicate that to speak of vital interests being involved implied a serious emergency. I must therefore devote mature consideration to the matter before coming to a decision.

M. VAN EYSINGA (Netherlands; speaking in French). — Articles 5 and 7 are very closely connected. Article 7 relates to the imposition of restrictions upon freedom of transit at exceptional times and in case of emergency, whereas Article 5 lays down restrictions for normal times. I think that the idea contained in the Italian amendment should be taken in conjunction with Article 5, since it deals with special rules for normal times. Moreover, I am inclined to think that the French amendment also relates rather to Article 5 than to Article 7, at any rate to some degree, and it is this very point that makes me somewhat uneasy concerning this amendment. We are all of opinion that the subsidiary amendment proposed by the chief British Delegate and accepted by the French Delegate, constitutes a very considerable improvement. My objections, however, are not entirely removed; Article 7 refers to emergencies. This expression does not appear in the French amendment, and on the other and, the latter contains the expression *vital interests*, which may cause certain restrictions to be imposed on transit. Our Delegation shares the views of those delegations which are of opinion that this expression *vital interests* is somewhat vague. I think we might find something more definite. If we cannot do this in the course of a meeting, we might perhaps instruct a sub-committee to find a somewhat less comprehensive expression. In short, the Netherlands Delegation shares the views of the Belgian and Czecho-Slovak Delegations.

M. SERRUYS (France; speaking in French). — I am very glad that the debate has taken this turn, for it gives me an opportunity to define exactly both the purpose and subject of the clause under discussion. The Netherlands Delegate has stated that there is a very close connection between Article 5 and Article 7. That is obvious. Both provide for exceptions to a general rule. He has also very rightly said that

the exceptions provided for in Article 5 were constant and permanent exceptions, whereas Article 7 relates to extraordinary exceptions justified by an exceptional situation, or exceptional events.

M. Lankas, the Commentator of the Green Pospel, has brought to bear his usual somewhat pointed arguments, and I should like to refer to one of his remarks which seems to me of some interest. M. Lankas states that the text is sound. I venture to disagree, and in doing so I entirely share the views of M. Chargueraud, who, like M. Lankas, was one of the authors of the *Green Book*. It is consequently useless to quote the authors of the *Green Book*, some of whom actually took part in the Conference, while others were mere spectators. Now the spectators allow the others to come forward and direct operations. This is the second time that I have made a statement to this effect, and I absolutely insist that it be included in the Minutes. Apart from this point, however, I am of opinion that the statements of M. Lankas and of the Netherlands Delegate have thrown some light on the matter, and I entirely agree that their wishes should be met. I am prepared to concede this point just as readily as I agreed to the insertion of an additional exception at the request of Sir Hubert Llewellyn Smith just now. The French Delegation is actuated by no ulterior motives, and I therefore venture to submit to you a text which is intended on the one hand to maintain all absolutely essential guarantees, and on the other hand to eliminate all possible grounds for apprehension and dispute. This text is as follows :—

Exceptions may be made, in special cases, to the terms of the preceding articles in virtue of measures of a special or general nature which any of the High Contracting Parties might be obliged to take in case of an emergency affecting the vital interests of the country, it being understood that the principle of Freedom of Transit shall, as far as possible, be observed.

This paragraph refers only to an entirely exceptional situation and makes provision only for deviation from a general rule in exceptional circumstances, whilst at the same time affording the necessary degree of protection to the sovereign rights of States.

M. PIERRARD (Belgium; speaking in French). — Like M. Serruys, I am very glad that the discussion has enabled us to clear up this point, though this has not been done without a certain element of heat. I should like to define my views a little more clearly, and to assure the French Delegation that it will be met by complete frankness on the part of the Belgian Delegation. However, with my natural impetuosity, which is not the attribute of a diplomat, but rather of a certain legendary animal of my own country—I come from the Ardennes—I am obliged to give vent to whatever my fierce love of liberty impels me to say.

When the British Delegate suggested his first amendment, I regarded it as the first step towards the standpoint of the French Delegation, and the French Delegation immediately responded to this step. I was about to ask him to make a further concession when M. Van Eysinga joined in the discussion and expressed my own views still more clearly. Finally, M. Serruys himself proposed an amendment which I was on the point of suggesting. Our views, therefore, are identical, and I thank M. Serruys for having made this proposal.

M. LANKAS (Czecho-Slovakia; speaking in French). — I entirely agree with the Belgian Delegate, and I accept the wording of M. Serruys. I should like, however, to point out that I was not addressing myself to him when I quoted the *Green Book*, and I undertake not to do so again.

The CHAIRMAN (speaking in French). — Does the Italian Delegate wish his amendment to be inserted in Article 5, or does he wish it to remain in Article 7?

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation accepts the amendment of the French Delegation, and withdraws its own amendment on condition that it is inserted in the Minutes and the General Report.

The CHAIRMAN (speaking in French). — I will take the vote upon Article 7 as amended. It now reads as follows : —

Exceptions may be made, in special cases, to the terms of the preceding articles in virtue of measures of a special or general nature which any of the High Contracting Parties might be obliged in to take case of emergency affecting the vital interests of the country, it being understood that the principle of freedom of transit shall, as far as possible, be observed.

*Article 7 was adopted, 29 voting for :*

M. BIGNAMI (Italy; speaking in French). — Is it clearly understood that vital interests include matters of national defence even in time of peace?

The CHAIRMAN (speaking in French). — Certainly.

M. SERRUYS (France; speaking in French). — Of course.

#### POSTPONEMENT OF DISCUSSION OF ARTICLES 8 AND 9

M. VALLOTTON (Switzerland; speaking in French). — Of course this interpretation does not decide the fate of Articles 8 and 9, to which we have handed in an amendment which has not yet been considered.

The CHAIRMAN (speaking in French). — I have been asked not to proceed with the discussion of Article 8 now; perhaps we could postpone it until to-morrow and deal with Article 9 now.

M. VALLOTTON (Switzerland; speaking in French). — These two articles are closely inter connected; we cannot deal with the problems of war without having regard to the mutual obligations incumbent upon States Members of the League of Nations. I therefore propose that the discussion of Article 9 be also postponed.

The CHAIRMAN (speaking in French). — The Swiss Delegate proposes that Articles 8 and 9 be postponed until some future meeting. Has anyone any objection?

*The motion was carried.*

#### DISCUSSION OF PREAMBLE AND ARTICLE 10

The CHAIRMAN (speaking in French). — We now come to Article 10. As you are aware, Article 10 and the Preamble were to be dealt with together. Seeing, however, that some of the amendments to Article 10 have not yet been considered, I think it would be better to postpone the discussion of Article 10 until later. The opinion of the Officers of the Conference is that it would be better to discuss it at the end of the Convention.

M. SERRUYS (France; speaking in French). — Mr. Chairman, I quite understand your motives for postponing the discussion upon Article 10 until we are all thoroughly well acquainted with the subject. You may perhaps remember that a few days ago, when we were discussing the question of the Preamble, and an amendment was submitted by the Italian Delegation, I was the first to point out (1) that this article required very thorough consideration, because, in my opinion, the whole Convention is in certain respects dependent upon it. I venture to ask you whether you would be prepared to agree to a procedure differing very slightly from that which you have indicated. I suggest that we should forthwith hold a general discussion, in order to be able to form an idea as to the views, intentions and apprehensions of the Committee.

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(1) See p. 54.

I am under the impression that amendments have not hitherto been submitted, for the very reason that we agreed the other day to reserve the question until the general discussion. You will remember that I stated that in dealing with these subjects I felt we could not begin by forming a sub-committee. Directly the discussion is begun amendments will pour in. It will then be the duty of a sub-committee to sort them out, to observe their characteristics and to analyse them, in order that the final discussion may be founded on a well-prepared basis. If you see your way to adopting this procedure, I think that it will lead to greater clearness in the debate.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We agree.

The CHAIRMAN (speaking in French). — The Officers of the Conference take the same view.

We will now begin the general discussion upon Article 10 of the Draft Convention and also the Preamble.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation has already briefly stated the reasons which led it to move its amendment to the Preamble which entails the omission of Article 10. In view, however, of the importance of the question, I intend to repeat in somewhat greater detail the reasons which led us to submit our amendment for the consideration of the Committee in the best interests of the great work which we have in hand. Our amendment entails the omission of Article 10, and the addition in the Preamble, after the word *prejudice*, of the words : *to international conventions already existing or which may subsequently be concluded, and which, in the opinion of the Council of the League of Nations, are not contrary to the spirit of the present Convention.*

Our proposal takes into account both the past and the future.

(1) *The past* : Article 23 of the Covenant begins as follows : *Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon.* In our work here, therefore, we must follow the lines indicated by the Covenant itself in regard to conventions concluded between States in the past. Since, under Article 10 of the Draft Convention, States are accorded the right to maintain in force even such treaties as are not in complete conformity with the principles of the Convention itself, it is perfectly clear that the authors of the draft scheme fully realised the difficulty which would be experienced by States in ratifying the Convention if the past were not to some extent taken into account. Moreover, since Article 10 recognises the possibility of exceptions to the Convention in consequence of existing treaties, why should we not recognise that all existing treaties remain in force? This would be both simpler and clearer and—what is more important—would eliminate a serious impediment to the ratification of the Convention. There are certainly in existence thousands of conventions between States. Very often these conventions are extremely complicated, and the mutual transport facilities accorded constitute only a secondary consideration, and are closely bound up with other parts of the same treaty. Why should we abolish these facilities, which are the immediate result of special historical circumstances, the merits of which we cannot assess with any precision? Can we be sure that all the nations represented here have, in accordance with Article 10, been careful to declare all the treaties which they intend to maintain in force? Supposing a Power to have forgotten some, we shall run a risk of foregoing the accession of that Power to the Convention? Moreover, supposing that a State Member of the League of Nations has concluded a treaty with another State which is not a Member, what will be the position of the former supposing it to have forgotten to declare the treaty? Which will it be called upon to fulfil, the obligations already undertaken or the new ones? In order to avoid all these difficulties, the solution to which is so extremely difficult, the Italian Delegation proposes that, above all, the principle of respect for the past should be established.

(2) *The future* : It will be noted that in the text of Article 10 of the draft scheme, possible deviations from the terms of the Convention may be authorised when a combination of special economic, topographical and technical circumstances justify exceptional agreements of this nature. Since it is not specified who is to decide whether

the reasons adduced are justifiable, we propose that the decision should be vested in the Council of the League of Nations. If we adopt this system, it would be sufficient if States Members of the League of Nations, when concluding conventions with other States, were to take care to insert clauses clearly stating that the provisions were only valid provided the League of Nations did not object to them,—and this irrespective of whether the other State signing the Convention were a Member of the League of Nations or not, or whether the Convention itself dealt specially with transport questions or with general conventions in which transport questions occurred. Should the League of Nations not approve, any provisions to which exception might be taken would be regarded by common consent as null and void. This would eliminate any difficulty in connection with special agreements between States. As may be seen, our proposal is inspired by motives of justice and practical utility.

We are very glad to have been able to initiate a discussion on this subject, and shall welcome any conciliatory proposal which we regard as equitable; but we do venture to hope that our amendment, which is straightforward and clear, will be accepted by the Committee, if not in the letter, at any rate in the spirit of our proposal.

M. ALVAREZ (Chile; speaking in French). — Article 10 brings us to one of the fundamental points of the Convention on Transit,—the effect of the Convention on existing or future treaties concluded by the signatory States.

As I have already had occasion to point out before the Committee, the new international régime must be based upon the principle of co-operation (1). We must not, however, like Article 10 of the Draft Convention before us, proceed too far or too rapidly towards this goal. In its present form this article is certain to give rise to difficulties and dangers, since it involves entirely unacceptable solutions and tends on insufficient grounds to upset the established order of things, by abrogating all existing treaties or parts of treaties dealing with transit. I will not waste time in considering whether this article is or is not contrary to the terms of Article 23 (e) of the Covenant of the League of Nations as regards respect for existing or future Conventions concluded between States. I should like to point out, however, that Article 10 is bound to arouse strenuous opposition in the Parliaments of all countries, on the grounds which I have indicated. There can be no objection to the fact that paragraph 2 of the article allows States to declare which of such Conventions on Transit they intend to maintain in force. A whole series of treaties exists variously, called “treaties of peace, friendship, commerce, navigation”, which deal with the most varied subjects, amongst others those relating directly or indirectly to commerce and transit. According to the second paragraph of Article 10, an express statement to the effect that they are to be maintained is necessary, if these stipulations are not to lapse. A declaration of this kind, however, is by no means easy to make, and even supposing that it could be done, we should be faced with a list of treaties or portions of treaties reserved by each State, which in practice would lead to a veritable state of anarchy. We must lay down as a general rule the contrary principle, namely, that treaties on transit are to remain in force. This is the intention of the Chilean amendment, which states that “the present Convention does not cancel treaties which the High Contracting Parties have signed in respect of the matter with which the Convention is concerned.”

There is yet another point to be considered. As I have already had occasion to state, we must not establish rules of universal application in connection with transit any more than in any other sphere. We must take into account the special requirements of each continent and each locality. All the States of America assemble in Pan-American Conferences to discuss questions of special interest to them. The justification for these conferences is that all the States of the New World have similar geographical, economic and social characteristics, and that they are not separated by

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(1) The text of the Chilean Amendment with regard to co-operation reads as follows : —  
The Contracting Parties :  
Recognising that the affirmation and regulation of the right of free transit is one of the best methods of developing international co-operation,  
And being desirous of establishing this right in conformity with Article 23 (e) of the Covenant of the League of Nations, without prejudice, however, to their rights of sovereignty or authority over the routes set apart for transit :  
Agree hereby to enact the following provisions.

conflicting interests or irreconcilable rivalry. They can therefore reach agreement upon a large number of matters with regard to which a world-wide understanding is as yet impracticable. I would point out in passing that these Pan-American agreements have nothing whatever to do with the Monroe Doctrine; they are not conceived in any spirit of isolation, much less of opposition to the interests of European States. It is therefore essential to preserve the possibility of concluding such agreements in all freedom, and the Convention which we are preparing must neither abrogate existing agreements nor prevent the conclusion of new ones; otherwise public opinion in all these countries would mistrust a convention which failed to respect, and almost threatened to destroy, Pan-American policy, and their Parliaments would refuse to ratify it.

In addition to agreements which we may call *continental*, we must make allowance for *regional* agreements. Is it not true that certain European States are more closely bound together than others? This is particularly the case with two groups of countries,—the Baltic States and those known as the “Little Entente”. In America similar phenomena exist; the States of Central America have even gone so far as to form a Confederation, one of the fundamental principles of which is freedom of transit. These continental and regional agreements, more especially those of the American continent, have already become an integral part of international law and of international usage. Article 21 of the Covenant of the League of Nations expressly recognises this. Article 10 of the Draft Convention also appears to recognise it, but unfortunately vague and obscure expressions are used, such as : *In the absence of such a combination of special economic, topographical and technical circumstances*. It is essential, therefore, that the Convention of Barcelona should also formally accept the principle of continental and regional agreements. This is the object of paragraph 2 of the Chilian proposal, which states : *Neither does it prevent them from concluding freely such agreements of a continental or regional character as are only valid between the Parties which have signed them*.

The last paragraph of the proposal is to following the effect : —

*The High Contracting Parties will not, in future, be entitled to conclude private agreements which, in the opinion of the Council of the League of Nations, would be contrary to the spirit of this Convention.* The Chilian Delegation did not wish to impose this restriction, but as a conciliatory measure it has adopted the views of the Italian Delegation as expressed in their amendment on this point. I hope that the sub-committee appointed to prepare a final draft for Article 10 will bear in mind the principles underlying the Chilian amendment.

M. TRIFON MELEAN (Bolivia; speaking in French). — I must at once state that in my opinion Article 10 of this Convention is of fundamental importance. In other words, if this article is not maintained intact, and if amendments are introduced, it will become valueless, and the Barcelona Conference will have met in vain.

Amendments intended to maintain existing Conventions in force are unacceptable, because they are opposed to the world-wide and humanitarian objects which animate the League of Nations. The expression *status quo* implies completely arrested progress and as far as international conventions are concerned, it involves the death-agony or asphyxia of States which, like Bolivia, are surrounded by other States which place restrictions on their commercial development and deny them free access to the sea. In this connection, former treaties, which are characterised by the old egoistic motives,—the desire for domination or for greater economic wealth—can in no circumstances be regarded as liberal in their tendencies.

The Bolivian Delegation feels bound to state that, were the *status quo* to be maintained with regard to existing conventions with all their faults, it would not have been worth its while to come from America to Barcelona to take part in this Conference, and it might perhaps be better to have stayed at home and continued to bear, as best we might, the burden of restrictions and privileges of which we justly complain, shut in and separated from the sea as we have been since 1879. We have come here on behalf of Bolivia with the firm intention of voting in favour of Article 10, which encourages us to break the bonds of egoism and destroy the influence of particularist interests; we could then assemble, untrammelled by the past, in a fraternal concourse of nations, the guiding principle of which would be justice, equality, and the recognition of the rights

and duties for all States, both great and small. The Convention must apply to all countries alike, and must involve no special restrictions or privileges for anyone.

Looking at the matter in this light, the Pan-American policy disappeared when the United States brought its moral and material aid to the support of Europe and mingled its blood with the blood of the old continent, and when, through President Wilson, they made their voice directly heard; his celebrated Fourteen Points are the origin both of the League of Nations, and also of the present Conference, assembled to consider how to maintain the freedom of communications and transit. I am quite convinced that, as stated in our declaration, Article 10 should be adopted without any amendment calculated to destroy its essential object, namely, the abrogation of all agreements and engagements which are incompatible with the spirit of this Convention. We can only satisfy the requirements of the new generation of mankind, which seeks new laws for the States emerging from the shock of the world war, by abrogating former laws and treaties. We also call for the abrogation of those existing treaties which are incompatible with the spirit of this Convention in regard to States such as Bolivia, which are inexorably cut off from the sea. The *status quo* does not give satisfaction to our just demands, and can never fulfil Bolivia's present and future aspirations. On these grounds the Bolivian Delegation opposes the amendment to omit Article 10, moved by the Chilian and Italian Delegations.

In conclusion, I am happy to be able to quote from the *Excelsior* the words of the distinguished jurist, M. Hanotaux, our illustrious President, with regard to the object of the Conference. Amongst other things, he said: *In the world to-day all nations are economically one, and their relations one with another must therefore be facilitated. Peoples which have no sea-board must be provided with access to the sea. The object of the Conference is freedom of transit.* We appeal to the nations to renounce their traditional egoistic tendencies, to discard a certain element of mistrust and to abandon aggressive methods. The Republics of South America, which have found the means to make such remarkable progress in the sphere of common interest and justice, have sent Delegations to Barcelona, and it is highly desirable that the United States, which are also innately conscious of these interests, should collaborate in the agreements to be concluded on the subject for which this Conference was convened.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — My amendment is merely taken from Article 23 of the Covenant, and is to the effect that: —

The Members of the League of Nations will make provision to secure and maintain freedom of communications and transit and equitable terms for commerce subject to and in conformity with the provisions of international conventions existing or hereafter to be agreed upon.

By signing the Covenant, the Signatory Powers did not create a super-State, but simply a league, or groups of States, which have met together and adopted joint resolutions; this, however, entailed no alienation of their sovereign rights, which they continue to enjoy to the full. This being so, the Portuguese Delegation considers that the proposed wording of Article 10 is contrary to the spirit and letter of the Covenant itself. The Members of the League have undertaken to secure freedom of communications and transit, and for this purpose they may jointly endeavour to seek the best method of attaining the desired object, having regard to the special circumstances of each particular State. In other words, they remain free to lay down general principles capable of adoption by all. This is the task which lies before us. This is, however, a very different matter from compelling them to cancel all obligations and agreements *inter se* which may be incompatible with the Convention to be concluded here. Moreover, there will still be the difficulty of deciding what is to be regarded as incompatible with the provisions agreed upon. Even supposing that the terms of Article 10 were in conformity with the Covenant, would all countries be in a position to accept it even if they so desired? Have not some of them signed agreements which they are unable to cancel? I should like to quote an instance taken, of course, from my own country. In 1891 we concluded an agreement with Great Britain. According to this agreement we undertake to allow transit traffic destined for Rhodesia to proceed

through the port of Beira, and to construct a railway for this purpose within a short space of time. The undertaking to construct the railway, however, was superseded by our undertaking to grant the contract for its construction to a British Company, and one of the conditions of the contract, which was to be for 99 years, was that the Government of Mozambique should impose transit duty of 3 % at the port of Beira, which was to be paid over to the Railway Company,—and this in virtue of the Convention of 1891. We are therefore bound to remit monthly to the Railway Company the proceeds of the 3 % *ad valorem* duty on all goods passing through Mozambique which enter the country at the port of Beira. Can we cancel the Convention of 1891 and the contract made with the Railway Company in accordance with the terms of this Convention, simply on the ground that it conflicts with the terms of the Convention now in course of preparation? The English Company would protest, and would seek the support of its Government. Moreover, a rather curious state of affairs exists. There are several special régimes in Mozambique which are applied to transit traffic passing through the country on its way to various British possessions in South Africa. Whereas transit traffic passing through Lorenzo Marques for the Transvaal is quite free, transit traffic for the North pays 3 %, as also do goods destined for the Belgian Congo, in spite of our desire to facilitate transit traffic and trade destined for Rhodesia, which is a colony of our old ally, Great Britain, and for the Congo, which is developing so rapidly under the influence of the great Belgian nation. This situation is the result of an agreement which we cannot cancel by action on our part alone. We are desirous of establishing ever closer relations with Spain, a country with which we are connected by ties of friendship, strengthened, moreover, by similarity of race and history and by geographical conditions, and these relations take the form of treaties and agreements between the two countries. Must we cancel them and undertake not to conclude others in the future? I only mention these two countries because they are our neighbours either in Europe or the colonies.

We can adhere to general principles which must be accepted by all countries, Members of the League, in conformity with the obligations undertaken under Article 23 of the Covenant; we can undertake not to conclude fresh agreements in the future, or not to undertake fresh obligations which are contrary to the provisions agreed upon at this Conference. But in my opinion we must retain the right, accorded by the Covenant, to adopt, within the limits imposed by its provisions, a course suited to the interests and conditions prevailing in each country. These interests and conditions vary so much that I think it will be very difficult to make them conform to fixed and detailed rules intended to guarantee and maintain freedom of communications and transit, and also equitable treatment for the commerce of all Members of the League.

These are the reasons which have led me to submit an amendment which I crave your permission to read :—

The following to be added at the end of the Preamble of the Convention :—

The present Convention shall only apply to traffic proceeding by rail or waterway. Traffic by road shall be excluded, even for goods in transit between a railway terminus or the limit of navigability of a waterway and the frontier.

ARTICLE 10. — Treaties or engagements in respect of Communications and Transit concluded *inter se* by the High Contracting Parties and at present in force, shall remain in force if the parties so desire.

Other treaties or engagements may be concluded in the future, but they will not be valid unless, after they have been registered with the Secretariat, the Council of the League of Nations declares that they do not contain any provisions which conflict with those of the present Convention.

If the two Parties concerned so desire, existing agreements may remain in force. Should one of the Parties not desire it, such agreements shall be regarded as cancelled. For the future no treaties or agreements may be concluded except in accordance with the principles laid down. This would afford the greatest possible degree of latitude.

In conclusion, I shall be much obliged, Mr. Chairman, if you will ask the Committee, in accordance with the terms of my amendment to the Preamble, to proceed to consider now whether the present agreement has also to apply to roads, or whether they are to be excluded from it. I have already asked this question twice, but I have not as



yet had a clear answer. I should very much like to have one, because it is a very important point.

M. MATSUDA (Japan; speaking in French). — The Japanese amendment is very simple. It involves the deletion of the end of the first paragraph of Article 10 from the words *in the absence of* (inclusive), as also the whole of the second paragraph of the article. In other words, the idea is to confine ourselves to the principle alone and say :

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with these terms, and undertakes not to conclude any similar agreement in the future.

The effect of our amendment is that the provisions of the present Convention would stand alone with regard to the fundamental principles applicable throughout the world in regard to freedom of transit. Our amendment does not admit any exception to the principle. In this way the principle of freedom of transit would be safeguarded as one of the fundamental guiding principles of the future international régime. Article 23 of the Covenant makes provision for the reservation of existing international conventions. This article, however, was drafted during the Conference in Paris in order to avoid placing difficulties in the way of the Powers Members of the League of Nations; but it does not in any way prevent the adoption of our proposal, which is strictly in accordance with the spirit of the Covenant. This is the idea by which we have been guided, and which underlies our amendment. There are, however, yet other considerations, affecting rather the form than the substance of the article. The text as drawn up, and as now before the Conference, is not quite complete. An enumeration of the provisions contained in paragraph 2 should be added. This enumeration would entail a somewhat difficult discussion, which, I foresee, would lead to differences of opinion. I propose, therefore, that the whole of this article should be referred for examination to the Sub-Committee (1), appointed this morning to consider Article 5, because this article touches on an instance of restriction of the principle of freedom.

M. PERIETZEANO (Roumania; speaking in French). — After the discussion which has taken place, I have only a few words to say with regard to the amendment proposed by us to the effect that a portion only of Article 10 should be retained. Article 10 is composed of two quite distinct parts, one dealing with existing and the other with future conventions. We feel that existing conventions cannot be cancelled, more especially since the new organisations, which are to be based on the principles of the new Convention, must be allowed time to consider them. We think, therefore, that the first part of the article should be retained, because existing conventions can only be abrogated by degrees as each State sees its way to adhere to the Convention for the future, and to adjust its arrangements in accordance with the terms of the Convention. With regard to the provision concerning exceptional circumstances, in which future agreements contrary to the terms of this Convention may be concluded, I consider that this is somewhat dangerous, more especially since it does not state who is to decide the circumstances which justify a deviation from the terms of the conventions to be concluded here. In such conditions, it is always possible to evade the terms of a convention on the pretext of exceptional circumstances. I am therefore of opinion that the second part of the article, from the words *in the absence of* (inclusive) to the end, should be deleted. The enumeration provided for should also be omitted. If we admit the principle that existing conventions may remain in force, this does not imply that they must of necessity remain in force. Every State is entitled to repudiate conventions when it feels that it is its duty to do so. On the other hand, it is entitled to maintain in force those which it does not feel able to cancel forthwith.

Our Delegation proposes the deletion of the end of the article beginning with the words *in the absence of*, and also of the enumeration at the end of the article.

M. TSANG-OU (China; speaking in French). — In view of the extreme importance of the Convention on Transit in respect of international communications, the Chinese

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(1) See p. 82.

Delegation feels called upon to move the retention of Article 10. Its reasons are as follows : This convention is to be concluded in order to establish freedom of transit on navigable waterways and railways on a footing of equality and reciprocity. Article 10 of the Convention (in conformity with the terms of Article 20 of the Covenant) forbids the conclusion, in the future, of agreements incompatible with these provisions. As regards the past, Article 10 (also in conformity with Article 20 of the Covenant) authorises States which have entered into previous engagements and agreements either to cancel them if they are incompatible with the terms of the Convention, or to extend the benefits afforded by them to all other Contracting Parties. This article, however, should not prevent the conclusion of special agreements justified by special economic, topographical and technical circumstances. As regards the past, such agreements constitute actual exceptions, and must be specially provided for in the Convention; for the future, they will only constitute apparent exceptions, and may be absolutely valid, but only between the Parties which have signed them,—provided, of course, that they are not contrary to the real spirit of the Convention.

Article 10, therefore, is of vital importance and must be retained, for, in the opinion of the Chinese Delegation, it is, properly speaking, a kind of means of adjustment between the past and the present,—in other words, it is intended to settle difficulties which may arise from the application of the new Convention, side by side with existing agreements, according to the circumstances of each particular case. Should differences of opinion ensue, the Chinese Delegation considers that they should be referred to a sub-committee appointed for the purpose.

With regard to the difficulties referred to by the Italian Delegation, I venture to call the attention of the Committee to the fact that the Commission of Enquiry took these difficulties into account when drafting the text. The Report contains the following (1) :

At one time the Committee had thought it desirable that the examination of these conditions in every future case should be submitted to the Permanent Communications and Transit Committee or to the Council of the League of Nations, but it was subsequently considered preferable not to force upon States a procedure which, in case of urgency, or of vital national concern, might prove delicate, but to leave the matter so that only in the event of a dispute arising would the normal jurisdiction provided for in Article 15 come into play.

In short, the Chinese Delegation's idea in asking for the retention of this article was simply that the Conference must deal both with the past and with the present, because the first six articles of the Convention constitute obligations upon countries of transit. By reason of the great area of China, the northern part of the country is used for transit traffic, whereas the southern part despatches goods in transit. She has no reason, therefore, to favour either those countries through which transit traffic passes or those which despatch such traffic. Her desire is simply to deal with the difficulties involved in the application of the Convention, in order that each Contracting Party may fulfil its engagements.

M. SCASSI (Greece; speaking in French).—I have asked to speak on the fundamental question which dominates this debate,—the question whether Article 10 of this scheme conflicts with Article 23 of the Covenant of the League of Nations. This view has met with support, but for my part I do not support it. What does Article 23 of the Covenant say, and above all, what is its meaning? Article 23 imposes on the Members of the League certain obligations, amongst others that of making *provision to secure and maintain freedom of communications, etc.* That is the obligation, the positive part of the contents of Article 23. But are these obligations imposed by Article 23 unlimited? No, the authors of the Covenant thought that it was necessary to place certain limits. We all know the care which was taken by the authors of the Covenant to smooth as far as possible the way to the conclusion of these agreements, and to secure the greatest possible number of adherents. For this reason Article 23 makes a reservation as regards the provisions of the international conventions at present in existence, and also makes reservations regarding the future.

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(1). See p. 292. (Report of Commission of Enquiry.)

This is not an obligation; it is a limit to an obligation,—it is a negative expression. What is the positive expression of the limit to an obligation which I impose on anyone? It is the right which I give him to escape from this obligation,—in this case an obligation to conclude agreements. The limit imposed on this obligation is the right which is given us. But, according to the general rule, which enacts that no one is obliged to exercise his rights, and that anyone may abstain from exercising them, we are not bound to exceed this limit, though we have the right to do so. In order to make my idea clearer, I will put the question differently. However paradoxical it may appear, I maintain that it is the contrary opinion which is in contradiction with Article 23 of the Covenant of the League of Nations. The first part of Article 23 grants the right to conclude future conventions. But what is an agreement by which already existing conventions are abrogated, as is proposed by Article 10? This agreement itself is a convention. We have the right to conclude conventions, otherwise already existing conventions will bind us for ever. I therefore maintain that Article 10 does not contradict Article 23 of the Covenant of the League of Nations.

THE CHAIRMAN (speaking in French).—The Austrian Delegation has submitted an amendment as follows :

Insert in the *Preamble* a new paragraph 2 :

They recognise the desirability of the States mutually assisting each other when necessary, in order to facilitate as far as possible the putting into effect of this principle.

M. REINHARDT (Austria; speaking in French).—I ask pardon of the Conference if I depart somewhat from the line which the discussion has hitherto followed; we are dealing with Article 10, but I wish to discuss an amendment to the Preamble. As, however, the connection between this article and the Preamble has been established, I think that the present is a suitable moment to discuss the question.

At the time of the general discussion (1) I had the honour to allude to this amendment. The motive which guided me is so obvious that I do not consider it necessary to tax your patience by dwelling upon it. The Roumanian Delegate said in his excellent speech the other day that a country which was entirely free from egoism would, in his view, be as undesirable as a country which was completely enslaved to it. Our distinguished Chairman has himself confessed to a certain egoism which he considers very natural. I frankly confess that there is a little egoism in the amendment which I venture to propose, but I hope nevertheless that I have not exceeded the legitimate bounds. We have to find the means of surmounting the difficulties which may hinder the putting into practice of the principles of the Convention. The situation in Austria, in fact, is such that, even if she were to summon all her strength, she would not be able to achieve the aim of the Convention, though she desires to do so with all her heart. The economic and financial state of my country, her complete dependence on foreign sources for supplies of coal and raw materials, has led to a situation so grave that I may say that none of the countries represented in this hall has ever had to pass through such a crisis. In order to avoid repeating myself, I will venture to refer to the statement which I had the honour of submitting to the Conference and which contains all the details that may interest the assembly. The arrangements to which I refer in my text form a vital question for Austria; for other countries they would, I presume, be highly desirable, if not for the same reasons, at least on account of their own transit through Austria.

M. RESTREPO (Colombia; speaking in French).—I desire first of all to state that Colombia has no special interest in the question now under discussion. She has only a general interest, in that she desires the conventions which will be established to be liberal,—to be of such a nature as to give the greatest possible freedom to transit and commercial traffic in all countries.

I regret the tone which the Bolivian Delegate has lent to this discussion. Bolivia and Chile are countries friendly to Colombia. I hope that the conventions which we

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(1) See p. 24.

sign here will not react in a manner contrary to their interests or to such engagements as may exist between them in respect of questions of past history which are still unsolved, or which have long been finally settled by treaties. It is true that the States of South America have concluded treaties and conventions in Conferences which we call Pan-American, held at Washington, Mexico, Montevideo and other towns in South America; but I do not think that if, after discussion, we approve Article 10 of the Convention, as we should do, difficulties can arise as regards the conventions which we have signed in America.

Allow me to put forward some general arguments in favour of Article 10. This article refers to conventions which the States represented here may sign *inter se*, and not to past conventions with third Powers which have not signed the Convention now under discussion. If we approve Article 10, we are exercising our right, as representatives of our respective countries, to modify, through the Convention which we are to conclude, such previous conventions (in so far as they do not conform to this one) as our Governments may have concluded, not with third Powers, but with each other. These past conventions *inter se* are modified by this one; each State, exercising its right of sovereignty and its right to treat, will here sign new conventions, the effect of which will be to abrogate former conventions by which it has hitherto been bound and which conflict with this one. But the conventions concluded with other States not represented here will remain in force, since they are not conventions *inter se*.

The American policy referred to by Dr. Alvarez led us to conclude conventions with the United States, Mexico and Ecuador, States which are not represented here. Conventions between the countries represented here will be modified, but not those with Mexico and the other States which do not sign the Convention; *they* will continue to be bound by the previous conventions. The past and the present are therefore not in conflict, and we must decide to confine ourselves to the present and the future, and to modify the past in accordance with the new conventions; otherwise why are we here? Here, to begin with, is a convincing argument. Was this scheme drawn up by madmen ignorant of Article 23 of the Covenant, who have no other object but to cancel indiscriminately all past conventions, or by intelligent and patriotic men? The Committee appointed by the Council of the League of Nations studied the scheme thoroughly, word by word, and explained all its terms in a lengthy report, and in particular it defined the words *inter se*, the meaning of which is now quite clear.

There are two kinds of conventions. It is not enough for new conventions to be merely conventions *inter se* between the States represented here; they must also conform to the following provision: *and undertakes not to conclude any similar agreement in the future*. The States represented here may conclude new conventions, but only on condition that they accept the one which we are now preparing and which must be regarded as the general constitution binding the signatory States as regards questions of transit and communications. If the new conventions are not in contradiction with this, the States may sign them and may follow a regional or continental policy, as the representative of Chile has said; but the present Convention must be considered as the charter for communications and transit.

I think I have justified with sufficient clearness my vote in favour of Article 10, as modified by the excellent proposal of the Japanese Delegation. It is clear that the authors of the Draft Convention were timid, because they placed at the end of every Article a loophole, a road, a tunnel, through which freedom of transit might escape. If the author of the celebrated words *laissez faire, laissez passer*, were to rise from the dead and hear our discussion, he would turn in his grave, horrified to see that in two centuries the world has not advanced a single step, and that it was Colbert who achieved the greatest success with all the governments of the whole world, who do not wish either to *laissez faire* or to *laissez passer*.

The Convention which we are adopting depends on what we say in Article 5, since this article deals with the sovereign right of each State to forbid the entry into its territory either of goods or persons. The illustrious Delegate of the most liberal of nations—the British—has already begun to speak of *morality*. The Committee had stopped at the *security of the State* and at *health*,—the universal health question, concerning which everybody agrees that there should be interference, even in spite of the sovereignty

of States; but afterwards morality and monopolies were added, and then it was all over with transit, because each State always retains the right to pass a general law called a customs law, Article 1 of which consists of an enormous list of articles the entry of which into a country is forbidden. If we now turn to the persons on this list, we find anarchists, revolutionaries, outcasts, the disabled, etc., etc. *Vade retro, Satanas!* and as I have the honour to second the modification proposed by the Japanese Delegate, I venture to recall the fact that at the present moment a great Power in America is denying civic rights to intelligent races which honour humanity—the Oriental races—and that the Japanese and Chinese are banned from the United States, the freest country in the world! What does this mean? That there is no liberty in the world, that transit is in a bad way, and that we are wasting our time here discussing trifles, leaving on one side or merely touching the fringe of the great problems.

M. LANKAS (Czecho-Slovakia; speaking in French).—Since I am forbidden to speak of the *Green Document*, I can only attribute to myself the excellent ideas contained in it which have been so skilfully put together by our Secretary-General, although this is somewhat dangerous, because these ideas were referred to just now in far from flattering terms. I entirely agree with the point of view of the Greek and Chinese Delegations, but it seems to me natural that a general convention should cancel any special conventions which might be contrary to the main principles of the Chinese Convention. The first of these main principles is equality. But it has become evident in the course of the discussion that there are certain cases in which the nations themselves declare the impossibility of establishing complete equality, because there are certain situations which enable a State to grant to one other State conditions which it cannot grant to all States. It was thought that this loophole should be left, and I think it is not a tunnel.

Other conventions—and this distinction must be clearly drawn—are admitted, even if they are contrary to the principle of equality and contain certain special provisions. But it was understood that these provisions would be so trifling in number and importance that they would not be contrary to the spirit of our work, the significance of which has been so ably demonstrated by the Delegate for Colombia. The Austrian Delegate has proposed an amendment. I do not know what will be the fate of this amendment, but it refers to a certain extent to a past which will never return. For example, it deals with an epoch in which there was no coal, but I think we are approaching the moment when there will be too much coal and when the small countries will be only too pleased to sell it. I think the Austrian amendment goes without saying, and I refer the matter to the Conference, which will perhaps apply the old French proverb : *Ce qui va sans dire, va encore mieux étant dit.*

M. SERRUYS (France; speaking in French).—When I asked for the debate to be continued, I did not foresee that it would develop to this extent; but I am extremely glad that it has done so, for while it has brought out a number of points of view, it has shown that the only one upon which we are undoubtedly all agreed is that they are irreconcilable. Amongst them are opposing views upon which the assembly is divided, and there is also an intermediate point of view which seeks to reconcile them.

In attempting to group the opinions which I have heard expressed, some with fervour, some with animation, some with circumspection, I observe that they fall into three categories, which I will endeavour to define. The first in order of discussion is that which says:—“Maintain all conventions as regards the past, but as regards the future, let conventions be subordinate to the Convention on Transit”. We have heard the latter view sustained by a great wealth of legal argument. Allow me to say that some of these arguments have impressed me. I will, however, venture to observe that I cannot agree with all the assertions which have been made. When the Italian Delegation tells us that the maintenance of the Conventions can be sufficiently assured by invoking Article 23 of the Covenant, it appeared to me that this was too wide an interpretation of Article 23; the reservation with which this article begins does not refer to bilateral agreements, but to certain international conventions. When we are informed by M. Alvarez on behalf of the Chilean Delegation that the accepted principle is maintenance of conventions, allow me to say that I am inclined to believe it, but

perhaps for other reasons than those which M. Alvarez has evinced with so much talent. We are indeed, confronted rather with legal arguments than arguments from fact, and when I considered the question myself, it was these very reasons, based on facts, which I had in mind. You tell us that we have just created a new ideal, and that we are going to put it into practice. You are quite right, but it will not be put into practice unless you know how to do so by taking into account something which is worth more than a theory,—history. You are dealing with peoples which, in some cases for generations, have laboriously worked out contractual statutes which have since regulated their relations,—statutes which contain transportation clauses. These clauses are sometimes the counterpart of commercial clauses; on the other hand, commercial and transport clauses are sometimes the counterpart of certain political guarantees which, in their turn, form one of the conditions of peace for the regions in question. You say this is what you wish to maintain in force; but this is an argument based on fact, not a legal argument. Or at any rate you say:—"Here is something which we do not wish to undermine. These are conditions which we do not wish to abolish to-day. We do not wish to obliterate everything which forms the contractual basis of these conditions by drawing up a new statute." This, in short, is the *de facto* argument which I hear from the Italian Delegation, the Chilian Delegation, and from all who have come here to support the same cause.

And now, what is the position of those who oppose this view? They wish to begin with a clean slate; they regard this as a logical result of the Convention. This view was first stated with remarkable restraint and eloquence in the Japanese proposal; I am not surprised at its being formulated. It amounts to saying:—"Abrogate all conventions and draw up a new Statute in conformity with this Convention." What is the result? The result has been pointed out to you by the Colombian Delegate. It is that we are going to cancel conventions of very different kinds, some of which have, and others have not been concluded between you. On the other hand, if you make the reservation that you will not cancel those conventions with third parties, what will be the result? You will simply be allowing these third parties to profit by the changed situation; you yourselves will be placing the Contracting Parties in a paradoxical situation in which, by fulfilling their engagements, they will place themselves in a worse position in relation to yourselves than the third parties with whom you may have made agreements. For this reason the legal distinction drawn by the Colombian Delegate does not appear to me to hold good in face of the facts. What will happen when you have created this preferential statute on the pretext that you cannot abolish certain conventions? You will have committed what amounts to an act of injustice in the form of a preferential right for those whom you seek to place in this species of second zone.

Finally, with this system of absolute levelling, which completely ignores both history and geographical rights, you will end by ignoring those diverse conditions which the League of Nations has so wisely recognised, and which differentiate the countries of the various regions of the world; you disregard certain conditions which are admittedly necessary for governing the relations between Members of the League and these countries. For example, when the League of Nations provided that mandates should be classified as A, B and C, it was simply recognising the existence of differing historical, geographical and economic conditions throughout the world,—differing conditions of development which had to be taken into account. For this reason the abrogation of certain conventions with certain States is justifiable, whereas it is not justifiable at all in the case of other States, and the abrogation of certain provisions and certain statutes would simply result in anarchy.

Then there is a third, so-called intermediate point of view which has been evolved. I recognise and pay tribute to the diligence and moderation of the preparatory Conference in Paris. It furnished you with a policy which is the embodiment of prudence, but which, allow me to say, will result in imprudence of the worst description. This is, in short, what is proposed,—on the one hand you undertake to abrogate all agreements which are in conflict with the Convention prepared by the Conference; on the other hand you undertake not to conclude any further conventions except in conformity with the aforesaid Convention; but it is added that you will maintain in force a list of conventions of your choice. If

that is to be so, when you draw up this list you will only be confirming an existing state of affairs, and that without any appeal, or rather without any enquiry. You are indeed not qualified to carry out such an enquiry. I have heard of a super-Council—an idea which has been opposed—and also of a super-Assembly; I think that if we attempt here to pass judgment upon treaties between peoples we shall be transforming ourselves into a super-Conference. That is out of the question.

What, then, are you going to do? You are going to confine yourselves to ratifying a list of Conventions, and that in the least practical way, since you will place above all suspicion contracts of which you really know nothing, and which the States who have communicated them to you will not be certain to regard as a complete statement of their rights. Hence I conclude that the Paris Conference, in its wisdom, was perfectly aware of what should be the ideal, but, being unable to realise that ideal, confined itself to consolidating a state of affairs against which in appearance it protested.

The main objection which I raise against Article 10 is that it is inconsistent; it is for this reason that the French Delegation has not proposed an amendment. The question is an extremely thorny one; the solutions hitherto proposed will not meet the case, and it would therefore be advisable to lay down a policy on this matter, or at least to find a fair compromise between the various policies. Where can this be found? I should be loath to anticipate the labours of the Committee to which Article 10 will be referred; I only desire to point out that all resources have not yet been exhausted. There is a document which I frequently study when I feel any doubts with regard to our conventions; I refer to the Covenant. Let us examine it. Article 23 is outside the scope of this debate, but, without wishing to start a discussion on it at this moment, I venture to remind you that several other articles of the Covenant may be of great importance as a guide to the Committee. Article 18, in particular, emphasises the fact that the League of Nations establishes a fundamental distinction between the past and the future. When the League of Nations demands that all international agreements concluded in future must be submitted to its *Treaties Committee*, this only concerns future agreements. But was it foreseen that, in the future, agreements on questions of principle would be concluded? Not at all. The intention was to take count of all historical situations. Turning now to the South American States, I would ask them to read Article 21 again. This article certainly makes provision for future agreements and understandings; but all that will be settled by rule of thumb,—it will be adapted to history and social conditions. As a matter of fact, situations which take into account local conditions and historical affinities are provided for, not only for America but for the whole world. In this connection, when I consider the grouping of the South American States, I cannot help thinking also of the Inter-Scandinavian Convention.

The Covenant has provided for differences between old and new treaties. In the case of new treaties, it claims on behalf of the League of Nations a right which it did not assert in the case of old treaties; it provides for the modification of agreements within the limits of its principles; and finally—and this is an important fact—it has provided a method of procedure. For those treaties which are to be maintained, for this continuation of the system of agreements, it devised a rectifying agency, but not in the illusory form in which you will find it in Article 10. It devised something which is all the more powerful because it is a reservation, applied and formulated with reservations. In article 19 it is stated that :

The Assembly may from time to time advise the reconsideration by Members of the League of Treaties... whose continuance might endanger the peace of the world.

If you are seeking for a corrective in respect of the application of contracts, you will find it here provided. Do not let us therefore improvise anything now. Do not let us try to do the work of the Council of the League of Nations. Do not let us try to provide it with a new Statute. Let us conform to the Covenant. We can find in it all the resources which we require that is the message I wish to give to the Committee which is to be appointed.

If I have intervened, it is simply because, in the interests of clearness—which seems to me the first duty of this assembly—I wished to determine what are the different theories with which we are concerned,—both those which represent the extreme points

of view on either side, and also those which maintain the happy medium. The task of the Sub-Committee will be a difficult one. I have welcomed every point of view. I welcomed the views of those who affirmed historical rights. I welcomed the opinions of those who supported the idealist point of view. I also welcomed those who tried to arrive at a compromise between these two extremes. I now trust that the Sub-Committee will bear in mind all these points of view. I am not, of course, presuming to draw up a programme for the Sub-Committee, but I venture to point out to it what is the problem that it will have to solve. Such are the sentiments with which the French Delegation would approach the work of the Committee.

M. ALVAREZ (Chile; speaking in French). — I should like to state that it is only necessary to read the proposal of the Chilian Delegation to see that it deals solely with the question of principle and does not spring from any particularist interest. Moreover, the Treaty of Peace signed on October 20th, 1904, between Chile and Bolivia is of a very liberal nature; under its terms Chile grants Bolivia freedom of transit and customs exemptions.

THE CHAIRMAN (speaking in French). — I propose to submit Article 10 to a sub-committee, and also Articles 11 and 12, which are connected with Article 10. We would beg the Sub-Committee appointed this morning to consider Article 5 to be so good as to undertake an examination of Article 10, 11 and 12 as well, on the understanding that MM. Alvarez (Chile), Freire d'Andrade (Portugal), Perietzeano (Roumania), Melean (Bolivia), Reinhardt (Austria), Restrepo (Colombia) and Van Eysinga (Netherlands) (1) are added to the Sub-Committee. It is understood that each of these delegates may be accompanied by an expert.

The motion to refer Articles 10, 11 and 12 to a sub-committee was carried.

*The meeting adjourned at 8.20 p.m.*

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(1) For Report of this Sub-Committee see p. 132.

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# SEVENTH MEETING OF THE PLENARY COMMITTEE

(Saturday, March 19th, 1921, at 5 p.m.)

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## DISCUSSION OF ARTICLE 8 — ADOPTION OF ARTICLE 9 REPORT OF SUB-COMMITTEE ON ARTICLE 4

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### DISCUSSION OF ARTICLE 8

THE CHAIRMAN (speaking in French). — The Committee decided yesterday that a sub-committee should meet to consider Articles 5, 10, 11 and 12. This sub-committee held a meeting to-day, but its report is not yet ready, and we must therefore postpone the discussion of these articles until the next meeting. We will therefore take up the discussion at Article 8. To this article, which deals with the application of the Conventions in time of war, three amendments have been put in, one by the French Delegation, one by the Swiss Delegation and one by the Swedish Delegation. The Swiss Delegate will now speak.

M. VALLOTTON (Switzerland; speaking in French). — The French Delegation was the first to submit an amendment, in reply to which our own amendment was submitted. It would therefore be better for the French Delegate to speak first.

THE CHAIRMAN (speaking in French). — M. Sibille will now speak.

M. SIBILLE (France; speaking in French). — The French Delegation proposes the following wording for Article 8 :

The stipulations contained in the present Convention do not in any way affect the freedom of action of belligerents in time of war.

We have assembled here to consider what provisions shall be made in order to secure and maintain freedom of communications and transit in time of peace. We have come to the conclusion that this can best be done by means of an international convention, and we have laid down the following principle : every State shall maintain a system of fair commercial dealing, and shall be bound to facilitate transit,—that is to say, shall secure good conditions for traffic across the territory situated under its sovereignty or authority. The French Delegation hastened to associate itself with these principles, for we in France are anxious to promote the development of commercial relations, since they tend to make existence easier and more agreeable. But Article 8 involves a very difficult and very complex problem. Is the Convention, which was drawn up for application in time of peace—we have always had in mind a state of peace—to be maintained upon the outbreak of war? I think not. A solemn undertaking has been given by every State Member of the League of Nations scrupulously to respect all treaty obligations in all its dealings with organised nations. It would be impossible for belligerent countries, and, I may add, certain neutral countries, to keep to the letter of the provisions which the Committee has already adopted. In order to demonstrate this, it is only necessary to call to mind the conditions of modern

warfare. A hundred years ago, armies were small; troops moved on foot or on horseback towards the enemy's position; all that generals had to do was to endeavour to meet the enemy upon a field of their own choice, where the lie of the country was calculated to secure them the advantage. The battlefield was of limited area. Only a small proportion of the nation was under arms, and in consequence commercial life went on, even in the belligerent countries, and transport traffic was conducted very much as in time of peace. To-day all is changed; we have only to remember the last war. Nation arose against nation. All the strong, young, vigorous manhood of the nation, sometimes even the old men, flocked to the frontier, whilst the women worked in the factories. Transport traffic became extremely difficult. How can the same obligations be imposed upon belligerents in time of war as in time of peace? It cannot be done. The battle-front is now, and always will be of great length and depth, and the battle zone extends over many miles; the supreme anxiety of every leader will be to effect transport with as great rapidity as possible, and to convey troops to some point upon the enemy front which he suspects to be vulnerable; in time of war, generals must now requisition a proportion of the staff and material of the transport services. Further, how is traffic to be carried on in the interior of the country? There, transport traffic is no longer undertaken by the administration which is responsible for it in time of peace, but is placed under the supreme control of the military authorities, whose first care naturally is to provide for the transport of the troops needed for national defence. Thus, during the last war we saw even the most important commercial traffic neglected, interrupted or at any rate subjected to strict control. Under these conditions, how can you impose upon a country an obligation to make provision for transit traffic, seeing that it is sometimes impossible to effect transport from one place to another or even to ensure the food-supply of one district by means of the produce of another?

Do you wish to bind these countries to afford transit for the traffic of another State when the goods in question may only be articles of luxury? It cannot be. I would further draw your attention to the fact that transport in time of war does not remain under the civil authorities, or even under private administration, but is placed directly under the military authorities. Let me tell you that if you wish to lay down regulations for questions of transport traffic in time of war, the present Conference is not competent to do this. For that purpose you would have to refer to Article 9 of the Covenant, the charter of the League of Nations, where it is laid down that.

A Permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8, and on military, naval and air questions generally.

It must surely be clear to you from the terms of this article that it is not our opinion which the Council of the Nations has to obtain, it is the opinion of this Permanent Commission, which is created specially to deal with military questions.

I want you to realise the position resulting from a state of war, and to allow full liberty of action to the belligerent countries. It is not right to face the military leaders with the alternative either, in accordance with the terms of the Covenant, of strictly observing the provisions of the Treaty and sacrificing the primary needs of national defence or, on the other hand, of deliberately violating the Treaty and devoting all their attention to national defence. What we have to do is to make a treaty which can be applied in accordance with the terms of the Covenant, both in time of war and in time of peace. In my amendment I have only mentioned belligerents, and my colleagues have pointed out that I am forgetting neutrals, and our Swedish colleague demands freedom of action both for belligerents and neutrals. On reflection, I am, to a certain extent, inclined to accept this amendment, because when war is declared neutrals are sometimes obliged to mobilise their armies, or to hand over the control of their transport services to the military authorities. That was what happened in Switzerland, and my colleague M. Vallotton cannot be ignorant of the fact. As soon as hostilities were declared, the Swiss Federal Railways were placed under military control.

I am quite ready to grant freedom of action to a State situated near the theatre of war, but I should not be willing to accord it to every neutral without exception, because we are engaged in drawing up a Convention which will bear the signatures

of States situated in every quarter of the globe. It may happen that the war zone is limited in extent, and that the South American States, for instance, are not affected by a European war. In these circumstances, I consider that those States ought to remain bound as between themselves by the terms of the Treaty. However that may be, I repeat that belligerents must be allowed full liberty of action, more especially—and I cannot lay too much stress upon this point—because the control of the railways is in these circumstances taken out of the hands of the civil authorities and entrusted to the military authorities. For this reason, I would point out that you cannot take a decision of this kind without at least asking for the opinion of the superior Commission provided for in the article of the Covenant which I have just read.

M. HANSEN (Sweden; speaking in French).—It is stated on pages 33 and 35 of the *Green Book* (1) issued by the Commission of Enquiry, that that Commission confined itself to dealing in detail with freedom of transit in time of peace, although the *obligation* has been placed upon every State to maintain such freedom in time of war, as far as the rights and obligations of belligerents and neutrals permit. A little further on, however, on page 35 of the same volume, the Commission declared that in its opinion the question of freedom of transit in time of war should be dealt with by means of a series of special provisions to be studied at a later date; whilst on page 51 (2) we read that the Commission did not consider the time opportune for dealing with the rights and obligations of belligerents and neutrals, but that these might be defined afresh in a future convention on the limitation of the rights of war. In that case Article 8, as then drafted, would at once be revised to correspond with the new text. A comparison of the considerations which I have just quoted and the provisions of Article 8 reveals the fact that the actual meaning of all these texts is not at all clear. Whilst it might be maintained that Article 8 in itself is nothing more than a simple resolution recommending the maintenance of the principle of freedom of transit as far as possible, even in time of war; the *Green Book* commentary on the article would seem to indicate that certain obligations are incumbent upon a State which signs the Convention.

I stand here as the representative of a country which is as anxious as any that transit in time of war should be as free as the rights and duties of belligerents and neutrals permit. Would it not be well, in order to avoid future misunderstandings, to define once and for all the exact purport of Article 8? It is with this end in view that I propose that the article should be more clearly worded than it is at present. In this connection I would remind you that the equivalent clause of the Convention on International Aerial Navigation, concluded at Paris on October 13th, 1919, reads as follows :

In case of war, the provisions of the present Convention shall not affect the freedom of action of the Contracting States, either as belligerents or as neutrals.

This wording has been slightly altered in the amendment put forward by the Swedish Delegation, which reads as follows :

The stipulations of the present Convention do not in any way affect the rights and obligations of belligerents and neutrals in time of war.

I should like to lay particular stress upon the fact that the attitude which the Swedish Delegation has taken up with regard to Article 8 does not in any way imply that the Swedish Government would object to the maintenance in time of war of the provisions of the Transit Convention as far as possible. On the contrary, we hope that the preliminary work in connection with the establishment of fresh rules for transit in time of war—a subject which was, as I have stated, mentioned by the Commission of Enquiry—will be put in hand without delay, and also that the rules thus arrived at will be based on the same principles as the present Convention. I am convinced that, pending the completion of this task, the various Powers will, should the need arise, apply these principles to the widest possible extent.

To sum up: either no obligation, over and above the obligations resulting from existing

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(1) See p. 284.

(2) See p. 291.

international law, is incurred under Article 8, in which case it would be preferable to draft the article in accordance with the Swedish Delegation's proposal; or else Article 8 does involve certain fresh obligations, and in that case it is of capital importance that their exact scope should be made known. If we appear to press this point, we have a very good reason for doing so. My Government intends to carry out its obligations to the letter, now as ever, but in order to be able to fulfil them satisfactorily it must know exactly what they are.

The French amendment only mentions freedom of action for belligerents, leaving aside the question of the rights and duties of neutrals. As it stands it is not altogether satisfactory. I am therefore very glad that the French Delegate has said that his Delegation would not object to the insertion of an explicit reference to the rights and obligations of neutrals.

Lastly, the Swiss Delegation has put in an amendment dealing with the position—a singularly difficult one—of land-locked States in time of war. Personally, I should be very glad to give every possible satisfaction to the Swiss view, and I hope that a wording will be evolved which, whilst satisfying the claims of land-locked States, will not affect the rights and duties of other nations. Should we fail to arrive at an agreement during this meeting, it might perhaps be advisable to appoint a sub-committee to study the various amendments proposed. With regard to this question, I should like to emphasise the fact that any resolutions adopted by us now are only provisional, and that several Delegates are undoubtedly in the same position as myself,—they must refer the question to their Governments before any final decision can be taken.

THE CHAIRMAN (speaking in French).—The text of the amendment to Article 8 proposed by the Swiss Delegation reads as follows :

Pending the conclusion of a special Convention upon the rights and obligations of belligerents and neutrals in time of war, within the League of Nations, these rights and obligations shall not be affected by the terms of the present Convention, subject, however, to the following reservations :

The right of free access to the sea, over international transit routes, of a friendly State which is either land-locked or cut off from the sea by a war zone, may only be permanently restricted in respect of those routes which lie within the war zone. This right may not be permanently withdrawn even within the war zone :

(a) Unless the friendly State which is cut off from the sea refuses to comply with measures necessary for military security;

(b) Unless the friendly State makes no effort to carry out with its own means of transport the transit which it demands;

(c) Unless another route for access to the sea is not placed at the disposal of the land-locked State by the State to which the demand has been made.

The transit traffic of a friendly State which is cut off from the sea is exempt from any kind of angary or requisitioning.

M. VALLOTTON (Switzerland; speaking in French). — We had hoped in moving our amendment to obviate the necessity of finding ourselves in disagreement to-day with the country of which M. Sibille is the eminent representative, and for which he speaks in a manner which is bound to enlist the sympathy of every member of this assembly. It is a real grief to me, especially in view of this sentiment of respect,—and, may I add, of respectful affection,—which, in common with all of you, I have felt towards M. Sibille from the very outset, to find myself at variance with his views, and it is likewise painful for me to be obliged to criticise, as I regretfully must, France's attitude towards this question. Not only are we all convinced of France's terrible sufferings, but we are all profoundly affected by them, and I will say at once that it is for that reason that I am thunderstruck to find that the French Delegation should disagree with us upon a single point. As was done by the draft Article 8, we wish to bring out the principle that law should be maintained, even in time of war, as far as possible. France, on the contrary, emphasises the directly opposite theory, and thus adopts an attitude which is entirely inconsistent with that which she has always taken hitherto; whilst we are busy affirming the maintenance of law, she is proclaiming the contrary principle,—that there should be granted to belligerents complete liberty to trample that law under foot.

M. SIBILLE (France; speaking in French). — Not at all; not at all.

M. VALLOTTON (Switzerland; speaking in French). — Such a thing is not possible; there must be a misunderstanding, and I am convinced that once M. Sibille has reflected upon the matter he will admit to himself that his text ought to be that of Article 8.

M. SIBILLE (France; speaking in French). — We have always respected treaties, and that is why I will not sign a treaty which one day or another I may find myself under the necessity of ceasing to respect scrupulously.

M. VALLOTTON (Switzerland; speaking in French). — Yes; but I would have you observe that up till now belligerents and neutrals have been in this position of not possessing satisfactory formal rights, but of having various contradictory aspirations and theories upon the very subject with which we are now dealing, and these, as you are aware, have already given rise to discussion between several of the States represented here.

The crux of the matter is that we consider it too downright to propose, as is now being done, that there should be substituted for this complete absence of law a Convention set out in good and due form, and which we are to sign, in which we are asked, in reality, to admit that in time of war nothing exists any longer outside the rights of the belligerents. At this point, M. Sibille, I cannot but tell you that I utterly fail to understand your attitude towards this question. We are all convinced of the profound sufferings which France has undergone. Her sufferings, in common with those of other belligerents, arose precisely from the fact that one belligerent set at nought the rights of neutrals in time of war; and yet to-day you stand in this place as the champion of the very point of view which led to that action. May I utter an appeal to the French Delegation, who must surely be better informed upon the subject, and assure them that our true aim and object to-day is to take up the cudgels for the very belief which France has always defended,—that war must not be waged in a manner devoid of all pity;—no; it must be carried on with the very minimum of injustice. But I will not labour this point; I will rest in the hope that when the time comes for a study to be made of the various provisions, it will become possible to arrive at a definite agreement. What is it we have asked? We have asked, in the first place, for the maintenance of the very modest terms of the draft Article 8 presented to us by the *Green Book* Commission; in the interests of unity we might even, perhaps, have been content with the terms of that provision, and as late as to-day we even made overtures in that direction. Now, however, we have come into collision with a *non possumus*. We are obliged to ask the Conference for a ruling with regard to a principle which is of capital importance, in particular for land-locked States. In this connection may I state that if this Convention does not hold out to the States of Western Europe something very much superior,—in all modesty we can say it,—to the existing law in time of peace, then we,—we in particular, because Switzerland is not a maritime State,—become a party to the Convention only in a spirit of solidarity, in the belief that the co-operation of every European State may perhaps be needed in order to introduce similar law into other parts of the world which have not yet arrived at the same unity through participation in plurilateral Conventions.

I must make it clear that there are in this Convention two things which for us are not only a *sine quâ non*, but even perhaps constitute the only use which the Transit Convention may have in the future. These are the question of maintaining our free access to the sea, and that of the creation of an impartial conciliatory organisation which shall rise superior to the clash of wills between the different Powers. I am in a position to declare that these are the two points of really vital interest for us, and I should like to add that the whole future attitude of Switzerland, towards both this Convention and any which may ensue, will in great measure depend upon the decision arrived at to-day.

This is not the place in which to recount our misfortunes arising from the blockade of which we were the victims. I will only declare, without attempting

to prove it at any length, that Switzerland was really perhaps the only country, in Western Europe at least, which was effectively blockaded during the last war. We realise that the surrounding States made repeated attempts to come to our rescue, but what we should like to elicit from this Conference is some united effort in the direction of substituting a minimum right for a mere favour in this matter. We would ask at least the recognition of Article 8,—that pious wish,—the admission that in principle freedom of transit and the provisions of the present Convention shall be valid in time of war as far as is permitted by the rights of belligerents and the duties of neutrals, and also by the duties of belligerents and the rights of neutrals. I will once more appeal to the French Delegation to support Article 8, and if we can agree on this point I am quite prepared to renounce the idea of any wider or more comprehensive measure.

If I did not believe this, I should take the liberty of speaking at greater length on the origin of the additional stipulations which we have put forward in the interests of land-locked States.

M. ALVAREZ (Chile; speaking in French). — The Conference has now before it one of the gravest of problems. The Chilean Delegation has no intention of taking part in the discussion. We support the proposal made by the French Delegation to appoint a Committee to study the question of determining the rights and obligations of belligerents and neutrals. I desire to give you a brief account of the work of the American Institute of International Law in connection with the question of maritime neutrality. In each of the twenty-one Republics of the New World there has been instituted a National Society of International Law, and the federation of these Societies constitutes what is known as the American Institute of International Law. The Institute has already held two sessions,—one in 1916 at Washington, and one in 1917 at Havana. As early as 1916 it was realised by the Institute that when the Great War was over there would open before humanity a new era, and the Institute held it as a duty to concentrate all its efforts upon the study of the reconstitution of the comity of States, and of the system of law by which they should be governed. The Institute had the satisfaction of noting that the views it expressed in 1916 became dominating features in the Covenant of the League of Nations. With regard to the reconstitution of International Law, there was voted by the Institute a *Declaration upon the Rights and Duties of States*, and drafts bearing specially upon the fundamental facts with regard to International Law, such as the origin, development, interpretation and sanctions attaching to international laws, were submitted to the examination of the various National Societies. A draft on the *Regulation of Maritime Neutrality* was accorded special attention by the Institute. Certain aspects of the draft are *idealistic*, whilst others are *practical*; it is idealistic because it aims at a radical alteration in the regulations at present in force with regard to maritime neutrality by according the rights of neutrals predominance over those of belligerents. This *idealistic*, and even in some sort *revolutionary*, aspect of the measure as proposed is designed in the first place to educate public opinion, for we can only hope to see the triumph of the ideals contained in the project of which I have spoken to you when the League of Nations has been set upon a stable basis and has found a solution for the various outstanding problems which are of vital importance. But this draft measure of which I have spoken also possesses an essentially practical side, in that it turns to profit the experience afforded by the war, bringing into prominence the defects and omissions of the Hague Convention of 1907 on Maritime Neutrality. I have laid these facts before the Conference in the hope that they may cause to be appreciated the efforts which the scientific institutions of the *nouveau monde* have put forth in the endeavour to build a *monde nouveau*.

M. PIERRARD (Belgium; speaking in French). — M. Sibille has given us a striking picture of the needs of belligerent States in time of war. He has shown us how they are obliged to requisition every means of transport. As a matter of fact, victory in war should belong to him who can hold out the longest from the point of view of transport, and I think, therefore, that we should be pursuing the policy of the ostrich if we ignored this need. M. Vallotton, on the other hand, has given us a graphic descrip-

tion of the terrible situation of his country during the war, and everyone must agree that that, too, is worthy of consideration. In my opinion the question is one that can be looked at from different points of view. A State may depend for its existence upon the good-will with regard to transit of a neighbouring State. This State may be either a neutral or a belligerent, it being understood that, if the latter, it is on friendly terms with the neutral State. Is the belligerent State in time of war to oppose the passage through its territory of goods bound for the neighbouring neutral State, and is the neutral State also to place obstacles in the way of goods intended for the provisioning—I am naturally not speaking here of goods for the military provisioning—of the neighbouring belligerent State? These are vexed questions.

But there is yet another aspect of the question which M. Sibille does not appear to have considered. Mention has been made principally of rolling-stock and other railway material. What about naval and shipping material? Would not a neutral State have the right, for instance, of forwarding through the territory of a belligerent State goods destined for a sea-port, employing for this purpose its own rolling-stock and making no demand upon that of the belligerent State, which will have requisitioned all its own means of transport? M. Vallotton stated the case in the clearest possible fashion, nor did he hide from us the fact that Switzerland considers this to be a question of capital importance, whilst our friends of the French Delegation attach no less importance to it. I do not know whether Article 9 of the Covenant of the League of Nations, to which M. Sibille referred, bears upon the contingencies with which we are here dealing,—namely, the question of transit, for Article 9 refers back to Articles 1 and 8 of the Covenant, whereas in reality it is Article 23 which provided the material for this Conference. If we attempted to reach a decision on this subject in full Committee, I think that we should only prolong the discussion eternally, and I therefore propose that the question be referred to a Committee, time for reflection being thus given to all the parties concerned.

M. SKYBAK (Norway; speaking in French). — It is reported on page 35 of the *Green Book* (1) that in the opinion of the Commission of Enquiry the question of freedom of transit should form the subject of a series of special provisions, of which the study should be undertaken at a later date, and I am instructed by my Government to express the hope that it may not be long before the various Powers see their way to agree upon some more explicit and more detailed provisions with regard to a question which stands in particular need of clear rules.

M. COLDING (Denmark; speaking in French). — The rights and obligations of belligerents and neutrals have up to the present time been too vague and ill-defined for us to be in a position now to form an idea of the precise meaning of Article 8. Unless it be possible to lay down more clearly in that article the rights and duties of belligerents and neutrals in time of war in regard to transit, Article 8 in its present form appears to us dangerous, and for this reason we prefer the Swedish text; but we would also, in common with the Norwegian representative, express the hope that all these questions will be dealt with by a special committee as soon as possible, and form in the future the subject of a convention, in accordance with the suggestion made by the Commission of Enquiry.

M. VAN EYSINGA (Netherlands; speaking in French). — It is with great interest that I have listened to the debate which has taken place on Article 8. We have before us two separate texts which, upon examination, are really not so very different.

Whilst Article 8 of the Draft Convention lays down that the Convention shall be valid in time of war, so far as the rights and duties of belligerents and neutrals permit, the French amendment confines itself to the following words: *The stipulations contained in the present Convention do not in any way affect the freedom of action of belligerents in time of war.* The difference in principle between the two texts is not very great, and yet it arises from a decided difference of opinion. How are we to explain this phenomenon? I think we may find an explanation in the

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(1) See p. 284.

authors' different conceptions of war. The speakers in this debate have had in mind war conditions as they were prior to the coming into force of the Covenant of the League of Nations. There is no need to dwell upon the old conception of war as a sovereign right of every State, and finding its justification in itself, any State which has declared war being free from responsibility towards any other State for so doing. With this conception of war, it is quite conceivable that the point of view should be the following : the interests of the belligerents must come first, as in the days of *inter arma silent leges*. May I remind you that we do not find this conception of war among the great Spanish writers of the 16th century—the Victorias, the Vasquès, the Suarès, according to whose teaching there were just wars and *bella injusta*. Homage is respectfully paid to these great Spanish writers by a Dutch authority of the 20th century, all the more freely because Grotius himself borrowed the idea from a Spaniard. Whilst the war of independence, which we were obliged to carry on for eighty years against Spain, was actually in progress, Grotius persistently manifested the most profound veneration and admiration for his illustrious Spanish predecessors. This idea of discrimination between just and unjust war has now disappeared completely; but lofty ideas, though they may be lost for many years, always reappear, and the idea was actually revived in the Covenant of the League of Nations. I would beg the Conference, then, to bring to the study of this question the idea which thus underlies the Covenant. It is your duty to look upon the possibility of war from the same point of view as in the Covenant, and no longer according to the tradition which has been banished by the Covenant. What is the attitude towards war of this Covenant, our charter? It may be summed up in a word by saying that the Covenant forbids war. It forbids it in the most summary fashion by the terms of Article 13, where it is laid down that there must not be war, but that whenever any serious dispute arises, the nations shall resort either to arbitration or to conciliation. You may perhaps reply that when grave disputes arise, this article will not be applied. This hypothesis, however, is not overlooked in the Covenant; Article 16 provides for the non-compliance of any State, whether a Member or not of the League of Nations, with the terms of Articles 12, 13, or 15. In such a case there are to be called in against a recalcitrant State all the military and economic forces of the League of Nations. There will be a war, but one of a kind which we need not deal with at the moment, as it does not form the subject of Article 8, which is now under discussion; Article 9 it is which provides for such a contingency, and it is only when we come to discuss this article that we shall speak of war carried on by the League of Nations in order to enforce the execution of the Covenant. Does Article 8, then, not foresee the event of war at all? It does foresee it, but only in exceptional circumstances—for instance, where the arbitration and conciliation provided for in Article 13 have failed. For these very rare cases are we to revive the old idea of war, *inter arma silent leges*, or shall we not rather follow the lead of the Covenant of the League of Nations and declare that in such an event the right of free transit, as proclaimed in various conventions concluded under the auspices of the League of Nations, shall continue in force? To put the question in this manner comes near to answering it.

The Netherlands Delegation supports the proposal already made by several delegates to refer Article 8 to a small committee, but we think it our duty to make a general statement of the case and to request the members appointed to this small committee to look at war from the same point of view as that from which the hypothesis is viewed by the Covenant of the League of Nations.

THE CHAIRMAN (speaking in French). — I certainly think that we should do well to refer Article 8 to a sub-committee, and this would conform to the various suggestions which have been made. I propose the following as members of this Sub-Committee :

MM. PIERRARD (Belgium);  
BROCKMANN (Spain);  
SIBILLE (France);  
BIGNAMI (Italy);  
MATSUDA (Japan);  
VAN EYSINGA (Netherlands);



MM. HANSEN (Sweden);  
VALLOTTON (Switzerland);  
LANKAS (Czecho-Slovakia);  
FERNANDEZ Y MEDINA (Uruguay).

*It was decided to refer Article 8 to this Sub-Committee.*

#### ARTICLE 9

THE CHAIRMAN (speaking in French). — We now come to Article 9, to which there are no amendments proposed. Unless anyone wishes to speak, I will put this article to the vote.

*Article 9 was adopted, 31 voting for.*

#### REPORT OF SUB-COMMITTEE ON ARTICLE 4

THE CHAIRMAN (speaking in French). — As I said at the beginning of the meeting, Articles 10, 11 and 12 are reserved, and I therefore propose that we return to Article 4. You will remember that a Sub-Committee was set up to deal with the question of tolls and of the reservation of flag rights. M. Serruys was appointed Rapporteur of this Sub-Committee. I call upon him to speak.

M. SERRUYS (France; Rapporteur; speaking in French). — At its meeting on the evening of March 17th, the Committee referred to a Sub-Committee the amendments put forward by the Roumanian Delegation on the subject of Article 4 (1).

The first of these amendments related to the question of tolls. It read as follows :

Similarly, a reasonable scale of dues intended to cover the expenses of construction, upkeep, supervision, lighting, etc., in addition to charges collected for services rendered, such as lockage, life-saving, etc., shall be levied upon every means of transport which is permitted to pass over routes not subject to monopoly.

The Roumanian Delegation stated that the chief aim of the amendment was to determine a scale of tolls, and the Sub-Committee had therefore to deal with the two following questions :

A. Are tolls included under Article 4 of the present Convention?

B. Is the scale which is there fixed for tolls which may be levied upon traffic in transit similar to the general scale of transport rates defined in Article 4? .

The Sub-Committee replied to both these questions in the affirmative. It was decided that, although Article 4 should not contain an explicit mention of tolls, yet as these were evidently referred to, it would be desirable to alter the text as follows :

ARTICLE 4. — *Charges.* — The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock or other means of transport on the routes operated or administered by the State or under concession...

The object of the slight change, which incidentally has caused the French and English texts to correspond more closely, is to include mention not only of operating services but also of administrative services which are subject to a monopoly or under concession. In this way the question of tolls, should they be levied by a concessionnaire, is now expressly provided for and regulated under Article 4. In the English text the word was *administered*, whilst the corresponding French word used was *exploitées*. The two words are not identical in meaning, and in countries where the French language is used a distinction is made between the operation and the administration

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(1) See p. 69.

of railways. The word *operation* is used in connection with the material elements of traffic, whilst the word *administration* refers to all questions connected with the staff, the management or the concession of certain auxiliary departments, and the best method seemed to be, therefore, to include both words. Furthermore, by introducing the word *administrées* into the French text, and the word *operated* into the English text, we are able to cover any auxiliary services which may be conceded, and in this way a solution is found for the question of tolls.

In their second amendment it was proposed by the Roumanian Delegation to reserve the possibility of establishing scales of transit rates differentiated according as to whether the flag of the vessel importing the goods was the national flag or a foreign one, by inserting at the end of Article 4, after the words *of the through journey*, the words *except in the case of nationals of the country of transit*. In addition to the economic considerations laid before us at the meeting held on Wednesday, March 16th (1), the Roumanian Delegation emphasised the connection between this amendment and Article 4 of the Draft Convention on the International Régime of Railways, under which differentiation in respect of combined tariffs is not precluded. The Committee as a whole, with the exception of the Roumanian and Italian Delegations, were of opinion that, although differentiation in respect of combined tariffs was not precluded by the Railway Convention,—which, incidentally, had not yet been discussed by the Conference,—such differentiation in respect of transit would appear to be in direct conflict with the governing idea of the Draft Convention, and particularly with the principle of equality laid down in the last sentence of Article 4. In the course of this debate the Roumanian and Italian Delegations rejected the view held by the majority of the Committee, both of them maintaining that a country should be permitted to establish tariffs or any other regulations for goods traffic, differentiated according to the flag of the vessel transporting them. In view of the opposition of the Roumanian and Italian Delegations to the view held by the majority of the Committee, and in view, also, of the serious nature of a proposition of this kind, which—I speak for the majority—is directly opposed to the whole tenor of Article 4, the Sub-Committee proposes, if the Committee thinks it desirable, to re-open discussion upon this important point. In the form which I have just laid before you, with the readjustment in both texts with regard to the words *administer* and *operate*, Article 4 seems to us to lay down a perfectly consistent policy. The addition of the words proposed by the Roumanian Delegation would convey quite another idea, and it is for the meeting to decide whether the amendment should be adopted or not. A question so serious surely cannot be decided except by a vote of the Conference, and it is in deference to the opinion of our colleagues that we propose, if you think it desirable, to re-open the debate. The discussion in the Sub-Committee was of a technical character, and in the course of it various questions were raised which occasioned anxious consideration on the part of certain delegates. For example, we said to our Roumanian and Italian colleagues :—You have the right to levy maritime dues,—for instance, surcharges in respect of the flag flown by a vessel,—because these are not referred to in the Convention. The majority of the delegations represented on the Sub-Committee were not at all in favour of this system, and even the British Delegation clearly signified its objection to the idea. As a matter of fact, however, such surcharges, which are levied in various countries, are not contrary to the terms of the Convention, because it does not deal with maritime matters, but as the question had been raised, we desired to make it quite clear that we all considered that it did not come under the terms of the present Convention.

Another question, which I myself introduced, arose with regard to Article 4. The next task of the Sub-Committee was to draw up a passage for insertion in the Closing Protocol, in accordance with the decision arrived at by the Conference (2) on March 16th with regard to the reservation of flag rights. This text is now before you, and you will recollect the question which it was intended to settle. We were all agreed upon one point,—that the Convention also does not contemplate the reservation of flag rights in respect of traffic between two places situated in the same territory. Upon

(1) See p. 67.

(2) See p. 70.

the motion of the British Delegation, we voted for the insertion of the following passage in the Closing Protocol :

It is understood that nothing in Article 4 compels any State to authorise foreign vessels to participate in traffic between two points within its territory, when such traffic, according to the laws of the country, is or can be reserved for the national flag.

This text demonstrates the general view taken, that what we have called the reservation of flag rights is not affected by the Convention. In this connection, our Greek colleague raised the question whether the Convention dealt with the subject of water transport traffic. In our opinion it does not do so, and it is certain that the question will be raised again during the discussion on the Waterways Convention. One other question was submitted to the Sub-Committee (1),—that of the period before the expiration of which Article 4 should be applied. It will be remembered that the Brazilian Delegation put forward an amendment to the effect that a reasonable period should be allowed to enable the States which are Parties to the Convention to adapt their budgets to the new régime set up by the Convention. There are certain States which, following the signature of the Convention, will indeed be compelled to adapt their legislation and, in particular, their budgets, to meet its terms. Some of them levy certain differential charges, sometimes yielding a considerable revenue. That revenue they declare themselves prepared to relinquish, but they must be given time to make the necessary changes. It seemed to us that this question was one which should not be raised in connection with Article 4, and that our terms of reference from the Committee were not wide enough to enable us to deal with it, but that it was included under Article 20, which treats of the various periods within which the provisions of the Convention are to be applied. Finally, we came to the conclusion that it is really to this article that the Brazilian amendment properly belongs.

There you have the results of the labours of your Sub-Committee. I consider that they allow either of approval on your part, or of further discussion should we not be in agreement upon anything that admits of differing interpretations. A vote is also needed for the slight change which we have made in the text of Article 4, in order that there may be no possible doubt as to the interpretation of this article.

THE CHAIRMAN (speaking in French).—The Committee would like to tender its grateful thanks to M. Serruys for his Report.

M. SINIGALIA (Italy; speaking in French).—In connection with the discussion which took place yesterday on the same article, and in particular on the question of combined tariffs, I had the intention of supporting the Roumanian proposal. I was apprehensive lest the Transit Committee, by upholding the view taken by all the delegations with the exception of the Roumanian, should have committed an act which would be in conflict with the terms of Article 4 of the Railway Convention. At the time when the latter was drafted, there arose the same question, and it occasioned a protracted debate which resulted in the present text. This wording was adopted precisely for the reason that the same point was then raised which is now being raised by the Roumanian Delegation, namely, whether, in connection with these combined tariffs, it is admissible that preferential treatment in favour of the national flag should be allowed, it being, of course, understood that a provision of this nature would not place any obstacle in the way of perfectly equal treatment for all flags which are not national flags. In fine, the question resolves itself into this,—complete equality of treatment for every flag, but with preferential treatment for the national flag. As it seemed to me that this principle was already embodied in Article 4 of the Railway Convention, I supported the proposal which was made yesterday. I fully understand the reason for admitting a principle such as this one in the Railway Convention. It is said that this principle would cover imports and exports, but surely a totally different principle should not be admitted for traffic in transit. If certain goods are introduced into a country under the national flag, and if the latter is accorded the benefit of pre-

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(1) See p. 70.

ferential treatment, a difference should be made according to whether the goods remain in the country or are merely passing through it in transit, and it was only in view of this consideration that I supported the Roumanian proposal.

I think that the debate might either be continued now, whilst the Transit Convention is still under discussion, if that is considered the better course, or else postponed until the discussion of Article 4 of the Railway Convention. I think there is a close connection on this point between the two Conventions.

M. CARACOSTEA (Roumania; speaking in French).—I will only add a few words to the arguments used by my Italian colleague. I should like to draw the attention of the Committee to the fact that in our country a still more special position obtains. The State is the owner of a certain number of vessels, in the same way as it also owns certain railways. There is no company working these vessels or these railways; they are operated by the State, and as the possibility has been admitted of establishing preferential treatment for exports and imports, could not this be done in respect of transit traffic also ?

M. SERRUYS (France; Rapporteur; speaking in French).—Without actually taking part in the debate upon those questions which are dealt with in our Report, I will just mention the reasons which led to the rejection by a majority of the Roumanian proposal as now supported by the Italian Delegation. There were two dominating factors which served to influence us in this matter. The first one is a question of procedure. We considered that we ought not in Article 4, which deals with a special régime,—that of transit,—to prejudice any decisions at which the Conference might arrive with regard to maritime administration, if a convention upon this subject ever came to be laid before it. We further arrived at the conclusion that questions such as surcharges and differential treatment in respect of the flag flown were not only questions of a maritime order, but were also frequently economic questions connected with the control of imports and exports,—in fact customs questions,—and that they should be kept separate from transit questions, it having been precisely the intention of the authors of the Convention to indicate clearly that the transport tariffs with which Article 4 deals should be kept quite clear of any economic considerations,—in fact, that economic protection is one thing and traffic in transit another. That was the view which prevailed, and the question therefore becomes one of procedure.

There was yet another question which occupied our attention. We did not think that by establishing combined tariffs in the manner recommended by the Roumanian Delegation it would be possible in practice to lay down the rules of equality and of equitable dealing which should govern a régime such as that proposed, in view of the fact that certain considerations intervene, the significance of which we cannot gauge. It really amounts to not confusing the situation with the considerations upon which our view is based, and which should remain independent, and it is also a question of the impossibility of judging correctly the significance for the Transit Convention of the proposed amendment. This has led us to reserve the question, and to give our verdict against the Roumanian amendment. The reasons which I have just given you were, I think, those which underlay the decision of the majority of the Sub-Committee to reject the Roumanian proposal as seconded by the Italian Delegation.

M. SINIGALIA (Italy; speaking in French).—I must thank the French Delegate for the explanation which he has been kind enough to give, and which will serve to dispel the misunderstanding which has crept in. At the end of his statement he declared that the Roumanian proposal had been rejected by a majority of the Sub-Committee only in order that the question of differential treatment for the national flag might be reserved. If this be so, and if the reservation contemplates a later discussion upon the substance of the question in connection with the Railway or some other Convention, that is another matter.

M. SERRUYS (France; Rapporteur; speaking in French).—I will reply in as explicit a fashion as possible to that query. On the one hand, it seemed to us that the question should be treated quite apart from that of transit; that was a motive founded

on procedure. Then there were objections in principle on the part of the British Delegation; with these, which amounted to a rejection of the theory, I was in agreement. That theory, incidentally, may be voiced once more when the time comes to discuss the International Waterways Convention or the Ports Convention; at all events, the question can be raised when we come to deal with navigation, for instance, whilst it will necessarily re-emerge if ever we come to draw up a convention on maritime administration. It was the opinion of the Sub-Committee that, in view of the general spirit of the Convention, a proposal such as this would be in conflict with it, whilst it also appeared that as regards the question of procedure, we were not competent to lay down rules on other matters appertaining, perhaps, to railway transport rates, etc. The question is not one in which transit only is concerned. I will add that, with regard to the question of combined tariffs, we gave a negative answer. That was exactly the situation as viewed by the majority of the Sub-Committee. I think it is quite clear.

M. SINIGALIA (Italy; speaking in French).—You said just now that the Sub-Committee expressed its opinion following upon certain arguments put forward by the British Delegation.

M. SERRUYS (France; Rapporteur; speaking in French).—The reasons given by us were as follows: Do not let us confuse with transit questions, questions such as surcharges in respect of the flag or any system of differential treatment which we might set up, for they very frequently include considerations which have nothing whatever to do with transit. The attitude of the French Delegation has been known to you for a long time; it is in fact quite clear from the *Green Book*, and it has been proclaimed here more than once. Transport questions are one thing, and questions of imports and exports and of protection for imports and exports are another, and we wish not to confuse two things which appear to us to comprise different theories and to require different treatment. That is the exact attitude of the French Delegation. If I have interpreted wrongly the view taken by the British Delegation, I should be most grateful to Sir Hubert Llewellyn Smith if he would be good enough to let me have his views on the subject.

M. SINIGALIA (Italy; speaking in French).—Then the debate is not at an end?

Sir Hubert LLEWELLYN SMITH (Great Britain).—In reply to the suggestion made by my friend M. Serruys, I am only too glad to associate myself with his explanation of the decision arrived at by the majority of the members of the Sub-Committee, and of the reasons which actuated them in doing so. I should like, however, to say one word about the view of the British Delegation in this matter. We are not now discussing a Railway Convention; we are not now discussing a Waterways Convention; we are discussing a Convention on Transit,—transit by water, transit by rail. We laid down clearly in Article 4 that charges levied on transit traffic are not to depend upon the flag, the nationality, or the ownership of the vessel in which the goods arrive or leave. That does not in any way affect the general question of combined rail and sea tariffs, which could be studied in connection with the Railway Convention,—that is to say, it does not affect it in general, but it undoubtedly influences it in respect of transit rates. I would therefore say to M. Sinigalia:—“Should the Transit Convention be adopted in its present form, you are free, when the Railway Convention is discussed, to make any proposal on the subject of railway rates which is not in conflict with the decision expressed in Article 4 with regard to charges for the transport of goods in transit.” Clearly, however, we cannot reserve the whole question of these charges; they must be dealt with in connection with the present Convention. Surely it hardly admits of argument, that, unless the whole foundation of our Convention is to be destroyed, we must lay down the principle in it that charges for goods in transit are not to depend on the flag of the vessel in which they are brought to the country or taken away from it.

M. SINIGALIA (Italy; speaking in French).—I am sorry to be obliged to ask for one more explanation; I do not quite understand the objection. We are told that differential treatment in respect of the flag cannot possibly be discussed under the head of transit, but that it may be discussed in connection with the draft Railway Convention,—that it will then be permitted to maintain the principle of railway tariffs differentiated according to whether the flag is a foreign or a national one. Now these very railway tariffs apply just as much to goods brought to a port of the country by a vessel of the country, and bound for or coming from the interior of the country, as to goods brought to a port of the country and destined, for instance, to leave the country across a land frontier. This being so, what is the proper place for a provision which refers to transit traffic of this nature? The Transit or the Railway Convention? Personally I do not think it matters, but it must be clearly understood that if the principle envisaged in the present Convention be adopted in the Railway Convention, then it must also be applied to railway traffic in transit across a State, when that traffic has been brought to a port of the country under the national flag, and is to leave it across a land frontier, or *vice versa*. I should like it to be understood that this stipulation should not be aside.

M. FREIRE D'ANDRADE (Portugal; speaking in French).—I rise in order to ask the Rapporteur to explain a certain point. Judging from his words, it would appear to me that the Report does not touch exportation, and that a State is at liberty to lower export duties on national goods which leave the country in national vessels. Have I understood aright?

M. SERRUYS (France; Rapporteur; speaking in French).—There are, I think, two points which should be made clear in reply to the two questions which have just been asked me.

M. Freire d'Andrade enquires whether a State may establish different freight rates or different charges in favour of its own vessels as distinguished from foreign vessels. I agree. This falls under a convention on maritime matters and not under the Transit Convention. With regard to transport by rail or water, a State may establish internal import or export tariffs which are lower than transit tariffs. It is quite at liberty to do so.

M. FREIRE D'ANDRADE (Portugal) (speaking in French).—Thank you.

M. SERRUYS (France; Rapporteur; speaking in French).—We have no desire to prevent the application by a State of internal import or export tariffs which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag. That is where the disagreement begins, and all sorts of different ideas are mixed. To that we cannot consent. The question is therefore definitely settled. With regard to procedure, it is understood that the Italian and Roumanian Delegates may, if they like, raise the question in connection with railways, or with a convention upon maritime matters, or with the Convention upon International Rivers, but should the question ever arise, I should like to state that the French Delegation would, for identical reasons, maintain its attitude, and would contest the proposal.

THE CHAIRMAN (speaking in French).—I will recall to the assembly that a slight modification in the French text of Article 4 was proposed by the Sub-Committee,—namely, the addition, after the words *voies exploitées*, of the words *ou administrées*. (English text: insert before the words *administered* by the words *operated* or.)

Admiral DE ZWIERKOWSKI (Poland; speaking in French).—Mention has not been made of subsidies. I am not quite clear as to the views held by the French and British Delegations on this subject. For instance, has the State the right to subsidise a shipping line? And can any line so subsidised undertake transport on a lower scale of tariffs than other lines? Such a line would, in reality, have the same scale of tariffs

as the others, but a proportion would be repaid by the Government. Is this point covered ?

M. SERRUYS (France; Rapporteur; speaking in French).—That is a question which has no connection with transit; it is simply a commercial practice, which may sometimes have dangerous result but which has nothing to do with our draft Transit Convention.

THE CHAIRMAN (speaking in French).—Unless anyone else wishes to speak, I will now put to the vote Article 4, of which the text has been modified as follows :

ARTICLE 4. — *Charges.* — The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock or other means of transport, on the routes operated or administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

*Article 4, with the above text, was adopted.*

*The meeting adjourned at 7.50 p.m.*

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# EIGHTH MEETING OF THE PLENARY COMMITTEE

(Monday, March 21st, 1921, at 11 a.m.)

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## REPORT OF SUB-COMMITTEE ON ARTICLE 5

### REPORT OF SUB-COMMITTEE ON TOWAGE — DISCUSSION OF ARTICLE 13

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

THE CHAIRMAN (speaking in French).—I should like to propose an additional member for the Sub-Committee to examine Article 8, namely, M. Holck-Colding, one of the Danish Delegates. I presume no one will object to this.

## REPORT OF SUB-COMMITTEE ON ARTICLE 5

THE CHAIRMAN (speaking in French).—We will now proceed to discuss the text of Article 5 as amended by the Sub-Committee (1).

I will ask the Secretary-General to read you the text.

M. HAAS (Secretary-General; speaking in French).—The following is the text adopted by the Sub-Committee :

ARTICLE 5. — None of the Contracting States shall be bound by the present Convention to afford transit for passengers whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on the grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, luggage, goods, particularly monopolised goods, vessels, coaching and goods stock and other means of transport, are *bona fide* in transit, as well as to ensure that passengers in transit are in a position to complete their journey and to avoid danger to the safety of any route or means of communication.

Nothing in this Convention shall affect any measures which any of the Contracting States are, or may be, required to take by virtue of any general international conventions to which they are parties; or which may be concluded hereafter, particularly those concluded under the auspices of the League of Nations, relating to the transit, export or import of a particular class of goods, such as opium or other dangerous drugs, arms or the produce of fisheries or general conventions concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair competition.

THE CHAIRMAN (speaking in French).—It is pointed out that there should be inserted before the last two words of the second paragraph, in the French text, the word *ne* : *ne soit compromise*, but there seems every reason to think that the addition of this word is unnecessary.

M. SERRUYS (France; speaking in French).—It is unnecessary. In the French translation there is a slight divergence from the English text; the last paragraph does

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(1) See p. 82.



not express accurately the decision arrived at by the Sub-Committee. In the third paragraph we read :

*Rien dans la présente Convention ne saurait affecter les mesures qu'un quelconque des États contractants est ou pourrait être tenu (required) de prendre en vertu de conventions internationales...*

Ought not the words to be rather *est ou pourrait être amené à prendre en vertu de conventions internationales*, instead of the word *tenu*? There is a slight distinction in the meaning which should be made clear.

The text now before us goes farther than was originally intended. . We had meant to make an exception for any measures which might be taken by a State on its own authority, in pursuance of international conventions, with regard to literary and artistic property, false trade marks or false appellations, and we said that any measures taken in pursuance of such conventions, or which a State might possibly be called upon to take in pursuance of them, should be legitimate, whereas the English word *required* refers to the measures which a State is bound to take. The conventions in question do not in any way specify what measures are to be taken, the parties simply being pledged to take any necessary measures, and it is for this reason that I should prefer the words : *les mesures qu'un État serait amené à prendre...*, since the conventions have allowed the States the initiative,—*en vertu de ces conventions*.

Sir Hubert LLEWELLYN SMITH (Great Britain).—I am fully in agreement with the alteration proposed by M. Serruys, but I think that, if it is adopted, a search will have to be made for the right word in English. I do not think the word *required* is the right one.

M. HAAS (Secretary-General; speaking in French).—The Sub-Committee had to deal with three important points. The first was the one which has just been raised once again—the question of restrictions justified on grounds of commercial fair dealing. The Committee which discussed this question appeared to be unanimously agreed to express the wish that the Convention on Freedom of Transit should not be a means of facilitating unfair methods of commerce. Certain objections were, however, occasioned by the very elastic form of words proposed by the French Delegation, and in order to take these into consideration, whilst avoiding the inconvenience of a too elastic version, the end of Article 5 was drafted by the Sub-Committee in the following words : *or those concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair commerce*.

Another point which occasioned considerable discussion in the Sub-Committee was raised by the Italian amendment concerning State monopolies. The view taken by the Sub-Committee was that, although there was no doubt that the institution of State monopolies might permit a State to take reasonable precautions to justify measure which in certain cases might be stricter than those affecting goods *not* the subject of a State monopoly, it was none the less impossible to go the whole way with the Italian Delegation, and allow a State to prevent or hinder the transit of goods simply because these are the subject of a State monopoly. This amendment was rejected by the Sub-Committee. But in order to give as much satisfaction as possible to the Italian Delegation, and also to show that it was recognised that the existence of State monopolies did justify the taking of special measures, the Sub-Committee added to the second paragraph of Article 5, after the words *persons, luggage, goods*, the words *particularly monopolised goods*.

A third question was also discussed at some length. The Conference will remember that the French Delegation proposed to add a paragraph at the end of the article in the following terms : *This provision shall not apply whenever transit is carried out by vessels proceeding by waterway under customs seal*. The French Delegation had declared in Committee its intention not to insist upon the inclusion of this clause in the Convention, but requested that it should appear in the Final Protocol. But although this request was not made by any other delegations, certain of them asked for the inclusion of other similar provisions,—in particular, the Czecho-Slovak and Uruguayan Delega-

tions, the latter indeed, submitting a considerably longer amendment. After having discussed the question at great length, the Sub-Committee unanimously decided that greater freedom ought to be allowed on international waterways than anywhere else, and accordingly it was inclined to advocate the principle contained in the French and also in the Czecho-Slovak and Uruguayan amendments. The possibility of adopting the following text was even seriously considered : *whenever transit is carried out by vessels proceeding under customs seal... unless when there is serious cause to suspect fraud or contravention.* Whilst in complete agreement, however, upon the principle itself, the Sub-Committee was unanimously against including such a provision in Article 5 of the Convention on Freedom of Transit. There were, in fact, insuperable difficulties in the way of defining in this Convention the exact significance of the words *international waterways*, and the Sub-Committee found itself on the horns of a dilemma;—should the question be referred to a Convention as yet unknown, or should some vague formula be adopted such as *waterways falling under international treaties.* The Sub-Committee decided that, although complete agreement had been reached upon the principle, the question should not be taken up until the discussion of the Convention on the International Régime of Waterways.

The above constituted the three principal questions which formed the subject of alterations in the text before the Committee. In the course of debate one or two explanations were requested, and it was agreed that they should be mentioned before the plenary Committee. In the first place, there was the question of emigrants in transit, in connection with which the Sub-Committee adopted the text of the English amendment which entitles the High Contracting Parties *to ensure... that passengers in transit are in a position to complete their journey.* Whilst retaining this wording, the Sub-Committee was perfectly cognisant of the fact that the clause had only to be misinterpreted in order to become in practice a hindrance to the transit of emigrants, and accordingly it was considered desirable that the Conference should express a wish for the clause to be applied in the spirit, namely, that such necessary and reasonable precautions should be allowed as would not add to the difficulties of emigration traffic.

There is also the question of the addition of the word *morals*, which was proposed by the British Delegation. It was decided that the circumstances which it had in view were covered by the words *public health or security*, and that the addition of the word *morals* was therefore uncalled for.

For the purpose of bringing the French text into line with the English, the words *dans l'un et l'autre cas* were also omitted.

Lastly, the Sub-Committee studied the question whether the terms of the Convention forbade the transit of counterfeit coin, or at least did not permit this. No one doubted for a moment the intention of the Convention, and it was considered that the words *public security* fully sufficed for the purpose.

In connection with conventions regarding fisheries produce, it was pointed out that reference might with advantage be made to the interpretation of the word *transit* to be found in the commentary on Article 1 contained in the *Green Book* (1).

M. VALLOTTON (Switzerland; speaking in French).—I have the honour to propose that in order to avoid any misunderstanding, the words *plurilateral conventions* should be substituted for the word *those* in line 8 of paragraph 3, which would then read as follows : *arms or the produce of fisheries, or plurilateral conventions concluded...* The word *those* is not quite clear; it might give the impression that the word *goods* in the line above is the one referred to. M. Serruys is in agreement with me as regards this change, which will not, I think, occasion any difficulty.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think it would be a vast improvement in the text.

M. VALLOTTON (Switzerland; speaking in French). — I would like to make another observation with regard to this article. If there is a general desire to include the words *particularly monopolised goods*, then the Swiss Delegation will not destroy

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(1) See p. 286.

this unanimity by raising any opposition. I would, however, repeat the observation which our delegation took the liberty of making in the Sub-Committee. In the first place, from the legal point of view we are not quite clear as to why a distinction should be made in practice for goods which are the subject of a monopoly. It is a question of the relations existing between States, and we have not to deal here with any measures which a State may take within its own territory. Personally, I very much regret that the Italian Delegation should have insisted on pressing their amendment, which is such as to detract from the liberal tendency of the article. With regard to the clearness of the text, may I point out to the Drafting Committee, without laying any special stress on the point, that the addition of the words *particularly monopolised goods* does not in reality add anything to the text, because the words *vessels, coaching and goods stock...* appear to be included also under the term *particularly*. May I be allowed to proffer this observation with all respect to the Officers of the Conference, as it is they who are responsible for the wording.

M. BIGNAMI (Italy; speaking in French). — In reply to M. Vallotton's remarks, I ought to make it clear that the Italian Delegation continues to urge the adoption of the text which M. Haas, as Rapporteur of the Sub-Committee, has just read. In accepting the words *monopolised goods*, Italy has already made no small concession, and she is absolutely unable to abandon her view on the subject. Indeed, were this phrase to be omitted from the article, Italy would make a reservation with regard to accepting the latter.

THE CHAIRMAN (speaking in French). — We have here a draft which is in the nature of a compromise, and upon which we can all, I think, agree; I am sure that even M. Vallotton will not press his point further.

M. CARACOSTEA (Roumania; speaking in French). — I should like to make it known that there is complete agreement between the Italian and Roumanian Delegations on this subject. The words in question must not be omitted from the French amendment in the form which has been read to us. May I be permitted to give you an example which will demonstrate to you the absolute necessity of including the words.

THE CHAIRMAN (speaking in French). — I think that as the Conference seems to be unanimous on the subject, we could end the discussion at this point.

M. POLITIS (Greece; speaking in French). — We do not understand, and I therefore request that the example be given us.

M. CARACOSTEA (Roumania; speaking in French). — A few months ago there arrived in Roumania seven or eight truckloads of tobacco coming from Bulgaria and passing in transit through Roumania on their way to Poland. These seven trucks were duly registered at the Customs on their entry into the country, but when they came to leave the country, there were only five of them. I was asked to produce the two trucks; I instituted a search and I found them,—empty. The tobacco had been stolen and sold, and, as Goods Manager of the Roumanian Railways, I was obliged not only to pay compensation to the sender, but also to indemnify the holders of the monopoly for the loss sustained by them from the sale of the tobacco in Roumania. As a result of this incident, I decided that in future every truck containing goods which were the subject of a monopoly should have police escort during its transit through the country. It was said:—“There is a considerable distance between the two frontiers; armies of officials will be needed, to act in relays, and the expense will be very great. Who is going to pay,—the holder of the monopoly, or the State through which the transit takes place? Whichever it be, you will put a stop to all transit”. My reply was that when the State was once bound to take precautions to protect goods over which it exercised a monopoly, there could be no question of an obstacle to transit. In the circumstances I associate myself entirely with the view taken by the Italian and French Delegations.

M. POLITIS (Greece; speaking in French). — The example given us by M. Caracostea in order to justify the amendment does not seem to me a conclusive one. Suppose that instead of truck-loads of tobacco, which might bring in some twenty thousand francs to the Roumanian Government, it were a question of seven truck loads of lace, which is not subject to a monopoly, and which, instead of bringing in twenty thousand francs in virtue of the monopoly, could increase the customs revenue by five hundred thousand francs, what would then be the position?

M. PIERRARD (Belgium; speaking in French). — If I understand M. Vallotton aright, his chief object in recommending the words *plurilateral conventions* to take the place of the word *those*, was to make the text clearer. Why did he omit bilateral conventions? Did he consider that in the circumstances two States were not enough to bring into play the provisions of the Convention? *Plurilateral* can signify two plus one. May I ask M. Vallotton whether he does not feel disposed to substitute *general* for *plurilateral*?

M. VALLOTTON (Switzerland; speaking in French). — We agree.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In South America there are certain inter-State conventions which impose restrictions with regard to matters affecting public health, literary and artistic property, failure to declare the commercial origin of goods, etc. As these conventions are signed by certain countries only, should they be regarded as general conventions? It would be well to arrive at an understanding on this point. M. Vallotton's proposal appeared to us the more logical one, because the word *plurilateral* definitely refers to these kinds of conventions, of which I may cite as an example the Health Convention of Monte Video between Brazil, Argentine, Paraguay and Uruguay, which includes a number of restrictions on goods traffic by sea.

M. HAAS (Secretary-General; speaking in French). — I think we could use the word *general*. As regards the question raised by M. Fernandez y Medina, he will find all he wants in Article 10. Such would appear to be the line which it is necessary for the Convention to follow in order to be able to take geographical factors into consideration.

M. SERRUYS (France; speaking in French). — This is no longer a simple question of distinction between two shades of meaning, but a question of terminology. When we recently drew up the various treaties of peace, we took much trouble to distinguish between bilateral conventions on the one hand, and plurilateral ones on the other. General conventions fall under a rather different category, not only because they are wider, but also because when a convention proclaims itself "general" it usually contains an article stating that it will remain open for signature by other Powers. We are not prepared to make a distinction in this paragraph between conventions which are strictly speaking plurilateral, and general conventions, and I therefore propose that we adopt the word *plurilateral* which M. Vallotton has suggested. It seems to me by far the most correct term technically.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — General conventions also are included.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I quite agree as to the desirability of making a distinction of this kind between the words *general* and *plurilateral*, and it is for this reason that I prefer the word *general*. We have, I think, had in our minds during the discussion conventions which, it is true, were not universal, but which might become so if certain States acceded to them. I would beg M. Serruys not to insist upon a change in the text, because I think that if we use the word *plurilateral*, we may involve ourselves in a difficulty. May I ask M. Vallotton to accept the word *general*?

M. SERRUYS (France; speaking in French). — In order to arrive at an agreement, I propose the following text : *plurilateral conventions bearing a general character*, which will give satisfaction to all.

M. VALLOTTON (Switzerland; speaking in French) and Sir Hubert LLEWELLYN SMITH (Great Britain). — We agree.

M. HAAS (Secretary-General; speaking in French). — The expression *plurilateral conventions bearing a general character* may possibly have the merit of uniting us all in agreement, but its meaning is very vague. What constitutes the “general character” of a convention? Is it the fact that any State may become a party to it if it wishes?

M. SERRUYS (France; speaking in French). — Yes.

M. HAAS (Secretary-General; speaking in French). — Is it a question of the nature of the subject treated?

M. SERRUYS (France; speaking in French). — No.

M. HAAS (Secretary-General; speaking in French). — It is difficult to define the exact meaning. When dealing with such a difficult question, it is a pity to increase the difficulty of it; and besides, the real question—the one raised by the Uruguayan Delegate—finds its answer in Article 10. At the moment we may be said to be dealing with that part of the Convention which has a universal application; it is Article 10 which treats of the possibility of adapting it to various regional and local uses. The text itself clearly shows that the Sub-Committee intended to refer to general international conventions. It is not for me to intervene in the discussion, but I should like to point out that in the Sub-Committee the question did not even arise, and the only conventions contemplated were general international conventions.

M. SERRUYS (France; speaking in French). — As sometimes happens, my explanation has but served to add confusion. We are all agreed that the text should refer to plurilateral conventions, but not necessarily conventions remaining open for signature. In order to make the point perfectly clear, I should like to say that the conventions referred to are those of Paris, Berne, Madrid and Washington. As this statement will appear in the records of the meeting, there can be no longer any doubt as to the meaning of the article.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It should also refer to the North Sea Fisheries Conventions.

M. SERRUYS (France; speaking in French). — Those are referred to in the preceding sentence. At the moment we are dealing with *those concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair commerce*, whilst the preceding paragraph deals with conventions on the transit of fisheries produce.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I do not agree. These may be the only conventions at present in existence, but there may be other ones in the future.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — After hearing this explanation, I accept the ruling of Article 10 on this subject.

THE CHAIRMAN (speaking in French). — M. Serruys' remarks will appear in the records.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Whatever be decided, is it clearly understood that the text will be subjected to revision by the Drafting Committee?

THE CHAIRMAN (speaking in French). — Certainly, but you do not oppose the course suggested, together with a note in the records?

Sir Hubert LLEWELLYN SMITH (Great Britain). — Not at all.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I vote for Article 5 in its present form on the assumption that the words *reasonable precautions* include the right of every State, if it thinks necessary, to cause goods in transit to be escorted by a customs official, the expense to be charged to the sender. Our customs regulations accord this right, and I am anxious to make this declaration after hearing the example cited by the Roumanian Delegate, which might lead to the belief that the right of customs supervision, including the escorting of goods by a special customs official, was not included in the words *reasonable precautions*.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Certainly it is permissible to take any measures which are reasonable.

THE CHAIRMAN (speaking in French). — I think we are now in agreement, and, unless anyone else wishes to speak, I will now put to the vote paragraphs 1, 2 and 3 of Article 5 as amended during the meeting.

*Paragraphs 1, 2 and 3 of Article 5 were adopted, 28 voting for.*

#### REPORT OF THE SUB-COMMITTEE ON TOWAGE

THE CHAIRMAN (speaking in French). — M. Winiarski, Polish Delegate and Rapporteur of the Sub-Committee on the question of towage (1), will now speak.

M. WINIARSKI (Poland; Rapporteur; speaking in French). — At the time when the Commission of Enquiry was discussing the Preamble to the Waterways Convention, we agreed that a riparian State should be allowed to retain the right of establishing towage or other haulage services which are subject to a monopoly by the State or by a private concessionnaire, and a passage to this effect was inserted in the Preamble, whilst in the commentary to the general report on the Transit Convention it was stated that free passage should also be allowed to tugs with or without tow. It may happen that a State accedes to the Transit Convention, but not to the Waterways Convention, and wishes to take advantage of the commentary (2). It was decided by the Polish Delegation to omit from the text of the Transit Convention anything which might in any way prejudice the question of the establishment of any form of haulage service carried on as a monopoly, and the following clause was agreed upon in committee :

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

Certain delegations, however, expressed a fear lest a State should, under the pretext of establishing a traction service to be carried on as a monopoly, hinder transit or come near to preventing it altogether, and it is for this reason that we have added the following passage :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the free transit of vessels.

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(1) See p. 51.

(2) See p. 287.

After the drafting of these two paragraphs, the representative of Germany very rightly called attention to the fact that we had begun with a negative provision and ended with a positive one, and accordingly we changed the order of the paragraphs, inserting immediately before the paragraph which I have just read, the following one :

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

I will give a few examples of the various difficulties which came to light in the Sub-Committee. A is a State situated on the lower course of a waterway. It sends barges, accompanied by a tug in transit, through State B, which is the middle course, into State C, which is situated on the upper course. The tug leaves its barges with C and goes home light to A. Is it permitted to pick up a barge from a port situated in B in order to tow it to another port, belonging to the same State, which lies on its route? Here is a second example : A, the State downstream, sends a tug towing barges in transit, through the territory of B, upstream to C. The tug may be obliged to leave some of the barges in the country through which it passes; the original tug may be too big and may need replacing by a smaller one; is a State entitled to keep depots for tugs in the territory of the State through which the transit takes place? The view taken by the Sub-Committee was that such contingencies might occur, and that if they did, the question should not in any way be prejudged by the Transit Convention, and, accordingly, it is proposed simply to make the following note in the records of the meeting :

In virtue of the Convention on Freedom of Transit, a State is not bound (a) to allow a tug which is passing through a country light to undertake towage between places situated within one and the same State; (b) to allow within its territory the establishment of a foreign towage service working between places situated within its frontiers, with the object of providing running facilities for foreign vessels.

The above may be permitted in virtue of other conventions, but a State is not bound to admit them in virtue of the Convention on Transit.

THE CHAIRMAN (speaking in French). — I would thank M. Winiarski for his very lucid report and also for the very clear illustrations he has given.

M. VALLOTTON (Switzerland; speaking in French). — It is unfortunate that we did not receive the draft in time to be able to give a verdict on it now. At first sight, it would appear acceptable, on the understanding that acquired rights of freedom for towage over international waterways are expressly reserved. There must be no ambiguity on this point. I beg we may be accorded time until this afternoon in order to study the article.

THE CHAIRMAN (speaking in French). — Certainly.

M. KROLLER (Netherlands; speaking in French). — We have a certain number of observations to make on this subject. Everyone must be on an equal footing; there must not be a different set of weights and measures for the foreigner and for the national.

THE CHAIRMAN (speaking in French). — The proposed text reads as follows :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the free transit of vessels.

M. KROLLER (Netherlands; speaking in French). — I propose the addition of the words *on a footing equality* to follow the words *the free transit*.

M. SEELIGER (Germany; speaking in French). — These words should not be added to a negative sentence, but to some phrase which indicates in a positive manner that these services must be established on a footing of perfect equality.

THE CHAIRMAN (speaking in French). — It is a question of drafting.

M. WINIARSKI (Poland; speaking in French). — We have admitted this principle in the Transit Convention, and I am not opposed to it, but I do not think it could be inserted here without giving rise to the idea that in all the other articles where it is not expressly mentioned, it is not to be understood as applying.

THE CHAIRMAN (speaking in French). — Once an agreement has been reached between M. Kroller and M. Winiarski, the text can be voted upon at the beginning of this afternoon's meeting.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The Serb-Croat-Slovene Delegation has made certain reservations, and it would therefore be well if an agreement could be arrived at with M. Kroller and M. Winiarski to submit their draft to us before the vote is taken.

THE CHAIRMAN (speaking in French). — Will M. Winiarski and M. Kroller kindly examine the question with M. Avramovitch (1)?

### DISCUSSION OF ARTICLE 13

Article 13 now comes under discussion. The Roumanian Delegation has proposed the following amendments :

ARTICLE 13. — Omit the words in the title *In favour of the devastated regions*, and add the following sentence to the text :

It is likewise understood that, particularly on routes where the means of transport form the subject of a monopoly, transit shall be restricted to the capacity for traffic existing at the time, priority being accorded to internal, export and import traffic.

M. CARACOSTEA (Roumania; speaking in French). — The Roumanian Delegation has proposed the amendment which you have just heard, and I will now give the reasons which led us to ask for its adoption. It has been said that this is not the place to discuss it, but I should like to know where we are to discuss it if not here and now. In our own country,—and I think this is the usual procedure in countries which are purely agricultural,—the transport of cereals begins about the month of October, and it is absolutely essential that the transport of these cereals to the important ports of Braila and Galatz should be concluded before December 15th, for the reason that at that date the Danube freezes and navigation can no longer be carried on. It follows, therefore, that the complete cereal produce of Roumania must be dispatched via the Danube during these two or three months. Suppose that during this period, a neighbouring State came and said to us : “We wish to carry out transit traffic to your ports of Braila and Galatz during this season of the year, for the Danube freezes for us as well”—I ask you what attitude we should take up in the circumstances? You are well aware that at the present time the means of transport at our disposal are very limited. To which are we to give the more favourable treatment—to our own export traffic or to transit traffic? Please do not imagine that I wish to prejudice transit traffic in any way,—I shall be bound by the Convention which we are now drawing up,—but let me assure you that I think it most unlikely that my Government could rid itself of the obligations which it is under to transport its own cereal harvest. Whilst all of us here are determined to hold to the engagements into which we are about to enter, we are bound in the first place to consider our own interests. We shall make every effort to satisfy the demands of transit, but we cannot do this until our own interests are safeguarded. It is for these reasons that I beg the Conference to adopt the amendment put forward by the Roumanian Delegation.

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(1) For remainder of discussion see p. 142.



M. PAVICHICH (Serb-Croat-Slovene State; speaking in French).—The Serbian Delegation supports the Roumanian proposal. In our country the necessity is even greater than in Roumania of ensuring that the bulk of the transport be carried out during the autumn months. We have to dispatch quantities of earlies, fruit and cereals, of which certain parts of the country produce large quantities, whilst others, such as Dalmatia and Montenegro, do not produce any at all, and it is therefore necessary to stock them before the freezing of the Danube. I may add that we have not many railways, and that they are in very poor condition. The above are the facts which lead us to support the Roumanian proposal. By failing to do so, we should run the risk of safeguarding our neighbours' transit traffic, whilst unable to supply some parts of our own country with the products which are essential to their existence.

M. LANKAS (Czecho-Slovakia; speaking in French). — I am extremely sorry not to be able to support the Roumanian proposal. The amendment appears to me both exceedingly dangerous and also in contradiction with one of the fundamental principles of the Convention. As the Greek Delegate reminded us this morning, two principles are involved,—freedom of transit and equality. The word *equality*, as I understand it, includes not only equality between States which are third parties, but also equality between my own traffic and any transit traffic which I may undertake. May I note in passing that during the last few years the same railway situation has prevailed in other countries, in regard to transit traffic, as that which prevails in Roumania. The railway administration of the Czecho-Slovak Republic has always considered itself under an obligation to treat transit traffic in the same way as it treats its own traffic, and it is in pursuance of this principle that it demanded equal treatment for traffic crossing Germany, for instance.

It is true that there are sometimes considerable technical difficulties in the way of assuring such transport, but I think we must really exclude the possibility of inserting in the Convention itself, as a principle, that the carrying out of transport, and the application of the principle of freedom of transit should be dependent upon something so vague as the momentary capacity of the country of transit. In my opinion, the Convention on Freedom of Transit should take as its motto the words *Ad impossibilia nemo tenetur*. I cannot admit the possibility of embodying in the Convention a provision such as that proposed, and therefore I cannot, to my profound regret, see my way to support the Roumanian motion.

THE CHAIRMAN (speaking in French). — Will the Conference allow me to make a small observation on this subject? We read in the *Green Book* (1) : *Nothing in the Convention obliges a State to give transit traffic general priority over interior traffic*. Would not the simplest way be to insert that passage in the records of the meeting? Would not the Roumanian Delegation then agree that there is no necessity for any further statement?

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation cannot but cordially second M. Lankas' words, directed as they were towards the protection of freedom and equality for traffic in transit. If every country is given authority to establish in its own interest measures absolutely contrary to the principle of freedom of transit, I think it will be the death-blow of the Convention, especially since the provisions which we are at present engaged in drawing up exempt the different States from taking the necessary measures to improve their routes of communication, when these are inadequate. There is no shortage of means of transport in my country, although the conditions are naturally less favourable than they were before the war, and occasionally a crisis arises. I might, for exemple, mention the beetroot season. If we were accorded the right of putting a stop to all transit on the pretext that it was the season for transporting the beetroot crop, transit would no longer exist except in name.

The Chairman has just said that under the terms of the *Green Book*, Contracting States are not obliged to accord priority to transit traffic. Obviously they are not; if

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(1) See p. 284.

they were, it would be contrary to that equality which should be maintained between transit traffic and internal traffic, but if priority were accorded to internal traffic over transit traffic, that would likewise constitute an infraction of the principle of equality at which we are aiming. It is for these reasons that the Belgian Delegation is reluctantly compelled to deny its support to the Serbo-Roumanian proposal.

M. HOLLCK-COLDING (Denmark; speaking in French). — I will not do more than remind the Conference of the terms of Article 5 of the Berne Convention, which reads as follows :

Goods shall be dispatched in the order in which they have been accepted for transport unless the railway can establish a valid objection connected with the working needs of the line or with the public interest.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have no wish to prolong the discussion; I would only like to ask the Roumanian Delegate to accept the Chairman's proposal to insert in the records a passage which will show clearly,—and a declaration to this effect has already been made in the *Green Book*,—that there is nothing in this Convention to force a State to do what is impossible, and, in particular, that the Convention contains nothing which will oblige a State to give transit traffic general priority over internal traffic. I am unable to see the wisdom of embodying in the Convention so strict a form of words as that advanced by the Roumanian Delegation, which prescribes in so many words that internal traffic, including import and export traffic, shall have priority over transit. The British Delegation would be unable to agree, since it is obvious that there must be a distinction according to the different classes of goods carried. There might be on the one hand transit traffic comprising goods of vital necessity for a country, and, on the other hand, goods intended for domestic consumption, which are only luxuries. Are we to stipulate that luxury goods intended for domestic consumption shall have priority over goods which are a vital need? Possibly it will not be easy to find a suitable form of words for incorporation in the Convention itself, and for this reason I am inclined to advocate the method suggested by the Chairman, namely, the insertion of a sentence in the records. I hope that the Roumanian Delegation will see its way to accept this proposal.

M. WINIARSKI (Poland; speaking in French). — No one is bound by the impossible. Everyone understands that in the face of material obstacles arising from damage to or destruction of railroads and bridges, or from shortage of rolling-stock or fuel, the provisions of this Convention cannot be carried out in their entirety;—in a previous article, indeed, we provided for certain restrictions on freedom and equality of transit. As interpreted by the Polish Delegation, there is nothing in the Convention to prevent priority being given in certain cases to local traffic to the prejudice of transit traffic, but I could not accept a form of words which simply specified that there was no obligation to accord priority to transit as opposed to local traffic. In common with the Roumanian Delegation, I referred to traffic which is of primary importance, and I repeat that there is nothing in the Convention to prevent such traffic having the priority in cases of absolute necessity, but as the question has already been raised by the Roumanian Delegation, with a request that there should be a definite proviso to that effect, I cannot do other than second the amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The Serbian and Roumanian Delegations are very far from desiring in any way to infringe the principle of freedom and equality for transit. In the course of discussion, we have many times heard invoked the ideals of equality and of freedom, and the vital interests of a country. To speak quite plainly, all that we propose to do is to light upon a form of words which will give satisfaction to all, which may be applied by all and of which no-one can complain. What needs can be more vital than those of a region which is threatened with famine?

M. LANKAS (Czecho-Slovakia; speaking in French). — Famine constitutes the *emergency* mentioned in Article 7.

M. AVRAMOVITCH (Serb-Croat-Slovene State). — Exactly so, and it is noticeable that all the countries which demand absolute freedom and equality in transit are countries which not only produce goods intended for transit traffic, but which do not run the risk of being driven to search for food for hungry mouths. As in Roumania, so in Serbia, there is yet another difficulty,—the impossibility at certain seasons of undertaking, either by rail or waterway, the transport necessary to give satisfaction to the most urgent needs of certain parts of the country. Products may sustain considerable loss whilst in process of transport, and it is essential, therefore, that they should be carried during the proper season. The vital interests of the country are dependent upon it. We are told that the Preamble grants to one and all freedom to do as they wish. It would appear to me fairer to adopt a text calculated to give satisfaction to one and all. In order that a compromise may be reached, and if the Roumanian Delegation agrees, perhaps it will be possible informally to come upon a wording which would also give satisfaction to the delegations holding the opposite view. Surely the Conference, before arriving at a decision, should take into due consideration the interests of the countries to which I have made allusion.

M. REINHARDT (Austria; speaking in French). — The conditions obtaining in Austria go far towards justifying the proposed amendment to Article 13, but, in my opinion, there is a danger lest the restriction which it involves should be more or less detrimental to the principle of freedom of transit, and, therefore, although I stand here as the representative of a country which is a prey to difficulties of every sort, yet, in order to reconcile the needs of domestic traffic with those of transit, and to safeguard the principle of freedom of transit, I will consent not to support the reservation contained in this amendment.

THE CHAIRMAN (speaking in French). — With the object of meeting the views which we have just heard, we will now appoint a sub-committee.

M. CARACOSTEA (Roumania; speaking in French). — I should like, further, to relate the fact that during October, November and part of December, we are obliged to hire Austrian waggons for the transport of our cereal crop, and when our ports are in such a congested condition owing to the vessels carrying the crop,—it happens sometimes that a thousand trucks arrive in a single day,—we are unable to ensure the passage of any other traffic, and thus, whilst we have no intention of imposing any restrictions on transit traffic, there yet are circumstances which must be considered. We shall do our best to provide facilities for transit, and to arrive at an agreement with the countries concerned, with the object of indicating to them other routes and other ports, but on account of the circumstances which I have described above, my Government cannot bind itself in any way.

THE CHAIRMAN (speaking in French). — The British Delegate has proposed a form of words for inclusion in the records of the meeting, as I had suggested, and I will beg the Roumanian, Serbian, Belgian, Polish and Uruguayan Delegates to meet some time to-day, or during the evening, not as a sub-committee, but simply in order to hold a conversation on the subject of this proposal. May I bring specially to their favourable notice my suggestion, which was seconded by the British Delegate, that an endeavour should be made to find a form of words suitable for inclusion in the records.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If I understand aright, it is proposed that we should meet in order to see whether an agreement cannot be arrived at with regard to a passage to be embodied in the records, whereas I should propose a different course,—first of all an amendment proper, or failing this, a passage in the records.

Sir Hubert LLEWELLYN SMITH (Great Britain). — M. Chairman, since I handed you a draft form of words for inclusion in the records, the Polish Delegate has drawn up a text which seems preferable to my own, and I think we could all agree upon it.

THE CHAIRMAN (speaking in French). — I think it would be well to hear this text before the discussion, and I therefore call upon M. Winiarski, the Polish Delegate, to speak.

M. WINIARSKI (Poland; speaking in French). — As a matter of fact, I have drafted a text, but I should like to say that unless it meets with the approval of my Roumanian and Serbian colleagues, I shall not press it.

Nothing in the Convention on Freedom of Transit shall be understood to imply that internal traffic of vital importance for the country may not be given priority over transit traffic of minor economic importance.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If this includes import and export traffic, I am ready to accept it.

THE CHAIRMAN (speaking in French). — The text will be embodied in the records.

M. CARACOSTEA (Roumania; speaking in French). — I would request that it should appear in the form of an amendment to Article 13 of the Convention.

THE CHAIRMAN (speaking in French). — In these circumstances, it will be well for a fresh conversation to be held between you before the vote is taken (1).

*The meeting adjourned at 1.30 p. m.*

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(1) For remainder of discussion see p. 142.

# NINTH MEETING OF THE PLENARY COMMITTEE

(Monday, March 21st, 1921, at 5.30 p.m.)

## REPORT OF SUB-COMMITTEE ON ARTICLES 10, 11 AND 12 — TOWAGE — DISCUSSION OF ROUMANIAN PROPOSAL ON PRIORITY FOR INTERNAL TRANSPORT

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### REPORT OF SUB-COMMITTEE ON ARTICLES 10, 11 AND 12

THE CHAIRMAN (speaking in French). — We are now going to hear the Report of the Sub-Committee which was appointed to prepare the text of Articles 10, 11 and 12. I will read you the text of these articles as unanimously proposed by the Sub-Committee, and I will then call upon the Rapporteur, Sir Hubert Llewellyn Smith, to speak.

ARTICLE 10 (in substitution for Articles 10 and 11). — Subject to the provisions of Article 19 of the Covenant, the Conventions, Agreements, and Treaties concluded between the Contracting States, in regard to Transit, before the... 1921, remain in force.

In pursuance of the above provision the Contracting States undertake, either at the expiration of these agreements or as soon as circumstances permit, to introduce into any agreements thus maintained in force, which may conflict with the terms of the present Convention, such amendments as may be necessary to bring these agreements into harmony with its terms, so far as the geographical, economic, or technical conditions in the countries or regions, which are the subject of these agreements, allow of this being done.

The Contracting States further undertake not to conclude any conventions, treaties or agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

Moreover, the Contracting States will be entitled, when drawing up future agreements, to establish regional understandings regarding transit, in conformity with the spirit of the Convention.

ARTICLE 11 (in substitution for Article 12). — The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of the still greater facilities granted for freedom of transit on the territory situated under the sovereignty or authority of any one of the Contracting States, under conditions compatible with the principles of the present Convention, or, on the other hand, the prohibition of the granting of such further privileges in the future.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — Before I give an account of the work of the Sub-Committee, I should like to mention one or two small drafting amendments which were made in the text at the last moment and are not included in the version which you have just heard. They modify two sentences only. The first paragraph of the new Article 10 should read as follows: *The Conventions, Agreements, and Treaties concluded between the Contracting States in regard to Transit before the... 1921 are not abrogated as the result of the present Convention subject to the provisions of Article 19 of the Covenant.* The words *are not abrogated* take the place of the words *remain in force*, and the order of the sentence *subject to the provisions of Article 19 of the Covenant* has been changed.

Paragraphs 2 and 3 are not affected.

Paragraph 4 should read as follows: *Furthermore, Contracting States may, in matters of transit, enter into regional understandings in conformity with the spirit of this Convention.* The words *when drawing up future agreements* have been omitted, the words

*to conclude* have been substituted for the words *to establish*, and the words *the principles* for the words *the spirit*.

I am inclined to think that the task entrusted to the Sub-Committee which has just ended its work is amongst the most difficult and delicate of any which has been undertaken since the Conference began. It is only owing to the conciliatory spirit evinced by one and all that it has been possible to produce a text upon which there could be unanimous agreement. This text is necessarily a compromise, and a compromise cannot give satisfaction to all. All I can say is that we have done our best to take into consideration the various opinions which have been expressed upon the subject, and I therefore hope that the Conference will be able to accept the text upon which we have agreed.

At the very outset of our labours it was evident that there was a clear contradiction between two different schools of thought,—that in favour of maintaining all existing conventions, and that in favour of abrogating them; but as we pursued our enquiry it became clear that the conflict of views was far less acute than had at first appeared. On the one side the three following exceptions were admitted by those who proposed to abrogate all conventions and to substitute for them those wider conventions upon which we are now engaged :—firstly, conventions concluded with non-contracting States cannot be abrogated. This in itself constitutes an important exception. Secondly, a reservation must be made with regard to certain existing conventions concluded between the Contracting States. Incidentally the *Green Book* draft of the article expressly lays down that certain among them may be kept in force. Lastly, the draft which we had before us provided that, even as regards conventions in the future, there might be exceptions founded upon *a combination of economic, topographical and technical considerations*. On the other side, those who proposed the maintenance of all existing conventions declared their willingness to concede that, as and when the opportunity should occur, either by the expiration of the validity of a convention, or of the period for revision, or by any other means which might offer, it should be the duty of the Contracting States, so far as economic, topographical and technical conditions warranted, to endeavour to harmonise such conventions with the terms of the Transit Convention.

After careful consideration of the question, we came to the unanimous conclusion that it was desirable to proceed on the basis of the latter rather than the former view, namely, on the principle that the Transit Convention should not *ipso facto* abrogate existing conventions, but that it should be the duty of Contracting States to utilise every opportunity that occurred of harmonising their previous obligations with the terms of the present Convention. In arriving at that conclusion we were actuated by our conviction that by adopting the other system we should be faced with a formidable list of conventions to be kept in force, and that if we thus strengthened the maintenance of these conventions, the Transit Convention would come into force without there being any obligation binding the parties concerned gradually to bring the provisions of the conventions thus maintained in force into accord with the terms of the present Convention.

We were also influenced by the fact that, whilst the procedure which we advocated, and which is embodied in our text, applies equally to conventions between Contracting States and those concluded with non-contracting States, it is absolutely impossible to apply the principle of abrogating conventions (with the natural exception of the conventions maintained in force), to any conventions other than those falling under the first of the two headings to which I have just referred.

I ought to mention—and this is a point to which the Italian Delegate attaches importance—that it is not to be understood that one only of the Contracting Parties is at liberty to abrogate a convention, but rather that, as soon as an opportunity for revision occurs, it is incumbent upon any Contracting State which is a party to such a convention to enter into negotiations with a view to bringing the provisions of that convention into harmony with those of the present one.

With regard to future agreements I shall have fewer observations to make, because I think it was evident from the general discussion in Committee that there was not any acute difference of opinion on the subject. As regards the future, no less than the past, we propose that there shall be the possibility of exceptions based upon eco-

conomic, topographical or technical considerations, but that, subject to such exceptions which, as you will observe, allow recourse to the jurisdiction of the League of Nations, the Contracting States should undertake not to conclude any conventions, treaties or agreements which might conflict with the terms of the present Transit Convention. There follows a sentence inserted in order to give the elasticity necessary for the conclusion of regional transport agreements which, although consistent with the principles of this Convention, might perhaps go a little further. There may exist, between neighbouring States which are not in the strictest sense contiguous, mutual arrangements, admitting of certain formalities in favour of each other, or the mutual recognition of customs seals, or other measures, either administrative or even outside the sphere of administrative measures. It is obviously not desirable to prohibit the conclusion of such agreements, but they need special mention in this clause in order to prevent their legitimacy being called in question. I may add that it was particularly in order to accord satisfaction to the desires of some of the South American States that this particular provision was inserted.

As regards the former Article 12, which dealt with greater facilities, we decided, after considerable discussion, to retain this article, making it, however, slightly more elastic than it is in the printed text of the *Green Book*. Instead of the hard and fast words *under conditions compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties*, we suggest the words *under conditions compatible with the principles of the present Convention*.

I now come to the Preamble, which was also submitted to our Sub-Committee. We were of opinion that it was only referred to us in so far as it was connected with the other questions under examination, namely, the draft amendments to the Preamble suggested in order to determine the relations between the Transit Convention on the one hand, and future and existing conventions on the other. We consider that, should our draft of Articles 10 and 11 be adopted by the Conference, there will be no need to make any reference to this matter in the Preamble. I warn the Conference that we have not dealt with the amendments to the Preamble connected with other matters,—for instance the Austrian, Chilian and French amendments, and perhaps one or two more which escape me and which are chiefly concerned with matters of form. The Sub-Committee was of opinion that its task did not include the study of such questions, and it is for the Conference to decide whether they shall be referred to another sub-committee, or to the Drafting Committee.

There is yet another point. There are a certain number of further proposed reservations, which may be called geographical reservations rather than conventional ones. There is one put forward jointly by the French and Portuguese Delegations; there is another proposed by the representative of India, and I myself, although I did not, strictly speaking, put forward an amendment, had occasion to mention to the Sub-Committee that it would certainly be necessary for some declaration to be inserted, either in the Convention or in the Protocol, for the purpose of adjusting the application of the Convention to the special conditions obtaining in the colonial possessions of certain States, in particular in the Colonies and Dominions of the British Empire. We came to the conclusion—and I am authorised by the Sub-Committee to suggest to the Conference—that any reservations which might still appear necessary after the adoption of Articles 10 and 11 as proposed by us might very well be embodied in the Final Protocol instead of in the Convention. But we are of opinion that, as a result of our decision that existing conventions shall not automatically be abrogated, it may be possible to reduce still further the number of these geographical reservations.

THE CHAIRMAN (speaking in French). — I have to thank Sir Hubert Llewellyn Smith, the British Delegate, for his very excellent statement, by means of which we have had borne in upon us the utility of referring matters of this kind to consideration by a sub-committee. I consider that the conciliatory spirit manifested by this Sub-Committee does honour not only to the Conference but also to the League of Nations.

M. SERRUYS (France; speaking in French). — It is a very pleasant duty for me to have to thank our Rapporteur, not only for the statement which he has just made on an exceptionally complex matter, but also for the laborious work which he under-

took in the Sub-Committee, and especially for the spirit in which he carried it through. The result arrived at is similar to that which I outlined before the Committee at some length when reviewing the situation on Friday afternoon.

The agreement which has just been reached on the subject of Article 10 is the best possible guarantee of the spirit of conciliation and practical achievement which animates this Conference, but if we have arrived at this result it is in a large measure owing to the determination and clear-sightedness of our Rapporteur. I am, I think, voicing the feelings of all of us in tendering him our hearty thanks.

M. ALVAREZ (Chile; speaking in French). — I only rise to express my thanks to the Rapporteur for the able manner in which he has presided over the meetings of our Sub-Committee. The proposal on the subject of Article 10 which is now before the assembly gives the greatest satisfaction to the Chilean Delegation, which concurs heartily in the agreement reached.

M. MATSUDA (Japan; speaking in French). — I should like, on behalf of the Japanese Delegation, to pay a tribute to the Rapporteur. The efforts of our British colleague, Sir Hubert Llewellyn Smith, as Rapporteur of the Sub-Committee, are worthy of the highest praise. Unfortunately, the Japanese Delegation, which put forward a proposal at the last meeting, cannot accept the principle of the new draft as submitted to the Conference. Japan wishes to maintain the principle of freedom, purely and simply, for all transit, as advocated last time.

The matter must be considered from two points of view,—that of previous treaties and that of future ones. The Japanese view is that when any exception has once been admitted, the fundamental principle suffers, and the object of the Convention is wholly destroyed. It may be said that previous agreements are justified by very special and exceptional circumstances, and that the past is thus approximated to the present, but a meticulous study is needed in order to prove the special circumstances, and if this be not done, I am convinced that many doubtful cases will subsist, for, as you have seen, agreements in the past were not inspired by the same principles as those we are now discussing. The Japanese Delegation holds, therefore, to its original proposition not to allow any exception to the terms of the text, but, if any States consider the maintenance of certain existing treaties to be indispensable, the Japanese Delegation proposes, in order to effect a compromise, to subject these treaties to minute and careful study. With regard to treaties in the future, we think they could without difficulty be drawn up in accordance with the principle of the present Convention.

To sum up, an important exception to the principle having once been admitted, the Convention will have very little or no value.

M. BIGNAMI (Italy; speaking in French). — The solution adopted approximates nearly to that proposed by Italy, taking as it does the form of a distinction between the past and the future. By accepting Sir Hubert Llewellyn Smith's text the Italian Delegation has manifested a desire for conciliation. The Delegation notes the declaration to the effect that amongst the Powers which have concluded a Convention with one or more other Powers, none is obliged to abrogate any treaty merely upon the request of a signatory Power, but need only examine the possibility of bringing it into accord with the Convention on Freedom of Transit.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I should like to know whether by the words *Conventions, Agreements and Treaties concluded... in regard to Transit*, it is intended to include certain provisions in treaties which do not deal exclusively with transport questions. Are Health Conventions, Treaties of Peace, or Commercial Treaties, which contain provisions relating to Transit, to be considered as included in this declaration?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — A convention containing provisions on transit is considered to be a convention relating to transit.



M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you for your explanation.

THE CHAIRMAN (speaking in French). — Does anyone else wish to speak on the subject of the new draft of Articles 10 and 11?

The Rapporteur will be kind enough to say a few words on the subject of the date left blank in the first paragraph.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I omitted to call the attention of the Conference to the fact that in line 3 of Article 10 there is a date left blank which ought to be filled in. I do not know whether the Conference feels disposed to fix this date now, or to leave it to be filled in by the Drafting Committee when the latter has determined the form which the Convention is to take.

Although our Sub-Committee discussed the subject at some length, I do not think we have any collective proposal to make, and if I make a suggestion, it is simply in my own name. We are all agreed that the date must be one not too far in the future. The date of the coming into force of this Convention is certainly unsuitable, for the reason that a considerable period, which may extend to several months or even to a year or more, sometimes elapses before ratification takes place, and this period could be utilised for the drawing up of new conventions which, by the terms of the present draft, would fall under the heading of "existing conventions", and would therefore be maintained in force. Clearly such a condition of affairs cannot be contemplated. Perhaps April 1st would be rather too early a date, but I suggest that it should be not later than May or June.

I must add that I greatly regret to hear the declaration made by the Japanese Delegate. The Japanese Delegate was a member of our Sub-Committee; he attended its meetings and was entirely in agreement with the decision arrived at, which was referred to a small Drafting Committee to be put into shape. I am sorry to hear that he now wishes to revert to a text the principle of which is entirely different. It may be that I misunderstood his statement, and that it was merely to the effect that he would have preferred the alternative solution, but I was certainly under the impression that he was in agreement. Had I thought that there was an acute divergence of view upon the question of principle, I should not have informed the Conference that the Sub-Committee was unanimous in its conclusion. Perhaps the Japanese Delegate will tell us whether I am right in thinking that, in spite of the statement of his views which he made, he nevertheless supports the general view taken by the Sub-Committee and, I think I may say, by the Conference, and would not oppose the decision upon which we agreed.

M. MATSUDA (Japan; speaking in French). — If I am asked whether the text as now drafted concords with the Japanese proposal, then, much as we regret it, I must reply that it does not. Our proposal is very simple and very clear, and by its terms no exception is admitted. If this view is not confirmed then, in our opinion, every treaty concluded up to the coming into force of this Convention ought to be set down in the text itself. If I were allowed to formulate a proposal in this connection, I should ask that this list be added to the first paragraph of Article 1.

M. SERRUYS (France; speaking in French). — May I briefly explain how the compromise was reached. I will ask our Japanese colleague to follow attentively the short statement I am going to make, which would appear to me fully to meet his difficulty.

Why did the Sub-Committee take up a different point of view from that contained in the *Green Book*? At the beginning there was a conflict between the various views held in the Conference. We speedily came to the conclusion that it was not so much a question of theory as of producing a Convention likely to endure. Looking at the question from the practical side, we discarded the idea of lists as being impracticable, and the principle that the Convention should be a practical one was the sole aim on both sides.

When, following the lines of the *Green Book*, it was laid down that existing treaties should be abrogated wholesale, it was fully understood that this was an entirely theoretical point of view, and that the danger attending the carrying out of such a measure would be considerable; this procedure was accordingly modified without delay by the introduction of the idea of lists. Such was the motive prompting the transition from the realm of theory to that of practice and of history. At the time when the *Green Book* was written, the danger passed unsuspected,—although indeed there were those who did perceive it, and avowed as much to me—but it was necessary to establish a theory, and accordingly a compromise was made. First the obligation was declared to be general, and then the most dangerous form was adopted for the maintenance of treaties,—that of *ne varietur* maintenance of treaties by a body lacking sufficient authority to sanction international conventions. It was first decided that there was to be general abrogation, and then a purely negative proposal was put forward involving the maintenance *ne varietur* of a host of conventions upon which the assembly was not competent to give a verdict and which therefore, it was unable to register.

One thing was said and another done.

We were then faced with the alternative theory. The system of all-round maintenance of treaties also resulted, in many cases, in a negation of the principles of the Convention. Accordingly, we arrived at a compromise based on a practical conception of historical evolution. We said : The conventions shall be maintained; we are not going to throw disorder into a statutory contract which may have cost a country some considerable amount of trouble to establish and which, as far as world-peace is concerned, constitutes a surer guarantee than the modification of certain transport clauses which might occur here and there in the statute. We said : By maintaining conventions in force, we have no wish to perpetuate irrevocably the present state of affairs. We came here in order to accomplish progress, and we want to see that progress accomplished. Side by side with the system of maintenance in force of treaties we introduced a corrective by saying : By reason of this very maintenance, the Contracting Powers undertake, as soon as circumstances permit, to adapt the present system to that ideal at which we are all aiming. May I be permitted to observe to our Japanese colleague that the establishment of lists of treaties to be maintained in force might well prove the negation of certain of our principles, whereas the system of adaptation as proposed constitutes the progressive and logical achievement of our plan. Such at least was the intention of those who, although holding opposite views, yet came to an understanding, and I hope that our Japanese friends, in virtue of their habitual calm philosophy and their steady advance along the road of progress, will be prompt to appreciate the motives by which we were guided.

M. MATSUDA (Japan; speaking in French). — I hope I may be excused for speaking thus often, but there are two things which I should like to explain; the question was referred to a Committee of five or six members who were to meet at five o'clock this afternoon. I was present and made the proposal which I explained just now. It has been necessary for me to say this, in order that the procedure followed might be known.

The second matter which I should like to explain is the following :—if we propose to retain the enumeration in the first paragraph of Article 10, it is because in our opinion the adoption of the text in its present form might lead to doubt as to the meaning, owing to the fact that some of the treaties previously concluded did not follow the principles which we are here laying down, whilst certain of the clauses contained in them may even be in opposition to those principles, and I cannot but consider, therefore, that the best means of avoiding any conflict would be to maintain the system of enumeration. I am no prophet, but I persist in my view that, in the event of our system being rejected, there will always be the risk of disputes arising. I was anxious to explain the situation fully in order to avoid any misunderstanding.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I should like to say at once that in referring to my regret at the attitude of the Japanese Delegate, I was excusing myself for having given to the Conference the impression that the Subcommittee had been unanimous in its conclusion, rather than giving my own opinion

upon the views expressed by the Japanese Delegate, who is fully entitled to register his dissent from that conclusion. With regard to M. Matsuda's remarks, his account of what happened at the Sub-Committee is perfectly correct except for one small detail, which was perhaps not sufficiently emphasised, namely, that before the small Drafting Committee met and began its task, the plenary Committee had decided that the principles to be embodied in the draft should not be those advocated by the Japanese Delegation,—and, I may say, to some extent by the British Delegation; for I do not wish to conceal from the Conference that it has needed a good deal of concession on the part of the British Delegation to arrive at this compromise. The question of principle was settled, therefore, before the small Drafting Committee entered upon its labours, and all that we intended to do this afternoon was to see whether that Committee had successfully embodied in its draft the principles already agreed upon. I wish to make this quite clear.

If my colleagues concur, I think it will be possible to give some satisfaction to the Japanese Delegate with regard to his very reasonable request that there should be a list of conventions already existing. I do not think it possible to include this list in our Convention, but, although I have not yet consulted my colleagues, I see no objection to stipulating that the Contracting States must undertake to supply the Secretary-General of the League, at the earliest possible moment, with a list of the conventions in which they are interested. The Secretary-General would then prepare a complete list and circulate it among the Contracting States. A procedure of this kind should go some distance towards meeting the views of the Japanese Delegation.

M. SERRUYS (France; speaking in French). — A proposal has just been made to us towards which I should like to make my attitude perfectly clear. The system previously laid down involved the abrogation of existing conventions and the drawing up of a list of the conventions to be maintained in force, whereas the system which has now met with favour consists in the maintenance of existing conventions, together with an undertaking to adapt them; and now a third system is laid before us,—the maintenance of existing conventions, coupled with the drawing up and communication to the Secretariat of a list of conventions which interest particular States. This proposal appears to me unacceptable in two respects. In the first place, if a State wishes to communicate certain conventions, they must be those which that State itself wishes to maintain, and of which it supplies a list for our information. In that case I see no objection. I am quite ready to approve of the Secretary-General's being informed by every State represented of the conventions, which that State wishes to maintain in force, provided this be done for purposes of information and that it does not involve any pledge, and provided also that the conventions in question have been concluded by the State itself, and are not merely conventions passed by other States, in which it may be interested. There is a distinction. A State is to provide a list, not of conventions which interest it concluded between other States, but of conventions which it has actually concluded.

There is another rather subtle point which should be stressed. It is that, if it is considered desirable to know what conventions are maintained in force by a State, the notification must be made for information only, and must not be looked upon as being in any way a condition of the maintenance of such conventions. It must be nothing more than a piece of information with regard to a decision taken, and must not imply anything else. With this reservation I can accept Sir Hubert's view.

THE CHAIRMAN (speaking in French). — Does the Rapporteur agree with M. Serruys' proposal?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I do, as far as the correction of the language is concerned. By "conventions in which they are interested" I meant conventions to which they were parties. I agree with M. Serruys on that point. I also agree with him that the list of existing conventions should only be circulated for the information of the Contracting States. I think there should not be a list of the conventions which the Contracting States desire should remain in

force, but that there should simply be the statement of fact. I should like to know whether this interpretation meets the views of the Japanese Delegate.

M. SERRUYS (France; speaking in French). — I fully agree.

THE CHAIRMAN (speaking in French). — Is the Rapporteur's proposal satisfactory to M. Matsuda?

M. MATSUDA (Japan; speaking in French). — If I understand my British colleague aright, he is in favour of those States which desire to maintain previous agreements in force informing the Secretary-General of the League of Nations. I agree that the information may be necessary for the purpose of maintaining such treaties in force, and on this understanding I could support Sir Hubert Llewellyn Smith's proposal. If, however, the information is to be subjected to an interpretative examination by the Secretary-General, with a view to ascertaining whether such and such convention is in accord or not with the provisions of the present Convention, then I cannot agree.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — M. Matsuda's proposal is entirely different from my own, and I am afraid we must conclude that my proposal will not meet his difficulty. I had understood him to say that it would tend to prevent misunderstanding if a list of treaties were communicated. I was impressed by this argument, and proposed that a list should be drawn up, not of those treaties which various States may desire to maintain in force, but of treaties actually in force. Each State could then have made what examination of them it pleased, but I did not contemplate their forming the subject of examination on the part of the Secretariat of the League of Nations.

THE CHAIRMAN (speaking in French). — I think that the Conference is now sufficiently clear as to the different views held with regard to this question. Unless anyone else wishes to speak, I propose that we now proceed to vote.

M. SERRUYS (France; speaking in French). — If I understand aright, the idea held by my British colleague is that the submission of a list to the Secretariat-General should be optional, not compulsory.

THE CHAIRMAN (speaking in French). — We will now vote on the text of Articles 10, 11 and 12 as comprised under Articles 10 and 11.

*The Articles were adopted by 27 votes to 2.*

THE CHAIRMAN (speaking in French). — If the Conference agrees to adopt the proposal made by the Rapporteur to refer the Preamble with the other amendments to the Drafting Committee, that would, I think, be the simplest method, and a decision could thus be arrived at with regard to the Preamble.

*This was agreed.*

Dr. Simon PLANAS SUAREZ (Venezuela; speaking in French). — Whilst the draft Convention on Transit is under discussion, and particularly when Article 10 has just been adopted, I have the honour to make the following general statement on the legal and conventional régime obtaining in my country.

The liberal tradition and the just and hospitable character of the Venezuelan people have ever found true expression in the principles which inspire their legislation, and in the method governing the practical application of those principles.

Venezuela is not a military Power; her future is guarded only by sentiments of justice, of freedom and of loyalty, and of trust in a mutual respect for sovereign rights. My country occupies both a vast extent of territory and an excellent geographical situation, combined with the inexhaustible wealth of a fertile soil; and for this reason Venezuelan statesmen have never had to care for anything other than the encouragement of the growth of their fatherland through the increased labour of her people.

measures which have had to be included in our legislation and in our special regulations for the prevention of fraud, in order to avoid the possibility of goods in transit remaining in the country or returning to it.

Our home waters, whether rivers or sea, are open to the navigation of all countries, via the Orinoco as far as Ciudad Bolívar, and via the Lake of Maracaibo to the port of that name. Outside these limits, for potent reasons which can be easily understood, navigation, including coastal traffic, is confined to vessels which fly the national flag. There are waterways flowing through vast stretches of country not only sparsely populated, but even sometimes entirely uninhabited, where trade is little more than a name, whilst there exist regions where the natural conditions all but forbid any navigation without the aid of very considerable artificial improvements, which are only likely after many long years to give results commensurate with the effort involved in carrying them out. In a word, the commercial needs of the country require that such works should be embarked upon without delay. For international navigation many different kinds of services are required moreover, including the work of supervision, services for ensuring public safety, and the administrative service required for the carrying out of fiscal measures. These would impose upon us liabilities of which we should feel the burden all the heavier for the reason that they would be unnecessary, and it is for this reason that we could not undertake them. Services of this kind, involving the labour necessary for the safeguarding of navigation, cannot be carried out unless they are definitely called for by the needs of trade, and also, naturally, unless there is the expectation that that trade will bring with it compensation in some measure, at least, for the expense involved.

But friendly relations with their neighbours constitute a very special bond between nations owning a common frontier line, and it has always been held by Venezuela that it is incumbent upon her to tighten the bonds of close friendship by which she is attached to her sister Republics of the American Continent. With these Republics we have relations of every kind, and in 1859 a Convention of Commerce and River Navigation was signed between Venezuela and Brazil, whilst it was again Venezuela which took the initiative in negotiations with the Columbian Republic, negotiations which, in a spirit of justice and of realisation of the benefits which would accrue to both parties, were undertaken with a view to concluding a Treaty to regulate navigation on waterways common to both countries, and to deal also with commerce and transit between the two States. It is on similar principles that Venezuela originally signed and is still carrying out the stipulations of treaties of commerce and navigation with various other countries.

As I have already explained, the tradition which has ever inspired Venezuela in her economic relations with other countries is that which has since been expressed in paragraph (e) of Article 23 of the Covenant of the League of Nations, where it is laid down that Members *will make provision to secure and maintain freedom of communications and transit, and equitable treatment for the commerce of all Members of the League.* In our country no distinction is made, the same rights being accorded to foreigners as to nationals. In Article 23 itself, we read that the principle of freedom in all matters appertaining to communications and transit, as also to equitable treatment for commerce, is *subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon.* The aim of this principle of the Covenant would appear to be to leave to Members of the League, by means of *inter se* conventions and domestic legislation, the task of settling the régime for commerce in general, and for communications, transport, transit, etc., and it is precisely in this spirit of respect for the principles of freedom and equity that the various States must treat with each other, whilst not ignoring their own mutual interests and needs.

In conclusion, may I repeat once again that Venezuela has by a series of legislative measures thrown open her rivers and inland waterways without distinction to every flag, navigation being free up to the point where the waterway ceases to be accessible to it; there have been taken into consideration, not only the possibilities of navigation itself, but also those of commercial traffic, whether foreign or Venezuelan, combined with the economic conditions peculiar to the country, and the natural conditions of her waterways. For the purpose of increasing facilities for international trade, there is now under consideration a scheme for the establishment of a free port,

and the work has already been begun. Venezuela is not only careful to keep in force the various treaties of commerce and navigation to which she is a party but is actuated by the wish to enter into any further agreements which may seem expedient in the future, and, with this object in view, the foreign policy of my country will continue to be inspired by its traditional principles of freedom and equity. Such agreements *inter partes*, whilst corresponding to the mutual interests and needs of the parties concerned, must not lose sight of the principle of absolute maintenance of the sovereign rights, of the jurisdiction and of the administrative autonomy of the Republic. These principles are fully recognised in the Covenant, which we have signed, and therein it is also expressly laid down that international conventions, including any which may be entered into in the future, are valid and shall be kept in force, whilst Article 23 of the Covenant clearly establishes the principle of a conventional régime founded on *inter se* treaties between the different States Members of the League of Nations.

#### ARTICLE 5 — TOWAGE — DISCUSSION OF THE ROUMANIAN PROPOSAL

M. WINIARSKI (Poland; speaking in French). — The representatives of the Netherlands, Roumanian and Serbian Delegations have met as a small committee for the settlement of two different questions. In the first place, the new text which was adopted by the Sub-Committee on the Polish amendment with regard to towage (1), lays down, amongst other things, that haulage services carried on as monopolies *must be so organised as not to hinder the free transit of vessels*. The Netherlands Delegate desired that, in view of the fact that freedom of transit was mentioned, there should likewise be a mention of the conditions of equality in which such transit should be carried out. On the suggestion of General Mance, to whom we owe in consequence a debt of gratitude, this point was settled by the omission of the word *free*. In this manner no mention is made either of freedom or of equality. We are all agreed that in abstaining from any such mention, and by simply speaking of transit, we do not cease to bear in mind the general conditions of freedom and equality which lie at the foundation of all the articles of the Convention. I will once more read the text of the second paragraph in the form proposed by the Sub-Committee :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question as to whether and in what conditions such service may be established is outside the scope of the present Convention.

With regard to the second point, namely, the Roumanian proposal (2), we all agreed not to add another paragraph to Article 13, and it was decided by a majority to propose instead an additional paragraph to Article 5, to read as follows :

It is clearly understood that any traffic of vital importance for a country, including internal traffic, as well as import and export traffic, may temporarily be given priority over transit traffic.

It was thought that this sentence would be more in place under Article 5.

THE CHAIRMAN (speaking in French). — There would appear to be a difference of opinion on this subject. Is there any objection to inserting the proposal at the end of Article 2?

M. WINIARSKI (Poland; speaking in French). — I see none.

THE CHAIRMAN (speaking in French). — Are you willing to leave the Drafting Committee to decide the best place for it?

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(1) See p. 127.

(2) See p. 127.

M. WINIARSKI (Poland; speaking in French). — Yes.

THE CHAIRMAN (speaking in French). — Does anyone wish to speak upon this question?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — Will the question of towage, upon which we are all, I think, of one mind, be dealt with independently from this question?

THE CHAIRMAN (speaking in French). — Certainly. If no one sees any objection, a vote will now be taken on the towage amendment.

I will now put to the vote that amendment in the form which you have just heard.

*The amendment was adopted by 24 votes to none.*

THE CHAIRMAN (speaking in French). — The amendment is unanimously adopted.

We now have to vote upon the following text (1) :

It is clearly understood that any traffic of vital importance for a country, including internal traffic, as well as import and export traffic, may temporarily be given priority over transit traffic.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I should like to ask the Polish Delegate a question. The text which he read out at the last meeting, and which received very general approbation, contained certain words which I see are omitted from the version just read, and I should like to ask him if he sees any objection to restoring them. I refer to the words *transit traffic of minor economic importance*; I think the text thus worded would meet with the desired unanimity.

M. CARACOSTEA (Roumania; speaking in French). — We accept Sir Hubert Llewellyn Smith's suggestion.

M. VALLOTTON (Switzerland; speaking in French). — The Swiss Delegation would regret very much to see these words included in the Convention. We hold the view that they would serve no good purpose. The whole attitude of the Convention, to which expression is given at the beginning of the text, recognises that the interests of a country through which transit takes place must be reconciled with those of transit traffic itself. The road to conciliation does not lie in the adoption of a form of words such as this, but in some version of the text which would give satisfaction to the views expressed by our colleagues. The text now before us seems to us totally to ignore the fact that every State which is now so desirous of its own needs being taken into consideration ought to realise that it may any day find itself in the position of a State which needs transit for its own traffic. It is in that direction that we ought all to seek for a solution more likely to meet with agreement than the one now proposed. This is not the first time that we have expressed this view to our Serbian and Roumanian colleagues. We explained to them in Paris the reason why the proposals they then made on the subject were too one-sided, taking too little into account the common need of all, and even the interests of their own country, and it is therefore to be regretted that we should be obliged once again to explain why we cannot accept the amendment now before us.

M. LANKAS (Czecho-Slovakia; speaking in French). — It is with infinite regret that I too cannot accept this text; I am in complete agreement with the Swiss Delegate on the subject, and I think that this view will be shared by all the land-locked States. I really am of the opinion that the present text is a most dangerous one, and would be calculated to jeopardise our Convention. Every national interest is already amply protected by the sentence recognising vital interests which, upon the motion of the French Delegate, was included in the Convention. It constitutes a guarantee which is

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(1) See p. 131.

quite sufficient, and any restrictions concerning the application of the Convention should be confined exclusively to occasions of emergency, when vital interests are at stake. To discriminate with regard to the respective importance of different classes of traffic would be a procedure to the last degree indefinite, and as for entrusting the process of discrimination entirely to the States through whose territory the transit takes place, it would be distinctly dangerous, and, I must say, though I am sorry to do so, utterly inadmissible. I sincerely believe that every State will be able to judge in practice, by applying the principles of the Convention, how far it may reconcile its own needs with those of traffic.

M. CARACOSTEA (Roumania; speaking in French). — I will repeat M. Serruys' own saying: "We are doing all we can to make the Convention a durable one." In order to do this, it will be necessary to make some small concessions. In agricultural countries like Roumania, when in the month of November the peasants and agricultural workers stand waiting for trucks to carry their produce to the gates of the Danube, knowing that when winter comes the river will freeze, if they see trains passing through the stations loaded with goods in transit, there will be risings, and then traffic in transit will in its turn be forcibly held up. If you want to make a durable Convention, you must admit the right of certain States at certain periods to claim priority for their own traffic.

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation cannot modify its attitude of this morning. I fully appreciate the explanation given by our Roumanian colleague, but I still consider that to introduce a principle of this nature into the Convention would be to go against the very principles which underlie that Convention. I propose, therefore, that the passage should be included in the records of the meeting; if it were admitted into the Convention, I should not vote for the latter.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am sorry to find myself in opposition to a certain number of delegates, in particular to the Belgian and Czecho-Slovak Delegates. I notice with satisfaction, however, that the British Delegate has shown a conciliatory spirit by accepting our proposal. In our opinion this proposal does not offer any restriction to freedom of transit. We have no intention of introducing any such restriction. All that we are asking for is the recognition of the lawful rights of certain countries on occasions of emergency.

I would like it to be noticed that the speakers in this debate may be divided into two classes,—those representing countries the products of which are not subject to deterioration, and which allow of a more regular system of export,—that is to say, goods which can be forwarded at any and every season—and those, including ourselves, who represent countries which transport products of a perishable nature, which, if subject to the smallest transport delay, are bound to suffer depreciation and even loss, whilst the population standing in need of them also suffers from any delay in delivery. There is no question here of land-locked States; the important point to know is not whether a State is land-locked or not, but what is the nature of its products,—whether they are subject to depreciation or not. We have suffered much in this way, and it is for this reason that, far from imposing any obstacle, we are only too anxious to grant facilities to land-locked States. It has been said by the Czecho-Slovak Delegate that the French proposal provides for such contingencies, but I explained fully this morning that it does not do so, for the reason that they are exceptional cases; the French proposal is directed towards interests other than those which the Roumanian Delegation and my own have in mind.

It is easy to say that there must not be discrimination between transit traffic and internal import and export traffic, but can a country be asked to make a gift to everyone else of that which itself stands in need of more than anyone else? Added to this, there are the considerations which I detailed this morning, and which include the character of the products, and the obstacles arising from snowfalls and ice during the winter season, all of which may suspend traffic. There is yet another reason. As in our own country in Roumania, all means of transport are the property of the State. Can it for a moment be conceived that the State which has at its disposal all these



means of transport, constructed by it in order to supply the wants of its citizens, should admit all the traffic of other States on a footing of equality with its own? Any Government which adopted this method could not but encounter criticism when once its subjects began to suffer from the results. Not only is our proposal a fair one, but it contains no element of danger.

We are asked why we are not satisfied with the proposal to include the passage in the Minutes. The reply is that once a principle is admitted, and its practice authorised, there need be no apprehension as to embodying it in the text of the Convention. Therefore, I beg the Conference to adopt our point of view and accept a text which the British Delegation has seen fit to support.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I do not recollect ever having advocated the insertion of this text in the body of the Convention; all that we discussed was the form that it should take.

M. LANKAS (Czecho-Slovakia; speaking in French). — The question now under discussion is such a grave one that I cannot undertake to limit the length of my remarks. The Serbian Delegate mentioned as amongst the most serious factors periods of famine. I maintain that famine constitutes an emergency, and as such is already provided for in the text. The Roumanian and Serbian Delegates cited those periods of the year when certain railway administrations have more than they can cope with in connection with the handling of their own traffic. This is a state of affairs which occurs in every State at some time or another. For instance, in our country, there exists what is called the beetroot season, and that, for us, constitutes a question of vital importance. The beetroot crop has to be transported to the sugar-refineries, and this is a process which lasts from two to two-and-a-half months. With us the season begins at such and such a date, whilst in another country it may begin later, and in a third one still later. If we accepted the formula proposed, it would mean permission during two-and-a-half months to deny freedom of transit to the Hungarians, the Austrians and the Poles, and would put a stop to all transit traffic through our own country. Germany could plead the same state of affairs about a month later, and other States a month later still, and the result would be that freedom of transit would be completely abolished, and to apply our Convention would no longer be practicable. I must, therefore, formally oppose the insertion in the text of this clause. The only method which I could consider would be that of making a statement in the records of the meeting to the same effect as one which is already to be found in the *Green Book*,—namely, that the Convention is not to be construed into permission for traffic in transit to have priority over internal traffic—with an additional declaration making it clear that States, in abiding by the principles of the Convention, retain complete liberty to handle their traffic in whatever way they think best. That is the only text of which I could admit the inclusion in the records.

THE CHAIRMAN (speaking in French). — I propose first of all that the Conference should agree to insert in the Final Protocol...

M. CARACOSTEA (Roumania; speaking in French). — As a proof of our anxiety to reach an agreement, we would accept a proposal to insert the clause in the Final Protocol.

THE CHAIRMAN (speaking in French). — I propose the insertion of the following words :

Nothing in the Convention obliges a State to accord to traffic in transit general priority over internal, export and import traffic. Subject to the strict exercise of the terms of the Convention, any State is free to organise its own traffic as it wishes.

Does the Roumanian Delegation accept this proposal?

M. CARACOSTEA (Roumania; speaking in French). — I can accept the version which I proposed, but I do not know whether it has not since been changed.

M. WINIARSKI (Poland; speaking in French). — Is there not a slight discrepancy between the text of the proposal which we have just heard, and the one which I read this morning, and which met with the approval of the British Delegation? The following is the version I suggest for embodiment in the Final Protocol :

Nothing in the Convention on Freedom of Transit shall be understood to imply that traffic of vital importance for the country, including internal traffic as well as import and export traffic, may not be given priority over transit traffic of minor economic importance.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yes, that is the one.

M. CARACOSTEA (Roumania; speaking in French). — The word *temporarily* should be added.

THE CHAIRMAN (speaking in French). — Will the British Delegation accept the text in its present form?

Sir Hubert LLEWELLYN SMITH (Great Britain). — If I am clear as to the exact words now proposed, I see no objection, provided the phrase be inserted in the Final Protocol, and not in the Convention.

THE CHAIRMAN (speaking in French). — I propose the insertion in the Final Protocol of the text which M. Winiarski has read.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Thank you.

M. LANKAS (Czecho-Slovakia; speaking in French). — I request that the specific reservations which I made should appear in the records.

THE CHAIRMAN (speaking in French). — It is understood that your reservations will appear in the records.

I will now put to the vote the proposal to insert in the Final Protocol the motion read by M. Winiarski.

*The motion was adopted, 20 voting for and 1 against.*

THE CHAIRMAN (speaking in French). — I propose to the Conference that the question of jurisdiction—Article 15— be referred to the Committee on Articles 3, 4 and 5 of the Rules of Organisation.

*This was agreed.*

*The meeting adjourned at 8.20. p.m.*

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# TENTH MEETING OF THE PLENARY COMMITTEE

(Tuesday, March 22nd, 1921, at 5 p.m.)

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## REPORT OF SUB-COMMITTEE ON ARTICLE 8 — DISCUSSION OF ARTICLE 13

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### REPORT OF SUB-COMMITTEE ON ARTICLE 8

M. BROCKMANN (Spain; Rapporteur; speaking in French).—The Sub-Committee appointed to study Article 8 adopted the following text, which I will now read to the Conference :

The present Convention does not govern the rights and obligations of belligerents and neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

The Sub-Committee unanimously begs the Conference to adopt the following Recommendation :

That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

M. THESLEFF (Finland; speaking in French).—The result of the Sub-Committee's work is a compromise, and, in my opinion, it is a good one. I could not, however, support the Sub-Committee text, and vote for it, unless I could hope that the Conference would adopt the Recommendation expressed by the Sub-Committee on the subject. I am convinced that this will be done, and I trust that the vote will be a unanimous one.

Sir Hubert LLEWELLYN SMITH (Great Britain).—Would it not be possible to separate the amendment of the Sub-Committee from the proposed Recommendation? Whilst I think it probable that an agreement could be reached upon the terms of the amendment, the Recommendation, which unfortunately I have not yet had time to study, raises considerable difficulties, and if it were possible to postpone discussion of it, I should be very grateful.

THE CHAIRMAN (speaking in French).—Perhaps the Rapporteur would give us his views on the subject.

M. BROCKMANN (Spain; Rapporteur; speaking in French).—I think the two—the amendment and the Recommendation—would be better kept together. The last part of the text adopted by the Sub-Committee might be simplified by substituting for the words *the rights and obligations of belligerents and neutrals in time of war* the words *the rights of communications and transit in time of war*. The latter part, moreover, might appear in the Final Protocol, the text to read as follows :

The Sub-Committee unanimously begs the Conference to adopt the following Recommendation :

That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights of communications and transit in time of war.

Sir Cecil HURST (Great Britain).—When I first saw the terms of the Recommendation which was distributed yesterday, I wondered whether the members of the Sub-Committee who framed it were aware that one of the last actions of the Assembly at Geneva was to reject a very similar proposal put before them, which emanated from the Committee of Jurists who sat at the Hague and prepared the first draft of the Statute for the Permanent Court of International Justice.

The very learned jurists who framed that scheme for the Permanent Court attached to it a recommendation almost identical in its terms with the Recommendation circulated yesterday. It was to the effect that the League of Nations should be invited to hold a Conference or Conferences for the purpose of arriving, if possible, at an agreed codification of the rules of international law. The motive of that proposal was a feeling that the work of the Permanent Court would be handicapped unless there were in existence conventions—what I may term law-making conventions—laying down the rules which the Court would apply. It was very natural for the lawyers who framed the scheme for the Permanent Court to make such a recommendation, but when it came before the Assembly at Geneva, the Delegates of the various Powers there represented felt doubtful as to the wisdom of the proposal and did not adopt it. It appeared to me, when I saw the Recommendation yesterday, that it would seem strange for the Barcelona Conference to adopt a Recommendation couched in terms almost identical with those of a Recommendation which had been rejected by the Assembly only a few months previously, and I find I was right in my conjecture that the members of the Sub-Committee who framed this Recommendation were not aware of what had been done at Geneva.

The objection present to my mind is quite a different one from that which is weighing upon the mind of the head of my own Delegation, who has considered the matter solely from the point of view of his own instructions; and the suggestion that was made privately to the members of the Sub-Committee, that the terms of this Recommendation should be modified, and should be limited to a suggestion to convene conferences for the purpose of determining, by means of a convention, the rights which should govern communications and transit in time of war, was made merely for the purpose of endeavouring to shape the Recommendation of the Conference to a form which would deprive it of any appearance of running counter to the action of the Assembly at Geneva. The suggestion was made without any reference whatever to the actual merits of this proposal, and without any idea that the country to which I happen to belong might be antagonistic to it. I trust, therefore, that this personal explanation may be allowed me, in order that I may not appear to have acted contrary to the instructions of the head of my own Delegation. My sole idea yesterday, when I asked the members of the Sub-Committee to alter the wording, was to endeavour to eliminate any opposition between the action of this Conference and that of the Assembly at Geneva.

If I may speak from a slightly different point of view for the moment, I would ask to be allowed to point out that the motive of the action of the Assembly at Geneva was the feeling that the present time, so soon after the conclusion of the great struggle which has devastated Europe, is scarcely ripe for asking the Powers to sit round a table and confer upon the rights and duties of belligerents. It was thought at Geneva—and I venture to think that it might be wise to consider the matter once more from that same point of view—that it would be better to leave a question of this sort for a little longer, in the hope that there may be a better chance of coming to an agreement when the feelings created by the late war have been allowed to subside.

M. LANKAS (Czecho-Slovakia; speaking in French).—There should be added to the Rapporteur's remarks the fact that the text put forward by the Sub-Committee is a compromise which was only arrived at after protracted discussion; it represents a bridge connecting two quite contrary opinions. I may as well admit that when I left the Sub-Committee,—events follow one another in this Conference with the rapidity of scenes upon a cinematograph, and we flit from one Committee-meeting to another—I was under the impression that a definite agreement on the wording had not yet been reached, and when, therefore, whilst I was listening yesterday to the discussion of other articles which interested me fully as much as this one, a text was placed before us, I had not time, any more than the other delegates, to study this

text, which, I repeat, was not yet drawn up when I left the Sub-Committee. I realise that in order to reach a speedy end, matters must be hurried on a little, but I must maintain that to my mind the Sub-Committee has not yet concluded its task, and that what we have before us is more an outline than a definite proposal.

I still think that the two sentences cannot be kept completely separate. The majority of the members of the Sub-Committee accepted the first sentence only on condition that the second should be added to it. I note to-day that there is a certain amount of opposition to this latter, and, therefore, I see no other way than for the Sub-Committee to meet once more for the purpose of devoting further study to the question.

THE CHAIRMAN (speaking in French).—I will ask M. Lankas whether he would not be satisfied if the Recommendation were quoted in the records of the meeting.

M. LANKAS (Czecho-Slovakia; speaking in French).—I will speak in my own name only, for I do not know whether I can act as spokesman for all my colleagues in the Sub-Committee.

M. SIBILLE (France) and M. VALLOTTON (Switzerland; speaking in French).—No, no; speak in your own name.

M. LANKAS (Czecho-Slovakia; speaking in French).—I do not think it is the Czecho-Slovak Delegation which has the greatest interest in the proposed addition, but I think that the two sentences cannot be kept completely separate.

THE CHAIRMAN (speaking in French).—Has anyone a proposal to make with regard to the vote on these two texts? Is a vote desired on the first part only, or on both together, or on each separately? I would suggest that the vote be first taken on the new text of Article 8, and then on the proposed addition to the article.

M. Gaston CARLIN (Switzerland; speaking in French).—I am against a separate vote, because, as the members of the Sub-Committee pointed out, the combination of the two parts of the article was the result of concessions on both sides. If a separate vote is taken, and the first part adopted without the second, this would constitute a betrayal of the hopes of those members who in all good faith agreed to the text as a whole, in the belief that the second part of it was a concession made to them in exchange for the concession they themselves were making by accepting the first part. In the circumstances, a separate vote would not be fair, because it would not take into sufficient account what passed in the Sub-Committee.

Sir Hubert LLEWELLYN SMITH (Great Britain).—I am not sure whether I have not forfeited my right to speak on this subject, the British Delegation having already spoken through Sir Cecil Hurst, but with your permission, Mr. Chairman, I would say this: If it is found possible to vote on these two motions separately, the British Delegation will vote in favour of the first and against the second. But if, as has been explained, the Sub-Committee finally decided to combine an amended Article 8 with a separate Recommendation, as a compromise only, then I think that would seem to show that the amended article by itself did not meet with unanimous support, and I suggest that it should be referred back to the Sub-Committee to be reconsidered in order to make possible the unanimous acceptance of a new text.

M. PIERRARD (Belgium; speaking in French).—As has just been said, it was not without great difficulty that the Sub-Committee arrived at the text of the article as now laid before you. It represents a compromise between views which at first sight appeared irreconcilable, and I should therefore be much chagrined, now that unanimity has been reached on this text, were the question once more put under discussion; and I think, moreover, that there would be a risk of bringing matters to a worse pass instead of bringing them to a successful conclusion. I would say in all friendliness to our English colleagues that it was a pity they were not able to assist in the work of the Sub-Committee, as I myself had proposed to Sir Hubert Llewellyn Smith that they

should do. Now, if I understand aright, the only thing regarding which Sir Cecil Hurst sees any difficulty is the draft Recommendation. Although not myself a lawyer, I made the suggestion to the Sub-Committee—rather timidly, I admit—that perhaps in view of its technical character it was not competent to give a general ruling on the rights and duties of belligerents and neutrals in time of war, —a rather serious question, and I proposed the addition of the words *so far as transit is concerned*. I will ask our friends of the British Delegation, and, in particular, Sir Cecil Hurst, whether they would not be satisfied with the following text :

...to govern the rights and obligations of belligerents and neutrals in time of war in regard to transit.

Further, in common with the previous speaker, I consider it impossible to take a separate vote on the text itself and on the Recommendation, seeing that several members of the Sub-Committee made the latter an express condition of their supporting the text proposed for the amendment itself.

M. ALVAREZ (Chile; speaking in French). — I wish to say one word in support of the text which has been laid before the Conference by the Sub-Committee. I do not think it is necessary to add anything at the end of the text. This question of the rights and duties of belligerents and neutrals in time of war forms an indivisible whole, and one part of it cannot therefore be dealt with whilst leaving the rest to be settled later. I aver that the question forms an indivisible whole because the rights and duties of neutrals nearly always have reference to trade with belligerents, and therefore if a resolution or convention governing the question is to be drafted, this will really amount to an attempt to regulate freedom of trade and of transit between neutrals and belligerents.

THE CHAIRMAN (speaking in French). — With M. Carlin's consent, I will first consult the assembly on the subject of the Recommendation appended to the new draft of Article 8. It reads as follows :

The Conference recommends that as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

M. Pierrard proposes to add the words *in regard to transit*. Does it not seem to you, M. Pierrard, that this addition is unnecessary ?

M. PIERRARD (Belgium; speaking in French). — I think it brings the Recommendation more into conformity with the views of the British Delegation. I made the proposal in the interests of general agreement.

THE CHAIRMAN (speaking in French). — In the circumstances we will add the words *in regard to transit* to the proposed Recommendation.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think the right course is being taken in putting the Recommendation to the vote before voting upon Article 8 in its amended form; and if I am compelled to vote against it I should like the Conference to understand exactly my reason. It is not that the British Delegation has any objection to the League of Nations issuing an invitation to a Conference of this nature; it is that I am without instructions, and that the text of Article 8 was the subject of very profound consideration at the British Admiralty and War Office. These two departments declared their readiness to accept the wording of Article 8 as it stands in the *Green Book*, but I have no authority for pledging them to take part in a Conference with the wide object of revising the rules of war. I should not like to mislead the Conference, if by voting for this Recommendation I gave the impression that the British Government was prepared to take part in a Conference of this kind,—I do not know myself what it would do if the question arose. Accordingly, I wish by my vote merely to reserve the liberty of action of the British Government with regard to the

response which would be given to any invitation issued by the League of Nations as a result of this vote to-day. That, and nothing more, is my intention.

M. ADATCI (Vice-President; speaking in French). — I desire merely to enlighten the Conference upon what took place at the Hague and at Geneva with regard to this question, in order that it may be fully informed before proceeding to vote. You will remember that in June and July, a Conference of Jurists from every country in the world, appointed by the Council of the League of Nations, met at the Hague, and there elaborated a draft Statute for the Permanent Court of International Justice. We worked for about six weeks under the chairmanship of that great American Mr. Elihu Root, and, at the end, we issued a Recommendation similar to the one now under discussion. This Recommendation was laid before the Council of the League of Nations, and the Council, meeting at Brussels in the following October, simply transmitted it to the first Assembly at Geneva. The Assembly at Geneva appointed a committee of which Sir Cecil Hurst and myself were members. We deliberated for a very long time upon the Recommendation; personally, I was in favour of the proposal, that is to say, in favour of the summoning as soon as possible of a Conference to promote the development of international law. The Recommendation had a wider scope than the one now before us. The Committee, which was presided over by M. Léon Bourgeois, adopted our Report, and transmitted it to the first plenary Assembly. The Assembly, after deliberating upon it, rejected it, taking the view that it is as yet too soon for a Conference of this kind to meet; and thus this Recommendation, which first saw the light at the Hague, and which was adopted by the Committee, was rejected by the first Assembly at Geneva.

That is how the question stands. A distinction must naturally be made between the general question of the further development of international law, and the special question of transit. If M. Pierrard's suggestion to add the words *in regard to transit* were adopted, the text would be more precise, whilst the meaning would remain as before. It is for the Conference to take the full responsibility of a free decision on the question.

THE CHAIRMAN (speaking in French). — I have to thank M. Adatci for the very interesting information which he has given us.

I will now put to the vote the amendment proposed by the Sub-Committee, with the addition of the words *in regard to transit*, as proposed by M. Pierrard.

*The Recommendation was adopted, 23 voting for and 5 against.*

I will now put to the vote the new text of Article 8, in the following terms :

The present Convention does not govern the rights and obligations of belligerents and neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

*The article was adopted, 30 voting for.*

THE CHAIRMAN (speaking in French). — We will now pass to Article 13, to which several amendments have been proposed. We have in the first place an amendment proposed by the Roumanian Delegation. Before asking the Roumanian Delegate to speak, I will ask M. Freire d'Andrade, who wishes to make an observation on the subject of procedure.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — At the time of the discussion of Article 2, I enquired whether the Transit Convention on railways and waterways applied also to roads, and I was told that the question would be discussed with Article 10. The question is one of considerable importance to us. Two amendments have been put in, one by the Italian Delegation, which received satisfaction, thanks to the conciliatory spirit shown by the British Delegation, and the other by myself. I think it is absolutely necessary for the Conference to give a verdict upon this question, which, I repeat, was postponed until the discussion of Article 10.

Sir Hubert LLEWELYN SMITH (Great Britain). — May I draw the attention of the assembly to the amendments already proposed by the British Delegation, and referred by the Plenary Committee to the Drafting Committee. These amendments were drawn up with the purpose of making it absolutely certain that this is a Convention relating to transit by rail and waterway. You will remember that at a very early stage (it was, I think, the first amendment I moved), this amendment was understood to be merely a drafting change, and everyone was agreed that the Convention only applied to transit by rail or waterway. The object of my amendment was merely to ensure that, where there was a small connection by road between a railway and waterway, the Convention should nevertheless apply. This explanation may perhaps re-assure the Portuguese Delegate.

THE CHAIRMAN (speaking in French). — Is the Portuguese Delegate satisfied with the reply ?

M. FREIRE D'ANDRADE (Portugal; speaking in French). — Yes, Mr. Chairman, I will not press the point further.

M. DUCHENE (France; speaking in French). — Before considering Article 13, would it not be advisable to consider the amendments which have been submitted by the Indian Delegation and the Portuguese and French Delegations, on the subject of certain territories where there would be difficulty in applying the terms of the Convention ? These amendments would appear to relate either to Article 10 or to Article 11, or even to Article 12, and it would be well to dispose of them before going on to Article 13.

THE CHAIRMAN (speaking in French). — Would you have any objection to these amendments not being included in the Convention as articles, but being inserted in the records of the meeting ?

M. DUCHENE (France; speaking in French). — If such be the desire of the Conference, I see no objection to the inclusion of these amendments in the Final Protocol.

### DISCUSSION OF ARTICLE 13

THE CHAIRMAN (speaking in French). — We can now pass to Article 13. There are three amendments before us. Two have been presented by the Indian Delegation, and the third by the French and Portuguese Delegations.

Sir Louis KERSHAW (India). — My second amendment is withdrawn.

THE CHAIRMAN (speaking in French). — The following is the text of the additional article proposed by the Indian Delegation :

As regards the French and Portuguese settlements in India, it is recognised that their peculiar geographical position prevents the application of the provisions of the present Convention. The conditions of transit may be the subject of special agreements between India and the States concerned.

Sir Louis KERSHAW (India). — When I explained before a meeting of the Conference (1) the attitude of the Government of India, and stated its readiness to apply the provisions of the Convention to the transit trade of India, I mentioned the exception which I shall move later with regard to foreign settlements. I said that the three Delegations concerned were in complete agreement as to the desirability of excluding these settlements, and that all that was necessary was to find some form of words to meet the case. Happily, complete agreement has been reached as to the appropriate formula, and the text of it has just been read. But although an agreement has been

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(1) See p. 17.



reached, I presume that the Conference will desire some explanation of the reason why an exception should be made, especially as this question constitutes an exception to the provisions of the Convention.

The first point I should like to make is that the volume of transit trade involved in this exclusion is insignificant,—it is, in fact, quite a small fraction of the total transit trade of India. That, of course, is not in itself a reason for excluding the settlements; the main ground for the exclusion is their very exceptional position. The conditions in this respect seem to me unique,—without parallel in any other part of the world. There are altogether eight of these settlements scattered through India. Some of them are on the sea-coast; others form a small enclave in the interior; on the borders of certain of them there are no customs stations, and goods pass freely from and to British India; in other cases, special routes have been prescribed and customs stations established. But perhaps the most extraordinary feature in regard to these settlements is the fact that they are in all cases compact blocks of territory; sometimes they are made up of parcels of foreign territory interlaced with the surrounding districts. A very good instance of this is Pondicherry on the Madras coast. I have here a map of Pondicherry. It is, unfortunately, not a large-scale map, but you can nevertheless see that it consists of about twelve scattered blocks of territory interwoven with the surrounding districts in the most bewildering fashion. I think anyone looking at this map would agree immediately that in such conditions it would be quite impossible to apply the provisions of the Convention. Another instance is that of the Portuguese Settlement of Daman, on the Bombay coast. Here we have a small block of territory on the sea-coast, then a small enclave further inland, then another enclave still further inland, and, to add to the confusion, there is a small island of British territory in the middle of the third enclave. It would again be impossible to apply the provisions of the Conventions in conditions such as these. Chandernagore is another very good instance. Here we have a small block of French territory of about three square miles, a little north of Calcutta. At present there are no customs frontiers. With the exception of goods required for French officials, which are exempt from duty, goods pass freely into Chandernagore, paying duty in the ordinary way at Calcutta.

I would like the Conference to imagine for one moment what would happen if the provisions of this Convention were applied in such circumstances. It is quite certain that enormous quantities of dutiable goods, such as tobacco, spirits and wines, would pass into Chandernagore, and, of course, the subjects of both Governments would participate in this illicit traffic. The Government of India would be forced, for the protection of its own revenue, to surround Chandernagore with a close customs cordon. I have spent most of my life in India, and I can assure the Conference that a customs cordon of this kind would be quite ineffective. I hope I have said enough to convince the Conference that the conditions are so peculiar that it would be impossible to apply the provisions of the Convention, and that the Government of India is not unreasonable in making this question a vital one, and asking for the exclusion of these settlements.

I feel sure that if the Committee which prepared the Draft Convention had been aware of these peculiar geographical conditions, it would have provided for them. Further, the three Delegations—French, Portuguese and Indian—all agree that they do not wish these settlements to be brought under the Convention; this fact may perhaps convince the Conference that the exception which I am placing before it is justified.

M. DUCHENE (France; speaking in French).—The French Delegation can but confirm the very able and detailed explanation just given by the Indian Delegate with regard to the position of the French and Portuguese enclaves in Hindustan. As, however, the joint amendment which is also before you is based upon considerations of the same kind, I feel that, in my capacity as the member of the French Delegation who is responsible on the colonial side for the results of any resolutions taken by the Conference, I ought to give some explanation with regard to the text which, in conjunction with our Portuguese colleagues, we have laid before you.

From the very outset the French Delegation, which took a prominent part in the

preparation of the drafts now before you, has made plain her intention of bringing the task to a successful conclusion, reserving the right to supplement the work in certain directions in a manner designed to render the Convention universal in its application, and to make its ratification more easy. It was along such lines that the French Delegation contemplated entering into the agreements which we are here to-day to examine in regard to their bearing, not only on the territory ruled by France in Europe, but also on her territory in other continents. With regard to most of this territory, including those countries where transit plays a prominent part,—I should like to lay stress on this point—the policy of France is against any differentiation, and she will not lay claim for an exception to be made on the ground of the special customs or conditions prevailing in any particular country. There are, however, certain regions where the peculiar topographical conditions cannot be ignored; this constitutes a factor which has not escaped the attention either of our Indian or of our Portuguese colleagues in connection with those territories whose interests they are here to watch. The nature of the considerations which they have in mind becomes clear from a study of the very moderate text now before you. The exceedingly moderate terms in which that proposal is couched are not the result of accident; their moderation is an indication of the lively desire evinced by France to arrive at mutual agreement, whilst it is intended at the same time to provide for certain practical needs which our country cannot ignore without the risk of weakening the effect of certain other provisions to which it would in that case have too rashly subscribed. In the territories referred to in our amendment, the conditions are such that attempts to penetrate to the interior meet with every kind of obstacle, and frequently can only be carried out with success by means of native craft, and it is therefore not surprising that in these circumstances any regular supervision or strict control of transit traffic cannot be maintained.

It is only necessary to glance at the map in order to recognise that these territories have yet to realise complete economic independence in their relations with their neighbours. In this connection I will only mention as examples the peculiar position of certain provinces of Cambodia in Indo-China, and in Africa various foreign territories which actually form enclaves among the French possessions; the Portuguese possession of Kabinda, the Portuguese Colony of Guinea, the Spanish Colony of Riomuni, and still others, down to the long corridor which British Gambia forms inside Senegalese territory. As regards these last, the two adjacent Governments have as yet been unable to regulate with any exactitude the conditions in which transit traffic may be carried out.

For all these different territories, just as for the enclaves in India, it is essential that the States concerned should be allowed full liberty to conclude agreements among themselves. The Paris Commission which drafted the Conventions which we are now discussing was obliged to concentrate its attention upon problems of greater urgency, and was unable, therefore, to take these considerations into account, but it has now become necessary to call them to mind, and they must not be left aside whilst the Conference is engaged in perfecting and revising the details of the work begun.

M. BIGNAMI (Italy; speaking in French). — I should like to put two questions to the Indian Delegate. Is there not in the final text of Article 10 a sufficient guarantee for the interests of which he speaks? May I point out that all agreements already concluded are mentioned in the first part of that article, it being there laid down that such agreements shall be maintained in force, whilst the second part of the article deals with any agreements which may be concluded in the future. It is clearly stated that :

The Contracting States further undertake not to conclude treaties, conventions or agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

It seems to me that, as regards both the past and the future, the interests of which the Indian Delegate spoke are actually protected. However, that may be, I should request a form of words much more general in character. There may be other States possessing territory similarly enclaved,—for instance, the Republic of San Marino

in Italy and the Republic of Andorra in Spain. I propose, therefore, that the question be submitted to the Drafting Committee to examine the possibility of finding a more general text than the one which the Delegate of India has just presented to us.

M. PIERRARD (Belgium; speaking in French). — Up to the present we have remained in what I might term the peaceful realms of the rights of transit, but it seems as though we were about to drop from those lofty realms to the abyss of the sacred egoism of States. Whenever during this Conference the principles of freedom and equality have been called in question, I have arisen to defend them,—in somewhat impetuous fashion, perhaps; but at any rate the Conference will do me the justice of admitting that every time there has been an opportunity of a compromise leading to general agreement, and a unanimous vote in favour of the article under discussion, I have taken it. Wine must be watered. I foresaw what would happen when I read the words *economic, topographical and technical considerations*, etc., which appear in one of our articles, and I protest here and now against this attempt on the part of certain States to obtain special jurisdiction for the territories over which they rule. I will not speak of India, where I am not conversant with what would appear to be a very complicated situation; I will go straight to the point, as is my wont.

I will now turn to the countries of Central Africa, with special reference to the Basin of the Congo as defined by Convention. You must know that this Basin does not only consist of the Congo Basin itself, but stretches towards the Atlantic,—on the north to about the second parallel south, and on the south as far as the mouth of the Loge, that is to say, below the mouth of the Congo itself. On the border of the Indian Ocean the maritime zone extends from the fifth parallel north to the mouth of the Zambesi. Speaking roughly, it may therefore be said that the whole of Central Africa is included in this Basin. At the time when the independent State of the Congo was set up in virtue of the Treaty of Berlin, certain measures were taken to ensure that as far as possible these territories should be administered on a basis of freedom for commerce and transit. The Treaty of Berlin is no longer in existence, but its place has been taken by another treaty,—the Convention of St. Germain-en-Laye, which was signed on September 10th, 1919. In Article 6 of that Convention we read :

Navigation shall not be subject to any restriction or dues based on the mere fact of navigation.

It shall not be exposed to any obligation in regard to landing, station or depot, or for breaking bulk or for compulsory entry into port ;

and Article 2 states that :

No differential treatment shall be imposed upon the said merchandise on importation or exportation, the transit remaining free from all duties, taxes or dues, other than those collected for services rendered.

You see, therefore, that this Treaty contains clauses which, as a matter of fact, are more liberal than those with which we are now dealing. Why, then, in Central Africa should further exceptions be made for the countries either to the north or to the south of this region? To my mind such a course would be absurd. Not only do I fail to enter into the motives adduced by my French colleague, but I must confess that were the Conference to ratify what seems to me an absolute paradox, I should be obliged to make reservations, and to ask my Government to give me additional special instructions, which I lack upon this subject. I much regret that our colonial expert, who is detained at Brussels, should not be here to-day in order to defend our policy, as he would do with greater force than I can myself. May I repeat that, if the Conference were to confirm such an illogical arrangement as the one proposed, I have no doubt that the Belgian Government would make reservations as to signing the Convention. At all events, I have no instructions to enable me to accept the proposed amendment.

We are in the domain of individual egoism, and therefore, as I said just now, let us look things straight in the face and call a spade a spade. We are speaking here of Central African territories, and I must make every reservation on the subject.

I cannot possibly support the amendment which has been put forward jointly by the French and Portuguese Delegations.

M. DUCHENE (France; speaking in French). — I should like to say a few words in reply to the observations which have just been made by the Italian and Belgian Delegates.

I am quite willing to admit the assertion made by the Italian Delegate to the effect that the peculiar conditions of certain French and Portuguese territories which we have described may also exist in connection with other regions, and I, for my part, see no objection to such cases being placed before us, if they corroborate the facts I have stated with regard to certain French possessions. In reply to a further observation made by the Italian Delegate, I would point out that the question would not appear to me to be completely settled by Article 10. Article 10, subject to the existence of certain exceptional factors, maintains existing conventions in force, and, subject also to certain reservations, provides for the possibility of special agreements. But this particular question is not merely one of conventions; there are, in particular, certain joint measures of an administrative character, the terms of which may vary from time to time, and which therefore require the constant keeping in touch of the authorities of neighbouring States, and it was in order to allow of this that special provisions of the kind proposed appeared necessary.

Turning now to the remarks of the Belgian Delegate, may I hasten to say that I think I can easily set his mind at rest? I think that there is some misunderstanding, and that the Belgian Delegate has, if I may say so, gone rather outside the question. We have no intention here of limiting in any way the effect of the very liberal régimes which had been applied, before this Conference met, to vast stretches of territory in Africa,—in particular, as the Belgian Delegate recalled, to the Basin of the Congo. France was one of the earliest Powers to promote these measures in 1884, thus carrying on traditions which dated from the Congress of Vienna. Not with regard to the Basin of the Congo any more than that of the Niger has France any intention of withdrawing from the conventional régime already in force, which she herself, in friendly conjunction with other States, strengthened by the signature, on September 10th, 1919, of a Convention; nothing is now further from her thoughts than to attempt to modify the terms of this Convention. A glance at the map of Africa will show that, after taking away not only that vast stretch of territory which the Belgian Delegate has shown you by placing a map of it before you,—I mean that vast region included under the Basin of the Congo—but also the equally wide region included under the Basin of the Niger, then, as far as Africa is concerned, the only territory affected consists of certain small parcels of land which, outside a very limited sphere, cannot, I think, be said in any way to affect any resolution which the Conference may be led to take.

Perhaps this misunderstanding serves to show that the terms of our proposal were not sufficiently precise, and if that be so, we are only too ready to devote careful attention to more detailed geographical specifications. I may say in conclusion that to this course the French Delegation would oppose no objection, and, if it appears necessary, I shall be the first to propose that the matter be referred to a special committee, which should study the subject from the point of view both of the territories which we have specified very clearly, and of any other territories the case of which may present itself to the representatives here of other States who feel a similar anxiety with regard to them, in order to determine the scope of the proposed clause with more precision, and in such a manner as may set the mind of every member of the Conference at rest.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I associate myself whole-heartedly with the opinions which have been so clearly put before us by the Indian Delegate and by M. Duchêne of the French Delegation.

Sir Hubert LLEWELLYN SMITH (Great Britain). — This discussion has been one of considerable interest, and must already have suggested to the Conference that, although there may be some advantage in linking the Indian with the French and Portuguese amendments, and discussing them together, there are also very great objections to that procedure, for the real fact is that, in spite of the similarity in the

wording, the bases on which these two amendments rest are entirely different. There may be—perhaps there are—good reasons for both, but they are entirely different reasons, and I therefore venture to suggest that we should discuss the Indian amendment first and the other amendments afterwards; but if the Chair rules that, for the greater convenience of the Conference, we should discuss the two together, I am perfectly prepared to do so.

THE CHAIRMAN (speaking in French). — I see no objection whatever to separating the two.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think that no-one can have listened to the statement of the Delegate for India without being absolutely convinced that his arguments are conclusive. They are not arguments founded upon conventions or agreements, and I am afraid, therefore, that the suggestion put forward in such a conciliatory spirit by M. Bignami, to the effect that these cases are met by the terms of Article 10, is not quite accurate. The fact is that the Indian amendment was designed to meet an exceptional state of things. It was founded on the fact that it would be an absolute administrative impossibility for the Government of India to treat as separate territorial units, for the purpose of the present Transit Convention, a large number of small fragments of territory, the largest of them extending over only a few square miles, and the smallest of them sometimes only a few acres, most of them entirely unprovided with any customs system of their own, thus presenting a problem which would be absolutely insurmountable if the Transit Convention were to be applied in all its rigour.

I have no authority to speak for India, but I know enough about the country to be convinced that were India required, as a condition of adherence to this Convention, to treat as separate territories for the purpose all these tiny spots of foreign territory which are surrounded by the territories of British India, there would be only one possible course for her to take, namely, not to sign the Convention at all. It could not be done,—it is administratively an impossibility. The arguments put to the Conference by M. Duchêne are of an entirely different order. Although they may be very good arguments, possessing considerable force, they were not founded on administrative considerations, but, if I understood him aright, on the fact that the means of communication in these vast territories in Africa are not as yet sufficiently developed to be capable of affording the facilities for transit contemplated in this Convention. We must all admit that backward territories in Africa cannot be expected to give full transit facilities of the kind which would be reasonably expected in the countries of Europe or America, or in other advanced countries, and I therefore regard M. Duchêne's proposal with much sympathy. I shall ask him, however, whether he has considered two things,—firstly, that there is nothing in this Convention which requires any contracting State to construct new railways or new means of communication, but only to make the best use of those which exist; and secondly, the full effect of those absolutely vital alterations which the Sub-Committee approved and the Conference adopted yesterday in connection with previous conventions and agreements. If he has considered both these facts, and has arrived at his conclusion accordingly, and if the French Delegation tells us that, in spite of this, they cannot accede to the Convention in respect of certain territories in Indo-China and Africa,—then I would ask that the number of territories which they reserve should be reduced to the minimum consistent with their vital interests.

I must say that I look with great misapprehension on the proposal to refer this clause to a sub-committee with a view to extending the benefits of the reservation to other territories, although I should have no objection to its going to a sub-committee, with instructions to consider whether its application cannot be restricted still further as regards those territories to which it is absolutely necessary to apply it. I listened with very great satisfaction to M. Duchêne's statement to the effect that there is not the least intention of applying in these territories any other than a liberal régime with regard to transit, communications and commerce. I think *liberal régime* were M. Duchêne's own words. There is at present nothing in the French and Portuguese amendments which confirms his statement. Would M. Duchêne be averse to adding

some words of a general character guaranteeing that, so far as local circumstances permit, France will ensure that the régime applied to transit in these territories is of a kind to facilitate the commerce and communications of Contracting States? If some addition of this kind were made, it might be well to refer the proposal to a sub-committee, with a view to ascertaining whether the very wide area at present covered by the proposal could not with advantage be reduced; but in this case stringent instructions should also be given not to extend its scope to any further areas.

Meanwhile, could we not come to a decision with regard to the amendment of the Indian Delegate which, as I have tried to explain to the Conference, rests on entirely different grounds? I do not think it has ever been suggested that the Government of India pursued any other than a most liberal policy with regard to transit, communications and commerce. The proposed reservation is not in any way based on a wish to evade the provisions of the Convention, but simply on the impossibility of treating these small territories, these settlements, as separate units for purposes of administration.

I ask that we should divide first on the Indian amendment, after which I shall not oppose a motion to refer the other amendments to a sub-committee.

THE CHAIRMAN (speaking in French). — I have no objection to the two questions being treated separately.

M. DE MADARIAGA (Spain; speaking in French). — Spain is in the same position as France and Portugal in that she possesses in Africa colonies and protectorates which have a very backward development. The Spanish Delegation does not, however, possess any special instructions on this point, and must therefore fall back upon her general instructions to incline to the side of greater freedom, should doubt arise. The Spanish Delegation is of opinion that in principle this paragraph is not needed in order to meet the cases adduced by France, Portugal and Spain, but that later on it might be found to be justified for some special cause. The Convention in its present form affords means for meeting special cases of the kind to which allusion has been made, such as the backward development of a country, etc., but one case exists which obliges Spain to intervene in the matter, and if an article of this nature were contemplated, Spain could not be excluded from the benefit of it. The British Delegate has declared his opposition to increasing the number of territories to which the benefits of this article may be applied, but if they are going to be applied to Portuguese and French territory, and not to any Spanish territory which may be peculiarly situated, then that might constitute the existence of differential interest as far as Spain is concerned. Accordingly, as, in the opinion of the Spanish Delegation, the text has a rather too general character, we shall support the French proposal to refer it to a sub-committee to make a detailed study of each particular case. I am also completely in agreement with the British Delegation in desiring the inclusion of a phrase intended to provide a general safeguard for the principle of freedom.

M. TSANG-OU (China; speaking in French). — The new article proposed by the French Delegation is of special interest to China, particularly in connection with trade in South China, which often involves transit across Tonkin. We are neighbours of France in that region, and I do not think we can refuse to recognise the justice of the French claim with regard to the local difficulties encountered by transport and communications. I do not therefore oppose the amendment; I would simply ask the French Delegation whether, if the assembly approved the idea, there should not be added the words *in conformity with the principles of the present Convention*. Thus, according to the text, the conditions of transit may always become the subject of special agreements between the States concerned, in protected areas and protectorates.

Should China, after having ratified the Convention on Freedom of Transit, make overtures to the French Government with regard to entering into fresh conventions on the subject of transit via Tonkin, I would also ask the French Delegation to agree to base her policy on the terms of the fourth paragraph of Article 10, as adopted yesterday by the Conference.

Sir Louis KERSHAW (India; speaking in French). — I rise only in order to deal with the point raised by the Italian Delegate. The British Delegate has already referred to his proposal on the subject of Article 10, and has explained why that article by itself does not constitute sufficient protection. The second point which the Italian Delegate raised was that a general formula would be preferable to a specific exception. So far as the Indian Delegation is concerned, a general formula, if it had the effect of excluding the settlements from the scope of the Convention, would be equally acceptable, but I can assure the Italian Delegate that several attempts have already been made, without any success, to frame such a formula, the difficulty being that a general formula is usually discovered to include within its scope some other territory which it was not the intention to include.

As I understand it, the general trend of the debate to-day serves to show that the Conference desires to limit the number of exceptions. Now the form in which the Indian amendment has been presented leaves the Conference quite certain as to what is being excepted, namely, the foreign settlements in India, and nothing else. If, in place of that definite amendment, we adopt a general formula, it is possible—in fact, it is almost certain—that territories in other parts of the world will be included. The Indian amendment is in effect, therefore, more limitative than a general one would be.

I would like to confirm the remarks of the British Delegate with regard to the liberal policy followed by the Government of India in all transit matters. The object of this amendment, which I understand the Chairman proposes to put separately to the Conference, is merely to avoid difficulties of administration. It is in no way intended to place any obstacle in the way of the small transit trade with these territories. The main transit trade, as I have already said, will come under the provisions of the Convention, which will be applied whole-heartedly by the Government of India.

THE CHAIRMAN (speaking in French). — Would you be willing for your amendment to be included in the Final Protocol?

Sir Louis KERSHAW (India). — I should have no objection if it had the same validity in the Final Protocol as it would have if embodied in an article, but I prefer the latter alternative. I must leave the decision to the Conference.

THE CHAIRMAN (speaking in French). — The Officers of the Conference will not raise any opposition to a separate article. We will now proceed to vote upon the addition proposed by the Indian Delegate, but in doing so we shall leave open the question of the form which the new article is to take; it is a matter which can be discussed in sub-committee. The Indian Delegate himself is ready to agree that the matter should not be settled now.

M. MATSUDA (Japan; speaking in French). — We are happy to be able to support the proposal made by the British Delegate. In my opinion the method suggested by him is the most practical one. We propose, therefore, that a committee should be set up to study the question whether any limitations or exceptions can be allowed. We are sorry to note a tendency within the Conference to introduce these different proposals, which are all in the direction of restricting the scope of application of the Convention which we are about to conclude. Candidly, we are of opinion that, if this tendency to make one exception after another is carried much further, it will become difficult to arrive at any agreement for the betterment of world conditions by means of freedom of transit. In order to bring the task to a successful conclusion, it is essential that each country should be guided by generous sentiments, and should make more or less of a sacrifice. If States here represented continue to suggest limitations and exceptions, how shall we ever terminate our work? No, they must be guided by principles of generosity, which, in our opinion, are identical with the principle of freedom of transit. It is for these reasons that I must once more repeat the remark which I have made so many times already:—freedom of transit must not be hindered or restricted. It is, then, with great satisfaction that I find myself in a position to support the view taken by my colleague of the Belgian Delegation, M. Pierrard

If either one or two committees are set up as a result of the British proposal I suggest they adopt as the key-note of their proceedings the ideas which, in all sincerity, I have laid before you.

M. DUCHÊNE (France; speaking in French). — I must apologise for rising to speak yet once again, but I will be very brief. I should like, first of all, to thank those members of the Conference who have been good enough to speak on the amendments proposed by us, thus throwing valuable light upon the subject. Taken as a whole, the remarks made have been most judicious, and the French Delegation is perfectly ready to consider them in as liberal a spirit as possible. I agree with the British and Japanese Delegates in thinking that the question ought to be examined more closely by a small sub-committee,—not in order to increase the number of exceptions which may be made in applying the Convention,—exceptions occasioned by the peculiar position of any given territory—that was never the French policy, as I said at the outset—but to see whether such exceptions are justified, and, when they are, to confirm them. I think that this small committee should undertake the study of both amendments considered together, and I am sorry not to be able to take the same view as the British and Indian Delegates on this point. I differ from them in being of the opinion that the cases which we have considered are not dissimilar to the obviously very complicated situation resulting from the existence of enclaved territory in India. It is not only in India that enclaves are to be found. There are enclaves which are as much a source of difficulty to the enclaved States themselves as to the States which surround them. The Portuguese Delegate will allow me to give an example :—in our French Colony of Dahomey, there is a small piece of Portuguese territory absolutely isolated in the midst of French territory, and possessing no sea-board. Its name is Whydah, and its position is in every respect analogous to that of the enclaves of which the Indian Delegate was speaking just now. It surely cannot be denied that cases such as this merit the sanction on the part of the Conference of stipulations of a somewhat special nature to be included in this Convention, and I fail to see how some of these territories can be treated differently from others.

I must therefore conclude by recommending that both amendments be referred to a small committee. This solution appears to me necessary because it would enable useful work to be done;—it is indeed the only solution, because it will allow us to reach the heart of the question.

THE CHAIRMAN (speaking in French). — Does the British Delegate agree that the two amendments be referred to a sub-committee?

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have listened carefully to this most interesting discussion, but I have not heard a single argument brought against the Indian proposal, and I therefore see no object in referring it to a sub-committee. I am perfectly content that a sub-committee should examine the question whether there exist in other parts of the world small enclaves similar to those referred to by M. Duchêne,—in which case they should certainly be treated in the same manner as those which form the subject of the Indian proposal—but I am of opinion that the time is ripe for the Conference to come to a decision on the subject of the Indian motion.

M. DUCHÊNE (France; speaking in French). — Then we shall be under the necessity of asking that the second amendment shall not be referred to a sub-committee either. I assert and I maintain that the conditions are identical. I have cited an example which is typical in every detail,—that of a territory identical in character with the Indian enclaves, and I hold the view that a committee must either be appointed with a view to examining both amendments or else not be appointed at all.

M. PIERRARD (Belgium; speaking in French). — It seems to me that we are confronted with two entirely different questions. Personally I am in favour of Sir Hubert Llewellyn Smith's proposal to vote upon the Indian motion, which would



appear to be founded on a concrete example. With regard to the whole Franco-Portuguese proposal, a further proposal has been made to refer this amendment to a committee, and in token of my desire for conciliation, I support this proposal...

M. SIBILLE (France; speaking in French). — Hear, hear!

M. PIERRARD (Belgium; speaking in French). — I would only request that the committee should not meet before it is possible for an expert to arrive from Brussels; I have to confess that I am not myself sufficiently versed in colonial matters to be able to deal with the question adequately.

Sir Louis KERSHAW (India). — I venture to support the Belgian Delegate's motion. I have heard no objection raised to my amendment; had any been raised, I should have been only too happy to meet it with explanations. I had understood that M. Duchêne supported the amendment, but if it really does contain anything which is not quite clear, then by all means let it be referred to a small committee.

M. BIGNAMI (Italy; speaking in French). — It is with great regret that I must register my inability to vote for the Indian amendment, on account of the fact that it treats of one particular case; whilst we hold the view that some general form of words should be found in order that a convention such as the one now under discussion should not have reference to special cases.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In reply to M. Bignami, I should like to say that if the meeting votes, as I hope it will, in favour of the Indian amendment, such a vote will be entirely without prejudice to the work of the Sub-Committee which will examine the question whether there exist in other parts of the world other enclaves to which similar principles should be applied. If the Sub-Committee finds, as M. Bignami is convinced, that there are such enclaves,—a question upon which I am less certain than he—it will report accordingly, and the Drafting Committee can then easily amalgamate the two amendments in a single article. I claim that the case of India has been proved up to the hilt. Not a single argument has been brought against it, and a vote ought to be taken upon it.

M. BIGNAMI (Italy; speaking in French). — If the Sub-Committee comes upon a form of words more general in character, the Italian Delegate would have no more to say. As, however, we are dealing here with a special case, it should be clearly stated whether it is understood that the Sub-Committee must find such a formula. Only if it did not succeed in doing so would the question arise whether there shall be included in the Convention, as a matter of course, an article dealing with special cases such as the present one. But I repeat once again that we cannot adopt the proposal unless it is understood that the sub-committee will endeavour first of all to find a text bearing a more general character.

M. DUCHÊNE (France; speaking in French). — Several different points of view have been put forward, and have found happy expression, surely, in the admirable speech which the Italian Delegate has just made. This being so, I am of opinion that a settlement ought to be found which will give general satisfaction. Obviously, if we have to find a more general formula, then the interests of India, however important, cannot be isolated. We of the French Delegation were the first to recognise this fact. If, on the other hand, it is a question of a special case,—that of India—I repeat that there is no reason why it should be treated outside other similar cases. In my opinion the Conference is not at present in a position to pronounce a verdict, and it may also be that, however determined we may be, and however much we may narrow down the terms of a clause, stipulations of this nature do nevertheless bear an exceptional character. Now I come to consider the question I must admit that stipulations of this nature are out of place in a Convention which is intended to embody general principles. I think that everyone would be satisfied if there were introduced into the Final Protocol the provisions which an attempt was made to

embody in the two amendments now before the Conference,—both the Indian amendment and the amendment concerning other territories. In the meantime, this need not prevent a sub-committee, or even the Drafting Committee, from considering what form of words should be inserted in the Final Protocol.

THE CHAIRMAN (speaking in French). — It is for the Conference itself, and not for the Officers of the Conference, to decide whether the two provisions are to be amalgamated or are to remain separate. I should like to consult the Conference upon this point.

M. DUCHÊNE (France; speaking in French). — Do you mean amalgamated in the Final Protocol?

THE CHAIRMAN (speaking in French). — Yes, in the final Protocol.

I will now put to the vote the motion to amalgamate the two texts in the Final Protocol.

*The vote was then taken, 7 voting for and 8 against.*

M. DUCHÊNE (France; speaking in French). — There is not a quorum, and therefore the vote is null and void.

THE CHAIRMAN (speaking in French). — There is certainly not a quorum, but we have as yet no definite ruling upon this point. It might be laid down that in order to obtain a quorum half of the delegates present must vote. I will once more put the question, with the request that every delegate here present will take part in the vote,

*The vote was then taken, 1 voting for and 8 against.*

THE CHAIRMAN (speaking in French). — In the circumstances, the question cannot be decided, and I propose that the debate be now adjourned until 11 a.m. tomorrow.

*The meeting adjourned at 8 p.m.*

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# ELEVENTH MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 23rd, 1921, at 11 a.m.)

## DISCUSSION OF ARTICLE 13 (contd.)

### DISCUSSION OF ARTICLE 14—REPORT OF SUB-COMMITTEE ON ARTICLE 15

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

## DISCUSSION OF ARTICLE 13 (contd.)

THE CHAIRMAN (speaking in French). — The Conference will remember that there arose yesterday afternoon a slight difficulty with regard to the vote upon the amendments proposed by the Indian Delegation and by the French and Portuguese Delegations, and that I suggested the vote should not take place until to-day. Before proceeding to this vote, I will call upon Sir Louis Kershaw, the Indian Delegate, to speak.

Sir Louis KERSHAW (India). — At the close of yesterday's proceedings the Conference found itself in a position of some difficulty, it being impossible to obtain a valid vote on the question whether the two amendments before the Conference should be dealt with together or separately. I hope the Conference will agree that the attitude taken up by the Indian Delegation in this matter was not an unreasonable one, for the course of the debate indicated very clearly that no objection was taken to the Indian amendment on the actual merits of the case, and that the tendency of the Conference was, indeed, rather in favour of it. But as it is apparent that some members of the Conference would prefer both amendments to be referred to a sub-committee, the Indian Delegation is ready to waive its objection, and, in order to save the time of the Conference and to preserve that spirit of harmony which has been such a feature of our proceedings, is quite prepared to agree that both amendments should be sent to a sub-committee.

I should like to add a word with regard to my own position. I have already said that the Government of India regards this question as one of vital importance. My own instructions are precise. Although I have come here with full powers from His Majesty the King Emperor to sign Conventions, it would, I am afraid, be quite impossible for me either to vote for or to sign any Convention which did not safeguard the position of India in this particular matter.

THE CHAIRMAN (speaking in French). — Every member of the assembly will, I am sure, agree that a debt of thanks is owing to Sir Louis Kershaw for his conciliatory attitude in this matter.

Unless there is any objection, we can proceed at once to appoint the Sub-Committee. I propose that all the delegations which took part in yesterday's debate should be represented upon it, namely, the Indian, British, Belgian, French, Portuguese, Spanish, Chinese, Italian and Japanese Delegations, to the number of which might be added the Brazilian and Netherlands Delegations. Has anyone any objection?

*This was agreed.*

It is not for me to convene this Sub-Committee, but I nevertheless propose that it meet to-morrow.

M. PIERRARD (Belgium; speaking in French). — That would be too soon, Mr. Chairman.

THE CHAIRMAN (speaking in French). — I recollect now that you asked yesterday that time might be allowed for a Belgian expert to be summoned, and I would therefore suggest to the assembly to postpone the meeting of this Sub-Committee until a later date, such as Wednesday of next week.

M. DUCHÊNE (France; speaking in French). — Thursday?

THE CHAIRMAN (speaking in French). — Very well; Thursday at three o'clock in the afternoon.

We will now continue the discussion of Article 13.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation has presented an amendment to substitute for the word *temporarily* the words *for five years*. Article 13 provides for temporary exceptions in favour of devastated regions, on the special grounds of the grave economic position resulting from the devastations perpetrated by enemy troops during the war of 1914-1918, and adds that the countries devastated shall be exempted temporarily from applying the provisions of the Convention. Italy, in common with other countries, was devastated during the war, and suffered much; but we are anxious to see the Convention concluded, and we would therefore point out that the word *temporarily* is not sufficiently precise; it may mean two years, ten years or even twenty years, whilst the Convention is only to remain in force for ten years before being renewed, so that, in practice, the word *temporarily* could not refer to a period longer than ten years. To the Italian Delegation even this period of ten years would appear excessive, and we propose accordingly that a period of five years should be fixed as in Article 378 of the Treaty of Versailles in respect of a number of its provisions. If serious cause arose, it would be for the League of Nations to allow any exception to be made, but we consider it necessary to lay down a maximum period.

M. Georges BONNET (France; speaking in French). — The French Delegation would like it to be known that it cannot support the amendment put forward by the Italian Delegation. In the first place, the amendment does not seem to us to correspond with the terms of Article 23 of the Covenant, which does not lay down any particular period of time for the reconstruction of the devastated areas. Secondly, the period of time fixed, which the Italian Delegation would like to be five years, would appear somewhat arbitrary; the exact time which it will take to reconstitute the devastated areas cannot be foreseen, and in consequence there is no possibility of knowing at what date normal conditions will once more prevail, which will enable these areas be placed under ordinary administration.

On the other hand, the French Delegation supports the British amendment to Article 13, namely, the proposal to add the following words at the end of the article *to the said territory or part thereof*.

M. BIGNAMI (Italy; speaking in French). — The amendment was put forward by the Italian Delegation after an exchange of views had taken place between its members and those of the French and Belgian Delegations, when these latter declared that they saw no objection to fixing a time-limit, and that they recognised the justice of the Italian point of view. But as the French Delegation, after further study of the amendment, is opposed to it, the Italian Delegation will not press it.

THE CHAIRMAN (speaking in French). — The Italian amendment is withdrawn.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The amendment which I have the honour to put forward might almost be said to be a drafting amendment.

I notice that the French Delegation shows willingness to accept it. The words I propose to add have as their object the restriction of this exception within the narrowest limits possible; I hope they will be accepted unanimously.

I should like to say that, whilst the British Delegation is quite in agreement with the terms of Article 13, which, as a matter of fact, reproduces the terms of Article 23 of the Covenant, yet I feel that so much has been done in the course of our discussion to meet the case put by the Delegates of Poland and Roumania,—it is sufficient to read the revised text of Article 7 and the provision in the Final Protocol to realise this—that I hope the countries whose territories have suffered devastation will take advantage of these exceptions only to the minimum extent possible. I trust that the Polish Delegate, who is presenting an amendment to extend this exception with regard to the devastated countries beyond the terms of the Covenant, will feel that the exceptions which have been made in the course of our discussion are sufficient to induce him not to press an amendment which, I fear, we should not be in a position to accept.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I rise merely in order to support the French Delegation's view, and at the same time to assure the British Delegation that our country, which is essentially a transit country, will do its utmost to provide facilities for transit traffic. But outside the needs of the devastated areas obstacles exist of a technical character which must not be forgotten. In Serbia, for instance, all our metal bridges are destroyed, and although we have done our best to replace them, and to this end have even applied to the countries which possess the largest metal industries, even their efforts added to our own have not been able after the lapse of a whole year to supply the need. I hold, therefore, that the French proposal is fully justified.

M. FRASHERI (Albania; speaking in French). — I should like to thank M. Avramovitch for his declaration that the Serb-Croat-Slovene Kingdom will use every possible means to restore transit traffic. As near neighbours of the Kingdom, I should like to tender him special thanks for the measures taken to facilitate the transit of passengers and goods.

THE CHAIRMAN (speaking in French). — If there is no objection to the British amendment, it is carried.

Accordingly, the words *to the said territory or part thereof* will be added at the end of Article 13.

We now pass to the amendment presented by the Polish Delegation.

M. WINIARSKI (Poland; speaking in French). — This is not an amendment. The Polish Delegation desired to obtain the consent of the Conference for a statement to be inserted in the Final Protocol to the effect that Poland is at liberty to interpret Article 23 of the Covenant in such a way as to include the material damages occasioned by the hostilities which continued until 1920, and have caused havoc to transport. Obviously, the Covenant could not foresee this war, which constituted as it were the winding up of the world war. I must thank the British Delegation for its attitude with regard to the Polish proposal. Poland does not intend to take advantage of this article in order to prolong beyond what is necessary the period for exceptions as provided for under Article 13. I should like to point out that our proposal may concern other countries bordering upon Russia, which have likewise suffered as a result of the war carried on with the States on their Eastern frontiers.

M. PERIETZEANO (Roumania; speaking in French). — I must apologise for having been absent for several days for reasons of health, and I will now ask permission to submit a few observations which occur to me on the subject of this article.

Here is an amendment which asks that allowance shall be made, not only for the war, but also for the events following immediately upon it; I refer to the Polish amendment. Roumania finds herself in much the same position. The principle underlying Article 13 must surely have found wrong expression if the members of the Conference are now beginning to enumerate events which entitle a country to be

exempted from obligations with regard to transit. The intention of Article 13 was to make exceptions in those cases where the devastation wrought by the war would render impossible the carrying out of certain obligations connected with transit. What should have been done, unless complete silence on the subject had been maintained, was to say once for all that which is said in every treaty through the world: *the plea of force majeure may be advanced*. This is permitted in connection with any contract, in private as in international law, and any contract may become null and void as a result; *ad impossibilia nemo obligatur*.

There is one principle which has been admitted throughout the Convention, and that principle we shall do well not to forget now that we are on the point of completing the work. It is that the rights of transit do not impose upon any nation the obligation of carrying out works. A State may be questioned as to its resources, but it cannot be forced to build in order to facilitate transit. It cannot be asked to carry out works over and above those which it considers necessary in its own interest; it would be carrying things to extremes to force anyone in the direction of expenditure which is only calculated to benefit his neighbour. This has already been admitted without dispute. It cannot be open to doubt that if, owing to damages due to the war or shortage of material, a country is not in a position to afford transit, it is exempt from any such obligation, even though the Convention is silent on the matter. You are going to bring a complaint against a State for failing to build a railway across a valley, and then oblige it to carry out the work on the ground that it is needed for transit traffic. That would mean entering upon a path which was never indicated in the Convention, and which certainly lies outside the domain of the rights of transit. These consist in claiming passage over already existing routes, in whatever condition they may be. Should the State concerned see fit to improve its railway organisation, so much the better, but no-one can oblige it to do so, or can dictate a policy with regard to new undertakings.

But there is yet another point. It has been proposed by our Italian colleague to fix a time-limit, and it has been pointed out that in Roumania there are not a great number of routes convenient for transit. Why is this? Is it because the Roumanians are an incompetent people who have shown themselves incapable of doing what has been done in other countries? No; it is because for four centuries Roumania has been incessantly at war with barbarians marching upon her from the South, from the East, from the West,—in fact from all the quarters of the compass. At this very moment our army is on the Dniester, awaiting every moment the onrush of the barbarians. How long will this situation last? I will undertake to cause the necessary railways to be built in Roumania if the Italian Delegate will only tell me how long we may expect these onslaughts to continue. We shall never see the last of them; who can ever tell whether he is really at peace? We are not at war with the Bolsheviks;—at least, war has never been declared. I wish you may never find yourself in their company, and I, personally, M. Bignami, would rather be at war with you than with these Bolsheviks, with whom there is no knowing where it begins and where it will end. How can you expect Roumania, who is never without the threat of a new attack, to undertake the construction of routes for transit traffic at a time when the rest of Europe has unfortunately something else to do than to assist in the defence of the frontier on the Dniester? If you all accompany us to the Dniester, well and good! But as long as you leave us to fend for ourselves, so long will I maintain that, if the attacks against us continue for another four centuries, Roumania during those four centuries will not build the necessary railways, because she will not be able to build them, and, furthermore, if this state of affairs continues for another four centuries, I cannot tell what will become of us. It is obvious that in these circumstances we can make no promises. I am far from wishing these conditions to continue in Roumania, and I trust that you believe me on my word. If I say this, it is not that in the midst of the Bolshevik menace I am looking for a loophole; I would much prefer to see that menace removed, in order that Roumania might be able to build railways both to her own advantage and to that of yourselves.

But there is not only Bolshevism. We do not know what may happen. Restrictions must apply not only to this war but to potential wars, and not only to them but also to cases of *force majeure*, such as Bolshevism or internal revolution. It is under-

stood that in a case of *force majeure*, a country must be excused from affording transit whilst it also goes without saying, since it is understood once and for all, that every country is only to place at the disposal of transit traffic those facilities which it has available, and cannot be forced to increase its means in order to facilitate transit. If, therefore, Roumania sees no advantage in improving her system of railways, if she has other fish to fry, no-one can oblige her to do it. It is for this reason that the Roumanian Delegation proposes to change the title of the article, and also to substitute for the idea of war as a ground for exception the words *on the grounds of force majeure*. It is unnecessary in any contract to state that the parties will be released from any obligation in case of *force majeure*, whether it be a question of private or of international law. I had proposed the words *through inadequacy of means*, which comes to the same thing. A statement to the effect that every country will afford what means it has at its disposal implies dependence upon the available capacity of its railways; for there can be no suggestion of forcing a State to injure its own interests in order to serve the interests of others.

This amendment, however, has not been brought under discussion; it was relegated to the records of the meeting,—for what reason I do not know. We shall end by reading the records rather than the Conventions. Well, that question is settled. As regards this article, not only must we not restrict the time-limit for this exception, but we must extend the provision to include every possible contingency which may be imagined as arising in the future from *force majeure*, just as is done in private and international law.

THE CHAIRMAN (speaking in French). — I would ask the Roumanian Delegation whether it wishes to press its amendment.

M. PERIETZEANO (Roumania; speaking in French). — A general principle in law is that a situation of *force majeure* arising in a country exempts that country from affording transit. We are only envisaging one case out of a thousand scattered through the Convention. I do not see any objection. We might easily add two or three others, such as revolutions, for instance.

THE CHAIRMAN (speaking in French). — Then you withdraw your amendment?

M. PERIETZEANO (Roumania; speaking in French). — I have no objection.

THE CHAIRMAN (speaking in French). — The Roumanian Delegation consents to withdraw its amendment.

M. SIDZIKAUSKAS (Lithuania; speaking in French). — As soon as the question of devastated territory arose, I thought it my duty to submit a few observations on the subject, with special reference to my own country. The burdens of the war have weighed too heavily upon the country which I have the honour to represent, for its special position not to deserve consideration. Not only was Lithuania, from the first days of the world war, the arena of fierce struggles, with the great armies both of victors and of vanquished using her territory as a highway for their manœuvres; not only was she obliged to bear the burden of an onerous and protracted military occupation; but, added to all this, Lithuania since the Armistice has suffered, at least towards her Eastern frontier, terrible devastation at the hands of the armed hordes of Soviet Russia, and, I feel constrained to add, of Polish regulars and insurgents.

Situated as she is between Germany and Russia on the one hand, and between the Baltic Sea and Poland on the other, Lithuania forms part of the highway linking up Eastern and Western Europe, and it is owing to this geographical position that she is predestined to play a very special rôle as far as transit is concerned. No less than five international railways cross her territory. It is on this account that the Lithuanian Delegation would like to see a statement in the Final Protocol to the effect that, subject to the conditions provided for in Article 13, she is at liberty to plead lawfully the grave economic situation arising out of the acts of devastation perpetrated on her soil, and due to enemy aggression subsequent to 1918.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Let there be no misunderstanding. I suppose that we are still engaged in a discussion of the Polish amendment. Possibly the Polish Delegate supposed the attitude of the British Delegate towards his amendment to be a trifle more favourable than I fear it really is. After a very close study of the amendments to the Convention, and in particular of the article which, on the motion of the Roumanian Delegation, we have agreed to insert in the Final Protocol, the British Delegation was satisfied that the contingencies which the Polish Delegation has in mind—namely, the impossibility of providing adequate transit in a devastated country—are sufficiently provided for by the terms of this provision. If I may say so, we dislike Article 13, because on principle we dislike exceptions. I am not proposing to alter the article. I understand perfectly that it reproduces a provision of the Covenant, but we are inexorably opposed to extending its scope.

M. WINIARSKI (Poland; speaking in French). — There has indeed been some slight misunderstanding. I agree with the British Delegate that everything has been done to provide for cases where the terms of the Transit Convention are impossible of execution, but we are nevertheless bound in some sort by the Covenant, which provides for certain exceptions in favour of the countries devastated during the war of 1914-1918. For Poland, the war did not end in 1918, but in 1920, and we should very much like the Conference to include a statement to this effect in the Final Protocol. However, the Polish Delegation will not press the point further, and should the Conference decide that the Final Protocol is not the place for such a declaration, we should be content to see it stated in the records of the meeting that the Polish Delegation proposes, should need arise, to appeal to the Council of the League of Nations to take these circumstances into consideration in connection with exceptions to the terms of this article.

THE CHAIRMAN (speaking in French). — I do not suppose the Conference will raise any objection to the last proposal made by M. Winiarski. The Polish Delegate wishes mention to be made in the records of the meeting of the desire expressed by his Government in the proposed amendment.

Does the British Delegate raise any objection?

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation consents.

THE CHAIRMAN (speaking in French). — Then the amendment is withdrawn, and this declaration will appear in the records of the meeting.

M. TSANG-OU (China; speaking in French). — I wish to give the reasons which have caused the Chinese Delegation to ask for the exclusion from the scope of the Transit Convention, at any rate temporarily, of the Chinese Eastern Railway. This railway, which is 1,500 kilometres in length, passes from Russia across Chinese territory to a Russian port, and constitutes an important route for international transit traffic to Russia. It was, I think, in 1896, when the Russian and Chinese Governments signed an agreement making over the construction, administration and operation of this railway to a Russo-Chinese Bank. Since the Russian Revolution, the Chinese Government has taken the place of the Russian Government in assuming responsibility for the efficient working of the railway. In spite of the disorder prevailing in Russia at the present time, traffic is safeguarded, but the Chinese Government does not consider itself entitled to assume on behalf of Russia the obligations contained in the present Convention, until there is a Russian Government able to join with the Chinese Government in ratifying the Convention. All that the Chinese Government asks is that traffic over this railway should be excluded temporarily from the scope of the Convention, and that the regulations to which international traffic over the railway is at present subject may be maintained in force until a stable Russian Government is in being. I would ask to be allowed to plead the provisions of Article 13 in order to insert a passage of this kind in the Final Protocol.



THE CHAIRMAN (speaking in French). — The following is the text submitted by the Chinese Delegate :

The Chinese Delegation requests that transit on the Chinese Eastern Railway be temporarily excluded from the Convention, until such time as there is a stable Russian Government with which China may come to an agreement in virtue of the Treaty of Concession for this railway.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I rise as Chairman of the Sub-Committee which after a very long discussion arrived, as we thought, at an agreement with regard to the relation of this Convention to previous conventions, an agreement which would appear to cover completely the case cited by the Chinese Delegation. M. Tsang-Ou was himself a member of that Committee. Clearly, so long as Russia is in its present condition it is not a Contracting State, and, under the terms of Article 10 in its present form, a convention concluded with a non-contracting State is not abrogated. The Contracting State merely undertakes to endeavour, as opportunity occurs, to bring conventions of this kind into accord with the spirit of our Transit Convention. There is clearly a desire to look forward to the time when there will be in Russia a responsible Government with which China can negotiate. I hope that after this explanation the Chinese Delegate will not insist upon a special reservation which would revive the whole question of Article 10.

M. BIGNAMI (Italy; speaking in French). — For the same reasons as those which I explained in regard to the amendment presented by the Indian Delegation, I would beg my esteemed colleague, M. Tsang-Ou, not to press his proposal any further. Otherwise, we should be introducing an exception which does not appear to me justified, and I therefore second the observations made by Sir Hubert Llewellyn Smith on the subject.

M. TSANG-OU (China). — I do not in any way oppose the views put forward by my British and Italian colleagues. I did not ask that the Chinese Eastern Railway should be completely excluded; I simply stated that, as long as a convention exists between China and Russia, China has not the right to take the sole responsibility of bringing that Convention into accord with fresh provisions. In order to do this, China must await the setting up of a stable Government in Russia, but that does not mean that China will not fall in with the terms of the Convention. The obstacle to which I referred is a theoretical one; in practice China will do all she can to harmonise the terms of the two Conventions. In any case, if the Conference is unwilling to introduce a specific mention of this kind into the Protocol, I will ask for my statement to appear in the records.

THE CHAIRMAN (speaking in French). — It will, of course, appear there.

M. MATSUDA (Japan; speaking in French). — One word only. I am in agreement with the view taken by the British Delegate on this question. As I understand it, my Chinese colleague meant to convey by his statement that China would like to apply the terms of the Convention with the consent of Russia, having in view the present very obscure situation in that country.

THE CHAIRMAN (speaking in French). — Does anyone else wish to speak on Article 13?

I will now put it to the vote.

*Article 13 was adopted.*

## DISCUSSION OF ARTICLE 14

THE CHAIRMAN (speaking in French). — We will now pass to Article 14.

The French Delegation proposes a different text for this article, and also a new article, to be called 14 (a). These will read as follows :

### ARTICLE 14

As regards the High Contracting Parties which were signatories to the Treaties of Peace concluded with Germany on June 28th, 1919, with Austria on September 10th, 1919, with Bulgaria on November 27th, 1919, and with Hungary on June 4th, 1920, the present Convention shall in no way prejudice their rights and obligations arising from the above-mentioned Treaties.

### ARTICLE 14 (a)

The present Convention shall be considered as the General Convention regarding the international régime of transit referred to in Article 279 of the Treaty of Peace with Germany concluded on June 28th, 1919; Article 331 of the Treaty of Peace with Austria concluded on September 10th, 1919; Article 246 of the Treaty of Peace with Bulgaria, concluded on November 27th, 1919, and Article 314 of the Treaty of Peace with Hungary concluded on June 4th, 1920; of Article 17 of the Treaty concluded between the Principal Allied and Associated Powers and Poland on June 28th, 1919; Article 19 of the Treaty concluded between the Principal Allied and Associated Powers and Czecho-Slovakia on September 10th, 1919; Article 15 of the Treaty concluded between the Principal Allied and Associated Powers of the Serb-Croat-Slovene State on September 10th, 1919, and Article 15 of the Treaty concluded between the Principal Allied and Associated Powers and Roumania on September 9th, 1919.

M. SIBILLE (France; speaking in French). — None of us has received a mandate to revise the Treaties of Peace which put an end to the late war. We should therefore all approve the principle laid down in Article 14 in the following terms :

The present Convention does not prejudice the application of the Treaties of Versailles, Saint-Germain, Neuilly, etc., between the Powers signatory to those Treaties.

But the text proposed to us appears to me open to criticism. We must not merely refer to a few treaties and add the word *etc.* We must enumerate all the treaties which the Convention we are drawing up does not prejudice. Moreover, the text of the article itself is somewhat lacking in precision, and in my opinion it would be preferable to use the following text :

The present Convention shall in no way prejudice the provisions of the Treaties of Peace concluded with Germany, Austria... nor the rights and obligations of the High Contracting Parties, in so far as they are signatories to the above-mentioned Treaties.

Allow me to recall the terms of Article 379 of the Treaty of Versailles. This article reads as follows :

Without prejudice to the special obligations imposed on her by the present Treaty for the benefit of the Allied and Associated Powers, Germany undertakes to adhere to any General Conventions regarding the international régime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers with the approval of the League of Nations, within five years of the coming into force of the present Treaty.

Thus Germany must accede to the Convention which we are preparing. It must be fully understood that this accession shall in no way prejudice the provisions of the Treaty of Versailles. It must be fully understood that this accession will leave untouched the obligations imposed on Germany, without reciprocity, by the Treaty of Peace. It must be fully understood that this accession will leave untouched certain obligations which must remain in force for these five years—in particular, Germany's obligation to convey in transit through her territory all goods and persons proceeding from and destined for the territories of the Allied Powers. Further, the provision must be reserved by which Germany is obliged—and, I repeat, without reciprocity—

to grant national treatment to persons and goods passing through her territory. The slight reservations which I have made should, I think, be the subject of a provision in the Final Protocol.

I now ask the Conference to refer Article 14 to the Drafting Committee, in order that due satisfaction should be given to the brief remarks which I have just made, not only in the interest of France, but also in that of the Allied and Associated Powers which signed the Treaty of Versailles.

THE CHAIRMAN (speaking in French). — If M. Sibille sees no objection, we might add the words *of Peace* after the words *the application of the Treaties*, and omit the word *etc.*

M. SIBILLE (France; speaking in French). — Let us leave *etc.* and refer the whole to the Drafting Committee, which will place before us a final text to which we shall doubtless all agree.

THE CHAIRMAN (speaking in French). — I now put to the vote the motion to refer Article 14 to the Drafting Committee.

*The motion was carried.*

THE CHAIRMAN (speaking in French). — It seems to me that Article 14 (a), which the French Delegation proposes to insert, could also be referred to the Drafting Committee.

M. SIBILLE (France; speaking in French). — I was about to make precisely the same remark regarding Article 14 (a).

Sir Hubert LLEWELLYN SMITH. — In my opinion it would be an excellent idea to refer this article to the Drafting Committee, especially as it raises questions which are little more than questions of drafting.

THE CHAIRMAN (speaking in French). — Is there any objection to referring Article 14 (a) to the Drafting Committee?

*Article 14 (a) was referred to the Drafting Committee.*

M. VALLOTTON (Switzerland; speaking in French). — The Drafting Committee might also consider whether this article should appear, not in the Convention, but in a final protocol. This is in the interest of the Convention itself. I am voicing this opinion now because I have heard it expressed in various quarters.

Sir Hubert LLEWELLYN SMITH. — I would suggest that it should be for the Drafting Committee to consider the proper place for this provision.

M. SIBILLE (France; speaking in French). — We all agree therefore that the Drafting Committee shall submit to us proposals, which we shall probably accept.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Since Article 14 (a) has been referred to the Drafting Committee, I would ask the French Delegation to be so good as to agree to a slight alteration in this article. The article begins thus :

The present Convention shall be considered as the General Convention regarding the international régime of transit...

While reserving the point of view of our Government, we ask the French Delegation to agree that the words *superseding the provisions relating to the international régime* shall be substituted for *regarding the international régime*. The idea is the same, but this text would seem to be clearer.

THE CHAIRMAN (speaking in French). — I propose that the question be referred to the Drafting Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In these circumstances we ask that a member of our Delegation should sit on the Drafting Committee.

THE CHAIRMAN (speaking in French). — Certainly.

M. POLITIS (Greece; speaking in French). — The list of Treaties of Peace in Article 14 (a) does not include the Treaty of Sèvres. The attention of the Drafting Committee should be drawn to this point.

#### REPORT OF SUB-COMMITTEE ON ARTICLE 15

THE CHAIRMAN (speaking in French). — We now come to Article 15. The Sub-Committee proposes a new text as follows :

In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation of application of the present Convention shall be brought before the Permanent Court of International Justice, unless, by the application of a special Convention or a general arbitration clause, a settlement of the dispute be effected, either by arbitration or in any other manner.

The procedure shall be in the form of a request by the Government which intends to submit the dispute to the Court.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning Communications and Transit.

In urgent cases, a provisional opinion may be given recommending any temporary measures, destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

I call upon M. Van Eysinga, of the Netherlands Delegation, Rapporteur of the Sub-Committee which has prepared this text.

M. VANEYSINGA (Netherlands, Rapporteur; speaking in French). — The Drafting of Article 15 was entrusted by you the day before yesterday to the Sub-Committee which had drawn up the new text of Articles 3, 4 and 5 of the Scheme of Organisation. This Sub-Committee has held several meetings. Conversations followed, and, although I cannot say that agreement was reached without difficulty, I have the satisfaction to observe that a general agreement has been arrived at regarding the text which has just been submitted to you.

In respect of disputes arising from the Convention, Article 15, in the form in which it exists in the *Green Book*, lays down that, in default of a direct agreement between the Parties, recourse may be had either to the Court of International Justice of the League of Nations, or to arbitration, or to any other method of settling such difficulties. As regards this jurisdiction, there was hardly any disagreement among the Members of the Sub-Committee. The difficulties arose in respect of what may be called the method of conciliation preceding the appeal to the tribunal. I shall deal in turn with each of the four paragraphs which form the new text submitted to you by the Committee.

The first paragraph reproduces the details of the judicial procedure in the form in which it appears in the *Green Book*. I will call the attention of the assembly to two points. As regards arbitration, the Sub-Committee unanimously recognised that the article provides for arbitration *ad hoc* founded on an *ad hoc* compromise, as well as for such arbitration as may be laid down in a general clause. The Sub-Committee also recognised that the application of the present Convention, in the form in which

it appears in the *Green Book*, only makes provision for disputes in which one of the Parties claims that the other is applying the Convention in a manner which is not in conformity with the Convention itself, and that it does not provide for cases in which one of the Parties claims that it does not agree with the application of a Convention by other Parties, even though this application is in conformity with the text of the Convention. On this point I think that we shall all agree, as the Convention has done.

The second paragraph is new. It seems to me that, in the first line, the words *before the Court* could be omitted, and added at the end of the paragraph. This paragraph was the result of a request addressed to the Sub-Committee by one of the delegations, with regard to the connection between our text and the Code of Procedure laid down in the Statute of the Court of International Justice of the League. Article 40 of the Statute of the Court of Justice lays down that cases shall be brought before the Court either on notification of an agreement to do so or by a request addressed to the Registrar of the Court. The question arose whether it was necessary or desirable to define the methods of instituting the procedure in the Convention itself. In this matter the Director of the Legal Section of the League of Nations gave us the benefit of his views. In his opinion, which was shared by several delegations, it would be desirable to introduce the methods of instituting the procedure into the Convention. For this reason the Sub-Committee proposes that, in accordance with our views, it should be laid down that the method of recourse should take the form of a request.

Several difficulties arose with regard to the third paragraph, which deals with the procedure to be followed before appealing to the tribunal. On this point the Conference was particularly concerned with an amendment proposed by the French Delegation. This Delegation proposed another text, which I shall not read, as it is known to all of you. I shall confine myself to pointing out the principal objections which the French Delegation raised to the text of the *Green Book*. The French amendment reads : *Before taking any legal action, the High Contracting Parties undertake to submit the disputes for an advisory opinion to the Council of the League of Nations, which will consult, so far as it may consider necessary, any technical organisation constituted for that purpose.*

In their verbal statement of the reasons for this amendment, the French Delegation first of all called attention to the fact that Article 37 of the Statute of the League of Nations states that when any Treaty or Convention which is in force recommends reference to jurisdiction to be established by the League of Nations, the Court shall constitute such jurisdiction. The French Delegation also emphasised the fact that the text of Article 15 of the *Green Book* seemed to include, even after an appeal to a Tribunal, such methods of conciliation as might take place before the Advisory and Technical Committee. This Delegation affirms that, in the codes of procedure of certain States, conciliation has always formed part of an appeal to a Tribunal, whereas, according to Article 37 of the Geneva Code, the League of Nations only desires an appeal to the Court without previous conciliation.

In the second place, the French Delegation asserts that, in case of any dispute, if an appeal is made to the co-operation of a body which was simply formed as a result of a resolution of the Assembly, this body, whose life would only be ephemeral, might in some way be rendered permanent in the text of a Convention.

In the third place, the French Delegation stated that, as the Covenant of the League of Nations provides for active co-operation on the part of the Council as regards the settlement of disputes, this duty of the Council ought to be notified in our text also. For this reason the French Delegation proposed to nominate the Council itself, which would, in so far as it might think necessary, consult any technical body formed for this purpose. The Council would not necessarily give a decision in respect of all disputes. It might refer to a technical organisation formed for this purpose. A certain number of delegations raised serious objections to this proposal. It was said first of all that it would perhaps be undesirable for our Conference not to follow a procedure already adopted by the Assembly in its Resolutions of December 9th last, on the occasion of a certain number of disputes similar to those with which we are now dealing. At that time the Assembly submitted for settlement, first of all to the Advisory Committee, and, in the second instance, to the Court of Justice, questions similar to those with which we are now dealing.

In the second place, serious objections were raised to the suggestion that the Council, which is primarily a political body occupied only with questions of the highest importance, should be empowered to settle all difficulties which may arise in our organisation. However, the delegations which raised these objections tried as far as possible to satisfy the French Delegation, which strongly urged that this task should be entrusted to the Council. The spirit of conciliation which guided our work led us to adopt a text which is a compromise, like all that we are doing here; I will venture to read this text to you, pointing out the various concessions which have been made.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning communications and transit.

I venture first of all to call attention to the words *before taking any legal action*. They were inserted to satisfy the first observation of the French Delegation. It is quite understood that the co-operation of the Committee which we are to form does not constitute part of the appeal to the Tribunal. We have been careful to avoid the difficulty which would arise if a mandate were granted to an organisation which might afterwards disappear, by saying that differences would be submitted to *the body which would be instituted by the League of Nations*. Obviously it is the Committee to be elected by our Conference in a few days which is referred to in this paragraph, but the Geneva Assembly may at any time change the name or organisation of the Committee thus provided for.

As regards the desire of the French Delegation to entrust all disputes to the Council, the proposed text reserves all the rights and powers not only of the Council but also of the Assembly in such matters. Obviously we have no competence to modify in any way the articles of the Covenant, and we have therefore reserved all the rights and powers of the Council and Assembly as regards the settlement of disputes. I am putting the matter as clearly as possible when I say that, in the opinion of the Sub-Committee, the reservation in respect of the rights and powers of the Council and Assembly requires that, if one of the parties informs the Council of a dispute, and maintains that this dispute comes within the scope of Article 15 of the Covenant, the Council will thereby be called upon to give its decision regarding this dispute. Further, it is understood that the rights and powers of the Council referred to in the article include, amongst others, the right of control on the part of the Council and Assembly with regard to technical organisations. In virtue of this right, no opinion of the organisation may be communicated to the parties, unless subject to the right of control of the Council, which, subject in its turn to the right of the Assembly, may defer this communication, if it considers, for example, that the dispute comes within the scope of Article 15 of the Covenant. I think that what I have said is in complete agreement with the Resolution of the Assembly regarding the relations between the technical organisations on one hand and the Assembly and Council on the other.

As regards the last paragraph I can be very brief. We have been apprised of a French and a Roumanian amendment involving the omission of paragraph 2 of the corresponding Article of the *Green Book*. The Brazilian Delegation, on the other hand, proposed to modify it somewhat, and I think we might all adopt the paragraph in the form in which you see it now, with the words *in urgent cases, a provisional opinion*—that, of course, of the Committee which is called upon to take a decision in the matter—*may be given recommending any temporary measures destined more particularly to restore the facilities of freedom of transit which may have existed before the execution of the act or deed which gave rise to the dispute*. This was the result of the compromise at which the Sub-Committee unanimously arrived.

THE CHAIRMAN (speaking in French). — The applause of the Conference expresses, better than I can do so, its thanks to M. van Eysinga for his excellent statement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I merely wish to ask whose is the provisional opinion referred to,—that of the Advisory Committee, that of the Council of the League of Nations, or that of the Court of Justice? I remember that when we drafted this article in Paris it was said that it would always be the Advisory and Technical Committee which should give opinions. In order to avoid misunderstanding, therefore, it would be desirable to state which organisation shall give a provisional opinion.

M. van EYSINGA (Netherlands; speaking in French). — My reply to the question put by the Delegate of the Serb-Croat-Slovene State is very brief. Paragraph 4 refers to a provisional opinion of the organisation named in paragraph 3. We might therefore say :

In urgent cases a preliminary opinion may be given recommending any temporary measures destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

This would be perfectly clear.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If it indeed refers to the Technical and Advisory Committee, I will no longer press the point, but I wish to have this information in order to avoid difficulties.

THE CHAIRMAN (speaking in French). — It is understood that nothing will be added.

M. POLITIS (Greece; speaking in French). — We seem to be ignoring the existence of the Advisory and Technical Committee when we speak of *the body which would be instituted*; the conditional tense is even used. I therefore agree with M. Avramovitch that this Committee should be named, since it exists, since we have drawn up its regulations here, and since we have instituted it ourselves. But M. van Eysinga has just said that this organisation might one day disappear; since it is intended to make it disappear before it is brought into existence, we might therefore say *to the Technical and Advisory Committee or to any other body which may be substituted for it in the future*. But I should like this *Advisory and Technical Committee* to appear in the text of this article.

M. van EYSINGA (Netherlands, Rapporteur; speaking in French). — I endeavoured just now to emphasise as far as possible the fact that there was no doubt, but that, on the contrary, there was perfect agreement within the Committee on this point. It is, of course, the Committee which we are going to appoint which is referred to in the third paragraph of this text. In order to satisfy the wishes of the French Delegation, we had at the same time—and I think it was quite reasonable—to consider the possibility, which will perhaps never be realised,—one never knows—that this Committee may be replaced by another bearing another name. It was in order to meet this possibility that we spoke of an organisation which would be instituted by the League of Nations. But, in so far as our Advisory Committee exists, it is to this Committee that paragraph 3 refers. There is no possible doubt on this point.

M. POLITIS (Greece; speaking in French). — Two words should be added.

THE CHAIRMAN (speaking in French). — I will put to the vote the Sub-Committee's new text of Article 15, amended as the Rapporteur has indicated.

*Article 15 was adopted, 29 voting for.*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I do not wish to re-open the discussion, but I think that the doubt which has arisen might be dispelled if we made paragraph 4 a continuation of paragraph 3. It would then be seen that it is a continuation of the same idea.

THE CHAIRMAN (speaking in French). — This observation is very just, and I think that the Rapporteur will agree.

M. van EYSINGA (Netherlands, Rapporteur; speaking in French). — I entirely agree.

THE CHAIRMAN (speaking in French). — You see the excellence of the method of work which we have adopted; through having appointed a Sub-Committee which has considered all the amendments before a word has been said on this Committee regarding any Article, we have arrived at agreement, and perfect agreement.

We have now only to discuss Article 16, as Articles 17 *et seq.* are Formal Articles, and may at once be referred to the Drafting Committee.

*The meeting adjourned at 1.15 p.m.*

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# TWELFTH MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 23rd, 1921, at 5.45 p.m.)

DISCUSSION OF ARTICLES 16 TO 23 — REFERENCE TO SUB-COMMITTEE OF THE BRAZILIAN PROPOSAL WITH REGARD TO ARTICLE 2 — CHAIRMANSHIP OF M. HANOTAUX, PRESIDENT

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

## DISCUSSION OF ARTICLE 16

THE CHAIRMAN (speaking in French). — We now come to Article 16 : *Consequences of non-execution.*

Several amendments to this Article have been submitted, by the Brazilian, British, French and Roumanian Delegations. All ask for the Article to be omitted.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I will not keep the Committee more than a moment. The British Delegation moves the omission of this Article because it is clear that after the changes which have been made in the Articles dealing with the settlement of disputes, it cannot remain as it stands, and, moreover, appears to them to be superfluous. If, however, anyone in the Committee holds a different opinion, the British Delegation would be willing to bring forward a motion for the Article to be referred to the same Committee that has arrived at such a happy solution of the whole question of the form of procedure for settling disputes, in order to see whether there is really any necessity for including in the Convention an article prescribing the procedure to be taken in case of non-execution.

M. Georges BONNET (France; speaking in French). — We agree with the British Delegation that the article should be omitted.

M. CARACOSTEA (Roumania; speaking in French). — We also support the proposal of the British Delegation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — We also.

THE CHAIRMAN (speaking in French). — Does anyone oppose the omission of this Article?

*Article 16 was omitted.*

## DISCUSSION OF ARTICLES 17 TO 22

THE CHAIRMAN (speaking in French). — We will now discuss the Formal Articles. I think they should be referred to the Drafting Committee. However, as amendments to them have been submitted, the Conference need not refer them *en bloc*, and can deal with the subject-matter of the amendments. There is no need to discuss Articles 17 and 18, *Ratification* and *Notification*, which are connected with the signature.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is willing to second the proposal to refer these articles to the Drafting Committee, but on condition that the Drafting Committee shall allow the authors of the amendments submitted to the Conference to defend them before the Drafting Committee.

THE CHAIRMAN (speaking in French). — This shall certainly be done.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There will probably be hardly any discussion on these Articles, and for this reason it seems to me preferable to consider them here. The Conference will then decide whether they should be referred to the Drafting Committee or not, because we cannot tell beforehand whether we shall only deal with questions of drafting.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We might all agree to refer Articles 17, 18, 19 and 20 to the Drafting Committee, but with regard to Articles 21 and 22, I am inclined to agree with the Serb-Croat-Slovene Delegation. We ought to give some indication to the Drafting Committee, particularly on the subject of Article 21.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I accept the proposal of the British Delegate, but I ask that in Article 20 the words *eighteen months after such ratification* shall be substituted for *July 1st, 1920*. I think that the period prescribed for the application is too short.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I agree with the Serbian Delegate that the question of the period to be allowed under Article 20 for the various countries to bring their internal legislation into accord with the Convention is not a drafting question. Nevertheless, I venture to suggest that we cannot satisfactorily amend this Article now, until we have before us the proposals of the Drafting Committee as regards the form which the instruments should take. I can imagine a text which would not necessitate the naming of any period, and I would, therefore, ask the Serbian Delegate to allow this Article to be referred to the Drafting Committee in its present form.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I agree with the remarks of the British Delegate.

THE CHAIRMAN (speaking in French). — If no one else wishes to speak, Articles 17 to 20 inclusive will be referred to the Drafting Committee.

#### DISCUSSION OF ARTICLE 21

We now come to Article 21. The Polish Delegation has submitted an amendment to this Article, but has just agreed that it shall be referred to the Drafting Committee. Does anyone object?

The proposal is carried.

We now come to an amendment by the Italian Delegation.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation proposes to reduce the period from ten years to five. We have before us an international convention, established for the first time, and treating of hard questions, the application of which may be very difficult. We must not forget that the world is still in a state of unrest, and that very complicated conditions prevail in certain countries, such as Russia. For this reason we propose to reduce the minimum period for the denunciation of the Convention to five years.

M. Georges BONNET (France; speaking in French). — The French Delegation adds its support to the Italian Delegation in proposing that the Convention should

be concluded for a period of five years. It also asks that the Convention should be renewed by tacit consent;—in fact, the French Delegation considers that, in view of the novel character of the Convention on Transit, it might be dangerous to enter upon an engagement for too long a period. To quote precedents, I will remind you that the postal and telegraphic conventions are subject to revision every five years, and that in view of the exceptional circumstances which we are experiencing, the last Madrid Conference was only concluded for four years, and the next meeting will be held in 1924. But this is a question of international agreements, concluded many years ago, and does not, as is the case to-day, refer to matters which are almost entirely new. The French Delegation, therefore, like the Italian Delegation, considers that a period of five years is sufficient. Moreover, it is of opinion that it would be advisable to fix in some other way the time at which the denunciation should be made; it therefore asks you to decide that this denunciation should take place six months before the expiration of one of the periods of five years. This proposal is intermediary between the *Green Book* and the Italian proposal.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation supports the proposal of the French Delegation, which is similar to that of the Italian Delegation; but I should like to call the Committee's attention to the fact that, as the Article is at present drafted, the date from which the period of five years begins is the date on which the Convention comes into force, and this date is fixed by an earlier Article as that on which at least three Powers have ratified the Convention. It appears to the British Delegation that the period of five years ought to begin from the date of ratification by the Power which desires to exercise its right of denunciation. I am not suggesting any particular form of words, because this article should be sent to the Drafting Committee. If the French Delegation agrees, we should like to see inserted something to the following effect: *five years from the date of ratification by the State desiring the denunciation.*

THE CHAIRMAN (speaking in French). — The Drafting Committee will take note of this recommendation.

M. Georges BONNET (France; speaking in French). — The French Delegation entirely agrees with the British Delegation.

M. REINHARDT (Austria; speaking in French). — I think we all agree that a period should be fixed for denunciation, and also that the Convention should last for successive periods of five years; but it seems to me necessary to add that where no denunciation has been made, the Convention should remain in force and should continue to be valid; I cannot find any clause which covers this case.

THE CHAIRMAN (speaking in French). — This is another point which will be considered by the Drafting Committee.

## DISCUSSION OF ARTICLE 22

We now pass to Article 22, entitled *Revision*.

The British and French Delegations propose that this Article be omitted. We have an amendment by the Serbian Delegation which proposes to draft Article 22 as follows :

The Advisory and Technical Committee shall present to each General Communications and Transit Conference a report on the working of this Convention, and the Conference shall consider, on the request of a Member supported by four other Members, the desirability of placing on the Agenda of the Conference the question of the revision or modification of the said Convention, in accordance with the conditions laid down by Articles 3 and 7 of the Scheme of Organisation.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As the proposed omission of this Article goes further than the amendment, I should like the British and French Delegations to give us their reasons.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It must be obvious to anyone reading this Article that it is a relic of the earlier draft which presupposed a General Conference on Transit and Communications, holding regular meetings, and therefore it is quite impossible for this Article to be retained after the changes which we have made in the Scheme of Organisation. I have considered whether there is anything that can be put in its place, but it appears to me that, as there will be an Advisory and Technical Committee with the duty of watching what is taking place, drawing up from time to time such reports as are necessary, and submitting them to the Council or the Assembly, and making suggestions for future Conferences, it is quite unnecessary for a period to be fixed here within which it should make these reports. It will be its duty to make such reports as and when circumstances require. This is not a matter which in any way regulates the obligations of the States; it is simply a definition of the duties of the Advisory and Technical Committee, and it surely finds no place in the Convention. If anywhere, it ought to be inserted in the Scheme of Organisation. But the British Delegation moves that it be omitted altogether.

THE CHAIRMAN (speaking in French). — Does this explanation satisfy M. Avramovitch?

M AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Not entirely. We are not dealing here solely with the Advisory Committee, but with the question of revision, and I think that we should apply to this convention the rules which apply to all Conventions,—that is to say that it should be possible to revise and modify it from time to time. There was another idea in Article 22; it was thought that the Advisory Committee would prepare the work and would communicate it to the General Conference, in order that the latter might be informed regarding the application of the Convention. For this reason we thought that this Article would have to be slightly modified, that it should be given a more general and democratic character, in order that anyone might ask the Advisory and Technical Committee to place such and such a subject on the Agenda. It is true, as the British Delegate has said, that after the adoption of Articles 3 and 7 of the Scheme of Organisation, the latter has lost a little of its original value, but for my part I greatly regret that, in the scheme for this Conference, some departure was made from the principles adopted in the General Scheme of Organisation for the Conference. We have changed the contents of Article 3, but in Article 7 we still retain the provision that the unanimous consent of the Members of the Conference is necessary in order to place any question on the Agenda. Moreover, we say that if, during a meeting, the Conference decided by a two-thirds majority only that a question should be considered, that question would not be considered then, but at the next meeting. I think this is going too far. The Serb-Croat-Slovene Delegation has always considered that the same rules should be applied here as were observed at Geneva. As this Article has only been adopted in first reading, I think the Conference may give further reflection to this matter, and may perhaps take a fresh decision in conformity with the spirit of Geneva, which we have invoked more than once.

For this reason I consider that we must not omit Article 22, but that obviously its text must be slightly modified, in order to conform with Articles 3 and 7 of the Scheme of Organisation.

THE CHAIRMAN (speaking in French). — M. Avramovitch will, I think, be satisfied if the Drafting Committee is informed of his remarks.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I beg to thank you, Mr. Chairman. In my view this Article should be in conformity with the scheme adopted at Geneva; I see no reason why our Scheme of Organisation should differ from that of Geneva. When the scheme was adopted in first reading, at the

time of the discussion of Article 7, I was on a Sub-Committee, and the Serbian Delegate was also absent; we could not, therefore, state our wishes at the time. For this reason I venture to express the hope that when the Scheme of Organisation is read a second time, my remarks will be taken into account.

THE CHAIRMAN (speaking in French). — The Officers of the Conference have taken full note of the desire expressed by Mr. Avramovitch.

M. Georges BONNET (France; speaking in French). — The French Delegation desires to state the reason for which it proposed the omission of Article 22,—a proposal which was also in accordance with the wishes of the British Delegate. The reason was that in Article 21 the French Delegation asked that the present Convention should be concluded for a period of five years and should be renewable by tacit consent for successive periods of five years. This being so, it seemed unnecessary to provide for a revision of this Convention, as this revision would in a way become automatic. For this reason we simply asked that Article 22 should be omitted.

THE CHAIRMAN (speaking in French). — Does no-one else wish to speak on the subject of the omission of Article 22?

If no objection is raised, we may consider that the meeting is in favour of the omission of this Article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think that it should not be omitted, but simply referred to the Drafting Committee. In any case, I must ask the Chairman to put the question to the vote.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Is there not a certain amount of misunderstanding? We all agree with the observations of the Serbian Delegate as to the advisability of referring this matter to the Drafting Committee,—not, however, in connection with this Convention, but for insertion in the Scheme of Organisation. I had understood we were all agreed to omit this Article here.

THE CHAIRMAN (speaking in French). — Is it understood then that Article 22 is to be omitted?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The French Delegate speaks of an extension of the Convention by tacit consent, but I am speaking of the work of revision, and it seems to me desirable to provide for this, and also for the Conference to consider the outcome of the application of the Conventions. In a few years information will be necessary, which the Advisory and Technical Committee will thus have been in a position to obtain. I should therefore like this Article to be not omitted, but simply referred to the Drafting Committee. If after this everyone agrees that it should be omitted, it will be omitted.

THE CHAIRMAN (speaking in French). — In view of the doubts expressed by M. Avramovitch, the Officers of the Conference have no objection to the referring of this Article to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — I merely wish to second the remarks of the Serbian Delegate, who is right in saying that it would be regrettable to eliminate completely the idea expressed in this Article.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation also seconds the proposal of MM. Avramovitch and Vallotton.

THE CHAIRMAN (speaking in French). — Article 22 is therefore referred to the Drafting Committee, together with Articles 17 to 20.

### DISCUSSION OF ARTICLE 23

We now pass to Article 23, to which the Polish Delegation has proposed an amendment. The Polish Delegation proposes to add to this Article a second paragraph as follows :

Each of the High Contracting Parties, however, may, at the time of the signature of the present Convention, indicate which of the two texts it proposes to invoke in the event of any dispute or discussion.

I call upon M. Winiarski, of the Polish Delegation.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is prepared to give any necessary explanation with regard to this proposal, which it considers to be very important from the point of view of international relations, but which it thinks is also an exceedingly difficult question. If the Conference is of opinion that it would be better to refer this Article, with the Polish proposal, to the Drafting Committee, in order to enable the latter to call upon the Polish Delegate to furnish explanations, the Polish Delegation will be prepared to do so. Otherwise I am quite ready, as I have said, to give all the necessary information here.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Would it not be possible to come to a decision now on this amendment? It seems to me that we are overloading the Drafting Committee with matters which are not really drafting matters at all. There is a clear principle of law as to the interpretation of treaties in two languages, and I am of opinion that it would be most undesirable to depart from that rule in drawing up the Conventions which we are now preparing.

THE CHAIRMAN (speaking in French). — Would the Polish Delegate have any objection if the question were settled this evening?

M. WINIARSKI (Poland; speaking in French). — No; but in that case I should like to speak.

THE CHAIRMAN (speaking in French). — I call upon M. Winiarski, the Delegate of Poland.

M. WINIARSKI (Poland; speaking in French). — If the Polish Delegation has the courage or the boldness to deal with this question, which appears to have been already settled by the Covenant, and by the decisions of the League of Nations, it is because we know that this Conference will interpret our intentions with all the goodwill that they deserve. The Polish Delegation is sincerely desirous of doing what is good and useful, without harming anyone, and, in order to act with complete independence, it has not sounded any of those Delegations which it might consider to be particularly interested in this question. It is impossible to have in two languages two absolutely identical texts, because the peculiarities of each language do not allow any thought or idea to be expressed in exactly the same manner in both languages. Those who have had experience of the constitutional life of States which are not homogeneous from the point of view of nationality,—such as Austria, for example,—know very well that these States have always been led to choose one language and to consider it as official; in this language the authentic texts of the laws are published. Here we have two languages,—English and French. Already disputes have repeated by arisen owing to discrepancies between the two texts. Perhaps it would be advisable to avoid or to limit the number of cases in which these difficulties may arise in future.

How does the Polish Delegation think that its proposal would be applied? Each Delegation would indicate beforehand which text it proposed to cite in the event of a dispute. It is fully understood that this point of view in no way affects the recognised rights of the two languages. A dispute would be almost impossible between two

Contracting Parties who had adopted the same text. You know indeed that when you work on one text only, and not on two, the ideas which come to you are almost the same. Obviously, certain occasions will arise in which one of the two parties may cite the French text whilst the other bases its case on the English text. In fact, this is already constantly happening. In future the number of these cases in which disputing parties will quote two different texts would, to a certain extent, be mathematically limited, and in the same way the causes of dispute and of dissensions between parties would also be limited. There are examples in which, when a question of interpretation arises, the omission of a comma, the order and arrangement of the words, have sometimes been quoted in support of one claim or the other.

As regards arbitration, everybody knows that if a dispute arises between two States, it is easy to solve it by means of arbitration, and yet preference has been given to the introduction of arbitration clauses, or the conclusion of Arbitration Treaties, in order to a certain extent to bind the parties beforehand not to have recourse to war until all possible diplomatic means have been exhausted. I think that, from the psychological point of view, the same reasons which have reacted in favour of these arbitration clauses will also militate in favour of such an obligation, which in any case is quite optional. In my view, it would be well to offer to those States who so desire, the opportunity of indicating which text they propose to cite in case of dispute. The Polish Delegation is of opinion that it would be of the utmost importance to normal international life, with a view to limiting the number of disputes as far as possible, to offer the States the option of binding themselves in advance.

THE CHAIRMAN (speaking in French). — I would point out to the British Delegate that the Officers of the Conference consider the question too weighty to be settled by a vote. It is true that the Drafting Committee is already heavily burdened with work, but it might take over this small task as well. But I think it is most important that the jurists should be consulted.

Sir Hubert LLEWELLYN SMITH (Great Britain). — If that is the opinion of the Chairman, I will not oppose it.

THE CHAIRMAN (speaking in French). — It is understood then that Article 23 and the Polish Amendment are referred to the Drafting Committee.

#### **PROPOSAL OF THE BRAZILIAN DELEGATE WITH REGARD TO ARTICLE 2**

THE CHAIRMAN (speaking in French). — I call upon M. Demetrio Ribeiro, Delegate of Brazil, to speak on an addition to Article 2 which was proposed some time ago.

M. DEMETRIO RIBEIRO (Brazil; speaking in French). — I wish merely to recall the fact that some days ago (1) the Brazilian Delegation suggested that, if the moment were opportune to abolish preferential treatment as regards waterways, it was no less so as regards the abolition of preferential treatment for vehicles, as the essential aim of the Draft Convention on Freedom of Transit is to facilitate transport, and transport presupposes routes and vehicles. We are going to abolish preferential treatment as regards routes. Surely it is at this Conference that we shall also deal with the abolition of preferential treatment as regards vehicles; otherwise I cannot see when we can deal with this subject. When we say this we have no ulterior motive in view, and in this matter Brazil may claim to be one of the most liberal countries. But on this subject perhaps some explanation may be given by the legal experts who are sitting on this Conference, and by those States with great transport enterprises, who will have had greater experience on this subject than countries which, from the point of view of equipment, cannot as yet claim to be contractors for transport.

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(1) See p. 58.

When the Brazilian Delegation first gave notice of its proposal, the Chairman suggested that we should begin by ascertaining, by means of friendly conversations, the sentiments of some of the Delegations chiefly concerned. The Brazilian Delegation made every effort to do so, and thinks that it is not acting ashly or impouedly in coming before you to ask that the question which it has raised should be examined by a special Committee composed of qualified persons, in the necessary spirit of complete disinterestedness.

THE CHAIRMAN (speaking in French). — I thank the Brazilian Delegate for his communication; I am indeed of opinion that it would be desirable to submit this question to a Sub-Committee. This Sub-Committee might be composed of one member of each of the following Delegations : Belgium, Brazil, British Empire, Bulgaria, France, India, Italy, Japan, Norway, Paraguay, Persia and Uruguay.

Is there no objection?

*This was agreed.*

We shall therefore consider the Report of this Sub-Committee next week, and also that of the Sub-Committee appointed to consider the question of enclaved territory—that is to say, the amendments of the Indian Delegation and the French and Portuguese Delegations.

I regret to say that our work is not yet completely finished, and I shall have the pleasure of taking the Chair again next week. I will now close the meeting of the Transit Committee, and will yield the Chair to the President of the Conference.

#### M. GABRIEL HANOTAUX, PRESIDENT, IN THE CHAIR

THE PRESIDENT (speaking in French). — Before asking you to suspend the meeting for a few moments, I am sure that I am voicing your opinion—and your applause goes to prove this,—by thanking M. Loudon for having presided over your labours with so much diligence and activity, and in such a conciliatory spirit. These are the characteristics of his mind, and it is not surprising that he has thus contributed to the progress of your discussions, and to the successful completion of the Convention on Transit.

Having thanked the President, I will also express his sentiments by thanking the Committee...

M. LOUDON (Vice-President; speaking in French). — That was what I wished to say, Mr. President. As I observed just now, we have not completed our labours, but we have almost done so, and before separating for the Easter holiday, I should like to tell all these gentlemen how grateful I am to them for the manner in which they have facilitated my task, and indeed how agreeable they have rendered it, so that at heart I now regret exceedingly that we have almost arrived at the end of our labours. We have had to make great efforts to bring our work to a successful conclusion, and you have shown such a sympathetic spirit that, now that we have laid the foundations of the work of the Conference, I must express from this place my very high appreciation of all the Officers of the Conference. The President will excuse me for having spoken, and will allow me to thank you again for the manner in which you have helped me to accomplish my very light and agreeable task.

THE PRESIDENT (speaking in French). — M. Loudon is one of those very rare men who regret to be asked to take a rest. Do not be uneasy, my dear Chairman; we are going to tire you again!

Now that we have completed this stage, if I may use the phrase; we may look back with real satisfaction. Although it is only a short time since our work began, the Conference has been formed, it has completed its Scheme of Organisation, and it has drawn up the main preface to all the Conventions,—the Convention on Transit. In the Scheme of Organisation you have constituted the organisation by which



our Conventions will be applied in the future—that is to say, the Advisory and Technical Committee, according to the idea of the Geneva Assembly; further, you have established the first method for entering upon the settlement of disputes, and this means very considerable progress from the international point of view as regards questions of transport,—progress of which you yourselves are the founders. I think that it is most encouraging for you to be able to point to such important results. They are indeed incomplete; there still remain some questions of wording, some details to be considered by sub-committees. But the results already obtained lead us to hope that the difficulties to be encountered now in the meetings of the Conference will be met in the same spirit, and, in spite of the inadequacy of your President, with the same success.

*The meeting adjourned at 6.15 p.m.*

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# THIRTEENTH MEETING OF THE PLENARY COMMITTEE

(Monday, April 11th, 1921, at 5 p.m.)

REPORT OF SUB-COMMITTEE ON SPECIAL CASES IN CONNECTION WITH APPLICATION IN COLONIES OF CONVENTION ON FREEDOM OF TRANSIT — REPORT OF SUB-COMMITTEE DEALING WITH BRAZILIAN PROPOSAL — STATEMENT OF CHINESE DELEGATE ON ARTICLE 10 — PROPOSAL OF SWISS DELEGATE REGARDING DENUNCIATION

*The Meeting opened with M. Loudon, Vice-President of the Conference (1), in the Chair.*

## REPORT OF SUB-COMMITTEE ON CERTAIN SPECIAL CASES IN CONNECTION WITH APPLICATION IN COLONIES OF CONVENTION ON FREEDOM OF TRANSIT

THE CHAIRMAN. — We will now examine the report submitted by M. Bignami, Delegate of Italy, on behalf of the Sub-Committee appointed to examine certain special cases relating to the application of the Convention on Freedom of Transit in the Colonies (2). M. Bignami will now address the Conference.

M. BIGNAMI (Italy; Rapporteur; speaking in French). — As you will remember, during the discussion on the Transit Convention, several Delegates drew attention to the difficulties of applying this Convention to exceptional cases which occur in certain colonies. The Delegate for India had indeed proposed the following Amendment to Article 13 :

As regards the French and Portuguese Settlements in India, it is recognised that their peculiar geographical position prevents the application of the provisions of the present Convention. The conditions of transit in these settlements may be the subject of special agreements between India and the States concerned.

A similar amendment had been proposed by the Delegates of France and Portugal, in the form of a new Article :

It is agreed that the special circumstances of their geographical situation do not permit the application of the provisions of the present Convention to Indo-China, or to the possessions and protectorates of France and Portugal in Africa. The conditions of transit in these possessions and protectorates may, however, form the subject of special agreements between the States concerned.

At the Meeting of March 22nd (3) there was a long and somewhat lively discussion. After the Delegate for India had explained the conditions peculiar to India, which, in his opinion, justified the proposed amendment, the French Delegate pointed out that there were also other cases which also justified it (Cambodia, Indo-China, the

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(1) This meeting was held after the 20th Meeting of the Conference in order to hear the Reports of the two Sub-Committees appointed on March 23rd (see pp. 163 to 185); the work of these Sub-Committees could not be finished before the reading of M. Neujean's Report.

On p. 234 will be found a Report by Sir Cecil Hurst, which forms the beginning of the account of the 13th Meeting.

(2) From this meeting on, the references are to the text which forms Section VI of Part IV of the present volume (*text prepared by the Drafting Committee based on the text drawn up by the Plenary Committee and submitted to the Conference*).

(3) See pp. 152 *et seq.*

Portuguese territories of Kabinda and Guinea, the Spanish colony of Riomuní, and the territory of Whydah, in Dahomey). The Belgian Delegate, while accepting the Indian amendment, declared that he could not support the proposed amendments, and reminded the meeting of the unique situation of the Basin of the Congo, as defined by Convention,—a situation which, in the opinion of the French Delegate, as in his own, should be maintained intact. The British Delegate supported the Indian amendment; the Italian Delegate, on the other hand, after asking if the new wording of Article 10 would not have met this case, stated that he could not vote for a proposal which made exceptions by name, but that he would have voted for a motion conceived in general terms. The Japanese Delegate declared himself in favour of full and entire freedom of transit.

It was then proposed to refer the problem to a Sub-Committee which should be directed to find some formula of a general nature. The Spanish and Chinese Delegates — the latter with certain reservations — supported this proposal. The discussion continued, and as a quorum was not obtained, the question whether the two subjects should be dealt with jointly or separately was postponed until the next meeting.

On the morning of March 23rd, the Delegate for India having withdrawn his objection, the two questions were referred to a Sub-Committee consisting of the Delegates of India, Great Britain, Belgium, France, Portugal, Spain, China, Italy, Japan, Brazil and the Netherlands.

The Sub-Committee met in the Mancomunidad Palace. It appointed as chairman at its first, and as rapporteur at its last meeting the Delegate for Italy now speaking, who is happy to be able to testify to the conciliatory spirit which inspired all its members, and who now feels it a great honour to state what measures the Sub-Committee considered necessary in order to meet the observations which had been put forward. All the decisions of the Sub-Committee were taken unanimously.

(1) *French and Portuguese Settlements in India and Indo-China.* — The Sub-Committee, after having heard the explanations given by the Delegate for India in connection with the French and Portuguese settlements in the Indies, and after having studied the maps, were of opinion that the serious administrative difficulties which would be caused by the application of the Convention, were sufficient to justify an exception. The eight settlements (five French and three Portuguese) are very small in comparison with India, both as regards the extent of their territory and the size of their population. The total area of these settlements is only 1,752 square miles, and their population numbers 843,325. The area of India is 1,773,168 square miles, and its population in 1911 was 315,132,537. The largest settlement is Goa, which has an area of 1,469 square miles and a population of 515,772; but in this case the Portuguese Delegation is satisfied that the conditions of the first paragraph of the proposed Article are fulfilled. Further, the geographical conditions of some of these settlements are peculiar in this respect, that they do not consist of a single area, but are formed of a number of small areas separated and surrounded by the British possessions in India.

In cases of this kind, as with enclaves consisting of a single area, if the provisions of the Convention were strictly carried out, the result would inevitably be an extensive contraband trade; and the Indian Government would consequently be compelled, in order to protect its financial interests, to surround each settlement by a vigilant Customs cordon. Not only would the Indian Government be obliged to incur expense and involve itself in needless difficulties, but the measures taken would probably be entirely ineffective, while no advantage would result for the settlements. At present a certain number of Customs stations on the frontiers of the settlements have been abolished, so that these settlements are now, as regards transit and customs, as favourably situated as the territory of British India which surrounds them.

In respect of Indo-China, the Sub-Committee was unanimously of opinion that regard must be had for the geographical and political situation of this possession, the peculiar conditions of which had been pointed out by the French Delegate. Possessing great length from north to south, Indo-China is, on the other hand, extremely narrow, even at its widest portion, from west to east. Owing to this configuration the country possesses about 6,000 kilometres of frontier, although its total area does

not exceed 300.000 square kilometres. Indo-China does not yet possess the material resources to undertake the permanent supervision of such extensive frontiers in regions which are only being gradually opened up economically, and in which the general conditions of peace and security are still very unsettled. It appeared evident to the Sub-Committee that these peculiar conditions made it impossible to put the Convention on Transit immediately and fully into practice in Indo-China.

After a long discussion, the Committee agreed to propose to the Conference the following Article :

It is recognised that within or immediately adjacent to the territories of some of the Contracting States, there are areas or enclaves small in extent and population in comparison with those territories, and forming detached portions or settlements of other parent States, to which it is impossible, for reasons of an administrative nature, to apply the provisions of this Convention.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where in consequence it is practically impossible to provide the necessary customs and police control.

The States concerned, however, shall apply in the case of such areas a régime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

This Article should be understood as an exceptional measure to meet special cases of French and Portuguese settlements in India and the French possessions in Indo-China. The article is drawn up, however, in such a way as to meet other exceptional cases, if any exist, provided that they present the same characteristics and that the States concerned agree to avail themselves of the provisions of the present Article.

In accordance with the last paragraph of the text adopted by the Sub-Committee, the States concerned shall put into force, in the countries referred to in the Article, a transit régime which as far as possible respects the principles of the Convention. This obligation shall apply especially to such dues as would have a directly injurious effect on simple transit, and which the States concerned shall proceed to abolish as soon as they consider possible. The Chinese Delegation, however, in agreement with the French Delegation, urged that, in the special case of Indo-China, the question of transit with the province of Yunnan should be settled by a special agreement between the two States.

(2) *Railway from Beira to the frontier of Rhodesia.* — The Delegate of Portugal reminded the Sub-Committee of the special situation of the railway from Beira to the frontier of Rhodesia. The Treaty of June 11th, 1891, between Great Britain and Portugal, recognised the right of the latter to levy a tax up to a maximum of three per cent. on goods in transit across the Portuguese territory situated between the east coast of Africa and the English zone of influence. In consequence, Portugal has conceded to a British company the right to construct a railway from Beira to the frontier of Rhodesia. One of the conditions of this contract is that the *ad valorem* tax of 3 % prescribed in the Treaty and levied on goods in transit, should be remitted to the company holding the concession. Under these circumstances, Portugal is compelled to maintain in the Port of Beira the *ad valorem* transit-due of 3 %.

The Sub-Committee, considering the special circumstances resulting from obligations undertaken under the terms of a treaty which remains in force, is of opinion that the transit-due above referred to may be maintained, under the terms of Article 10 of the Transit Draft which has already been approved. The Sub-Committee accepted the statement of the Delegate of Portugal that, although the Colony of Angola is included in the provisions of the Convention on Transit, it is understood that no State can be compelled, in virtue of this Convention, either to construct special railways in order to facilitate transit, or to cede territory for such construction.

(3) *Rights and obligations between territories forming part, or placed under the protection, of a single sovereign State.* — The Sub-Committee also considered a new Article submitted by the British Delegation for insertion in each Convention, laying down that the provisions of these Conventions shall not affect the rights and relations *inter se* of the territories which form part, or are under the protection, of a single sovereign

State, whether these territories, considered individually, are, or are not, Members of the League of Nations.

The Sub-Committee further considered the following proposal of the Chinese Delegation :

It is understood, for the purposes of the Conventions on Transit, Navigable Waterways, Railways and Ports, that in cases where adjoining territories are placed under the sovereignty or authority of one and the same sovereign State, these territories are included within the political frontier of that sovereign State, no matter whether the territories in question are or are not individually Members of the League of Nations.

The Sub-Committee having unanimously recognised that there is nothing in the present Conventions which conflicts with the British proposal, considered it preferable to define this interpretation more exactly by means of a new Article. This Article, which is reproduced below, also covers the case presented by the Chinese Delegation regarding adjoining territories which are placed under the sovereignty or authority of a single sovereign State, and which, as a result of this Convention, are naturally to be considered as forming part of one single State.

It is understood that nothing in this Convention shall be interpreted as regulating rights and obligations *inter se* of territories forming part, or placed under the protection of, a single sovereign State, whether these territories, *considered individually*, are, or are not, Members of the League of Nations.

(4) Finally, the Chinese Delegation drew the attention of the Sub-Committee to a certain number of questions relating to the application of the Convention on Transit to foreign ports, ceded on lease, which are situated on the borders of China. These ports are of limited extent with a very small population, and are under the Chinese customs system.

The discussion shows that the desire of the Chinese Delegation would be completely satisfied by the introduction into the Report of references based on the passage on page 39 of the Green Book which defines the word *authority* with reference to territories in which authority is shared, and also on the passage on page 39 (1) which defines the exact meaning of the word *frontier*.

The Sub-Committee therefore recommended the insertion of these passages in the report (2).

It is understood that the text of these articles will be referred to the Drafting Committee.

THE CHAIRMAN (speaking in French).— I have to thank M. Bignami for this Report, which gives us a very clear idea of the question.

We have now to consider and to adopt the two new Articles. The first which M. Bignami has read to us is drawn up as follows :

It is recognised that within or immediately adjacent to the territories of some of the Contracting States, there are zones or enclaves, etc.

This Article seemed to me a little confused, and I took the liberty of discussing it with M. Reveillaud, who is pre-eminently a jurist in French Law, and we thought that certain modifications could with advantage be made in the text. I will read you the text which we have prepared, and we can then send it for the consideration of the jurists, who, either immediately or, at latest, this evening, will draw up a final text which could be voted upon to-morrow.

The following is the text which I propose :

In view of the fact that within or immediately adjacent to the territories of some of the Contracting States, there are areas or enclaves small in extent and population in comparison with those territories, and forming detached territories or settlements of other parent States, to which it is impossible, for reasons of an administrative nature, to apply the provisions of

(1) See p. 287.

(2) Report of the Plenary Committee to the Conference, submitted by M. Neujean (Belgium). See p. 208.

this Convention, it is agreed that these provisions shall not be applied to the above-mentioned areas or enclaves.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where in consequence it is impossible to provide customs and police control.

The States concerned, however, shall apply in the case of such areas a régime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

Has anyone any observation to make upon this new Article?

Sir Louis KERSHAW (India). — I wish to make clear that, in accepting this Article, the Indian Delegation understands that it will be possible—and this matter has been explained to the Committee—to levy customs duty on goods arriving in British India, and to control illegitimate trade. There is no intention whatever of restricting or impeding legitimate trade with these settlements. As I explained to the Conference and to the Sub-Committee, the difficulties we wish to surmount are entirely of an administrative character. I wish this to be entered in the Minutes.

THE CHAIRMAN (speaking in French). — I think no-one will object to the introduction of this statement into the Minutes. As regards the translation of this Article into English, Sir Cecil Hurst and M. Reveillaud will perhaps be able to come to an agreement on the matter, and the translation will subsequently be read.

M. HALEWYCK (Belgium; speaking in French). — I have asked to speak in order to make clear page 5 of M. Bignami's lucid and excellent report. I refer to the last paragraph of this page, which reads as follows :

In accordance with the last paragraph of the text adopted by the Sub-Committee, the States concerned shall put into force, in the countries referred to in the Article, a transit régime which as far as possible respects the principles of the Convention. This obligation shall apply especially to such dues as would have a directly injurious effect on simple transit and which the States concerned shall proceed to abolish as soon as they consider possible.

In order to avoid any confusion, I should like to define more closely the purport of this passage. It was definitely understood in the Sub-Committee that this passage shall clearly indicate that transit dues which are now in existence shall in no case be increased, and that no new dues may be established in the territories referred to in the amendment.

Though I considered it desirable to make this statement in order to make clear the meaning of the paragraph in question, I do not ask for the Report to be changed. It will be enough if my words are recorded in the Minutes.

M. BIGNAMI (Italy; speaking in French). — I do not think this precision is necessary, for as soon as the States concerned proceed to abolish the dues in question, as soon as they consider possible, it is understood that they cannot increase them. But I see no objection to the Belgian Delegate's desire being taken into consideration.

M. HALEWYCK (Belgium; speaking in French). — I still think that this precision is necessary, and I should have no difficulty in justifying my point of view. But as the Rapporteur, in his reply, has signified his complete agreement as regards the scope of the paragraph and of the decision which has been taken, I do not press the point, as I do not wish unduly to prolong this exchange of views.

THE CHAIRMAN (speaking in French). — We may now pass to the new Article which has been proposed to the Sub-Committee by the British and Chinese Delegates. The Article in question reads as follows :

It is understood that nothing in this Convention shall be interpreted as regulating rights and obligations *inter se* of territories forming part, or placed under the protection of a single sovereign State, whether these territories *considered individually* are, or are not, Members of the League of Nations.

Does anyone wish to speak on this Article?

I put it to the vote.

*The Article was adopted.*

I think there is no objection to the proposal of the Sub-Committee recommending the introduction into the Report of the references based on the passage on page 39 of the Green Book (1) which interprets the word *authority* in relation to territories on which authority is shared, and also on the passage on page 39 which defines the exact meaning of the word *frontier*.

This was agreed.

## REPORT OF SUB-COMMITTEE ON BRAZILIAN PROPOSAL

THE CHAIRMAN (speaking in French). — The Report of the Sub-Committee on the Brazilian proposal (2) reads as follows :

The Sub-Committee has held two meetings, at which the Brazilian Delegate made a full statement of his point of view. Every aspect of the question was discussed. We desire to point out that since the appointment of the Sub-Committee the difficulties raised by the Brazilian Delegate have been partly obviated, owing to the adoption, by the Committee on the Navigable Waterways Convention, of a paragraph reading as follows :

The State under whose sovereignty or authority a port is situated, may withdraw the benefits of the preceding paragraph from any vessel, if it is proved that the owner of the vessel systematically discriminates unfavourably against the nationals of that State, including companies controlled by its nationals.

After careful investigation, the Sub-Committee cannot recommend the insertion of such a Clause in the Convention on Transit; inserted in this Convention, its consequences would be much more far-reaching. But the Sub-Committee is unanimously of opinion that it would be desirable to insert in the Report (3) a paragraph to the following effect :

The Brazilian Delegate has drawn the attention of the Conference to the fact that the two questions of freedom of communications and transit and equitable treatment for commerce are intimately connected. Article 23 (e) of the Covenant mentions with regard to both of these questions that they are to be made subject of general conventions. Moreover, the Brazilian Delegate points out that so long as no convention on the equitable treatment of commerce has been concluded, the task imposed upon Members of the League of Nations by the above-mentioned provision of the Covenant is only half accomplished; in the meantime it might be difficult to induce certain States to continue to grant transit facilities to countries which in their view would not accord equitable treatment to their commerce. The Conference considered that it was not possible to introduce into the Convention on Freedom of Transit any provision regarding equitable treatment for commerce, partly because this subject belongs to the domain of another technical organisation of the League, and partly because, so long as no General Convention has been concluded on this subject, there is no generally accepted principle to determine what constitutes equitable treatment for commerce.

Further, the Conference considers that, even when another convention on the equitable treatment of commerce has been adopted, the question of the refusal of transit facilities as a "sanction" for the purpose of ensuring the execution of this other convention, should be maturely considered, particularly on account of the harm which might result for other Contracting States from measures of reprisal taken solely as sanctions against any particular State,—for example, the exaction of certificates of origin. After considering this question as a whole, the Conference decided to recommend the Council to instruct the Economic Section of the Provisional Economic and Financial Committee in agreement with the Advisory and Technical Committee for Transit and Communications, to consider the question which has been raised by the Brazilian Delegate, and to submit a report on the conditions and limits within which it would be desirable for the League of Nations to authorise the refusal or restriction of transit facilities as measures for the purpose of ensuring the application of any convention which might be concluded regarding equitable treatment for commerce, or *vice versa*.

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(1) See p. 286.

(2) See p. 184.

(3) Report of Plenary Committee to Conference, submitted by M. Neujean.

THE CHAIRMAN (speaking in French). — Moreover, the Sub-Committee also considers that the attention of the Council should be particularly drawn to this question, with a view to taking immediate steps in the sense indicated. The Sub-Committee further recommends that the following Memorandum, which was submitted to it by the Brazilian Delegate, and which refers to the application of the Draft Convention which the Conference is preparing, should be transmitted to the Council for its information.

BRAZILIAN PROPOSAL REGARDING THE APPLICATION OF THE DRAFT CONVENTIONS  
WHICH ARE BEING DRAWN UP BY THE CONFERENCE

We have a constitutional charter by which we are governed; it is the Covenant.

Let us refer to it, for a moment, and observe that our fundamental statute lays down that : The Members of the League will make provision to secure and maintain, not only equitable treatment for commerce, but also freedom of communications and of transit.

“Freedom of transit, freedom of communications, equitable treatment for commerce”,— these are three integral terms of a single problem, as it is stated by the Covenant. They are the component parts of an indivisible whole. They can be considered separately, but only on the condition that no attempt is made to draw a hard and fast line between them in an arbitrary manner, as if the problems dealt with were entirely distinct. It is upon the homogeneous nature of its terms that the unity of the problem is based.

But, following the example of the Council of the League of Nations, which was influenced by the initiative of the Committee entrusted with the duty of drawing up the Agenda for the Conference, we are working out Draft Conventions on Freedom of Transit and Freedom of Communications, without taking any count of equitable treatment for commerce between Members of the League of Nations. In practice, this means that the nations whose international transport industry is still comparatively undeveloped, are asked to commit themselves to a system of exemptions which will work out chiefly to the advantage of those who possess ample means of transportation. They are asked to forego at once certain natural advantages which they formerly enjoyed, without obtaining anything in compensation.

By doing this, we are deviating from the course which would direct the vital forces of all countries towards co-operation, which is the creator of the wealth of the community. Is it desirable to change our goal, under the pretext that the task entrusted to this Conference is limited to the consideration of a portion only of Article 23 (e) of the Covenant? Would it not be wiser to consider the possibility of adding to the Agenda of the Conference a new scheme for completing the study of the problem which is defined in the Article in question?

Is it necessary to repeat that the Technical Organisations which were created by the Assembly of the Nations, at Geneva, are empowered to make additions to the Agenda during the course of a Conference, and to decide upon the subject of these additions, it being understood that such proceedings would only have a provisional value, until they are submitted to the judgement of the Council?

If, however, we agree as to the desirability of safeguarding the equitable treatment of commerce, we are not without authority to do so, if we act in complete agreement with the spirit of Geneva. Indeed, we may even add to the Agenda proposals for a new discussion with a view to taking measures for this purpose. But this procedure is no longer possible for us at this advanced stage of our labours; moreover, the problem to be solved would be immense, and it would not be an easy matter to collect all the necessary information and material. It must therefore be postponed. It will be the duty of the Assembly of the League of Nations, at its next meeting in September, to decide whether this matter shall be referred to another Conference like this one, or submitted to some other technical organisation. In any case, until the provisions regarding the equitable treatment of commerce are put into practice, as provided for in the Covenant, the Conference should not fail to adopt certain precautionary measures which are called for by these needs. This would have the further effect of avoiding a controversy, perhaps even a fundamental controversy, as regards form, and perhaps even as regards substance, in connection with the application of Article 23 (e), — a controversy which would not be likely to facilitate the ratification, by the States concerned, of the Draft Conventions on Transit and Communications.

These are the reasons which have given rise to the Brazilian proposal, the text of which has, after due consideration, been drawn up as follows :

The exemptions provided for in the Draft Conventions drawn up by the Conference shall not take effect in the territory of any of the Contracting States in the case of vessels, ships and other means of transport by water, which carry goods destined for, or belonging to, nationals of the State concerned if such goods are not admitted, under the most favourable conditions allowed, in similar circumstances, to any other goods— including those destined for, or belonging to, persons of the same nationality as the said vessels, ships or other means of transport.

Finally, the Brazilian Delegation ventures to suggest that, if the Conference agrees, the Council of the League should be informed of the matter as soon as possible through the usual channel.



Sir Hubert LLEWELLYN SMITH (Great Britain). -- With regard to the last paragraph of the Report of the Sub-Committee on the Brazilian proposal, the British Delegation has requested a small alteration to which, as Rapporteur, I consent. We suggest the substitution for the words *should be transmitted to the Council for its information* of the words *should be included with the documents transmitted to the Council as presenting the case for his proposal*. With that addition, the Report was adopted unanimously. It not only implies the insertion of a new paragraph in the Report of the Conference, but is practically a proposal to transmit this passage from the Report to the Council of the League.

THE CHAIRMAN (speaking in French). — I think that the Conference will accede to the wishes of the Sub-Committee, and will accept the proposed suggestion that this paragraph should be inserted in M. Neujean's Report.

The text of the Report of the Sub-Committee on the Brazilian proposal is therefore adopted with the proposed change in the last paragraph.

### STATEMENT OF CHINESE DELEGATE WITH REGARD TO ARTICLE 10 OF TRANSIT CONVENTION

M. TSANG-OU (China; speaking in French). -- With reference to the first paragraph of Article 10, the Committee has asked me to furnish some explanations regarding this question, which is a somewhat complicated one.

We have before us two conventions,—that on Navigable Waterways and that on Freedom on Transit. Both these conventions are based upon the principle of equality and liberty. In China, on the other hand, we have two régimes which differ in the following way. We possess ports which we call *treaty ports*, and ports which we call *closed ports*. The *closed ports* are those in which navigation and commerce are reserved for nationals only. The *treaty ports* are those to which foreign vessels are admitted without discrimination, even if they are carrying on coastal trade of any kind.

Amongst the forty-four States Members of the League of Nations, some ten have signed commercial treaties with China by which they enjoy a special régime. Paragraph 1 of Article 10 provides for the maintenance in force of existing conventions. I know that in this Conference, which is an exclusively technical one, we must not raise political questions. Allow me, however, to put a case. If, acting upon the principles laid down in Article 10, paragraph 1, we maintain in force the existing conditions, countries whose maritime traffic in the *treaty ports* is governed by special conditions may still enjoy the same treatment so long as the revision provided for in Article 10, paragraph 2, has not taken place. As regards States which have not hitherto concluded commercial treaties with China, they will be placed under the régime of the present Convention in all ports, both *treaty ports* and also those which may be opened in future. To take an example—let us suppose that England sees that advantages may be obtained from applying only one régime to the present *treaty ports* and the new open ports; she will then have to conclude new agreements based on the terms of Article 10, paragraph 2, in order to unify these different régimes. I am not now, be it noted, making a proposal on behalf of my Government. I merely wish to have an interpretation which I can insert in my report. It is not enough for me to furnish explanations regarding the present Convention or the Convention on Navigable Waterways; I must point out the difficulties, from the political point of view, of applying these conventions. If I am unable to say in what sense Article 10 will be interpreted, my Government will be placed in a difficult position and will not know whether it should ratify the Convention. Thus, Article 10, paragraph 1, maintains in force the existing conventions, and paragraph 2 provides for possible revision. I should like the Conference to tell me whether I am interpreting Article 10 in the sense in which the Conference itself understands it; it would serve as a basis for the Chinese Government to maintain the existing conventions as regards transit in paragraph 1. Paragraph 2 would come into play later if the Chinese Government were to encounter other difficulties as regards the application of the Convention,—difficulties which would be settled either by the Council or the

League of Nations or through diplomatic channels. I should like the Conference to say whether I can introduce this interpretation into the report which I shall send to my Government.

THE CHAIRMAN (speaking in French). — Would it not satisfy you if this appeared in the Minutes?

M. TSANG-OU (China; speaking in French). — No, I cannot submit this Convention for ratification by my Government without explanation. Neither can I, on my own authority, give an explanation of Article 10 unless my interpretation has the support of the Conference.

THE CHAIRMAN (speaking in French). — Would you be satisfied if it were inserted in M. Neujean's Report?

M. TSANG-OU (China; speaking in French). — I should be perfectly satisfied, but I should not like there to be any misunderstanding. My interpretation of paragraph 1 of Article 10 should not have the effect of weakening the right of revision provided for in paragraph 2 of the same Article. As this is a technical Conference, I will leave aside the diplomatic point of view, which is dealt with in paragraph 2.

THE CHAIRMAN (speaking in French). — Will M. Neujean insert that in his additional report (1)?

M. NEUJEAN (Belgium, Rapporteur, speaking in French). — I am quite prepared to do so, but the Chinese Delegate asks for an interpretation, and I do not think I am authorised in the name of this Conference to interpret the ruling of the Convention. The Conference itself must decide exactly what interpretation is to be inserted.

M. TSANG-OU (China; speaking in French). — That is what I wish.

THE CHAIRMAN (speaking in French). — The Conference must give its decision.

M. TSANG-OU (China; speaking in French). — It is the interpretation of the Conference for which I am asking. It is the Conference which must decide as to the wording.

THE CHAIRMAN (speaking in French). — We might place this question before the jurists, who will find a wording; we could then submit this wording to the Conference to-morrow and ask it for its decision thereon.

Sir Hubert LLEWELLYN SMITH (Great Britain). — So far as I was able to follow the explanation of the Chinese Delegate and the Document he has circulated, what he has said seems to be perfectly correct, but I entirely agree with the Chairman that it is a matter which the jurists should consider before we insert it in the Report. M. Tsang-Ou suggested in his speech that questions arising from Article 10 should be decided either by the Council or through diplomatic channels. That is not a method we have adopted for deciding questions. If a question arises under Article 10 or any other Article, it will have to be settled in the manner prescribed for disputes between States, and that is neither by diplomatic means nor by the Council.

M. TSANG-OU (China; speaking in French). — It is not disputes that I anticipate, but the difficulties of applying Article 10, paragraph 1. Let me take a striking example. Our port of Shanghai is open to international commerce; beside it is a highly developed port open to Chinese commerce. The English and French have not the right to come and trade in this latter port under the régime of their treaties of commerce, as they

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(1) Report of the Committee to the Conference, submitted by M. Neujean (see Part III, pp. 201 *et seq.*, reading and discussion of this Report).

do at Shanghai. Under the terms of the régime established by the new conventions they will only be able to come and carry on transit traffic there, in the same way as the Roumanians and Serbians, for example, who have not concluded earlier treaties. Thus, in the *treaty ports*, existing conditions are maintained as regards transit, in accordance with Article 10, paragraph 1, until a fresh decision is taken (revision as provided for in paragraph 2). As regards those former closed ports which will now be opened, it is only the régime provided for in the new Convention which is applicable to *all*. If a country which has concluded an earlier treaty finds it more advantageous for the new régime to be applied in the *treaty ports*, it will have recourse to revision through diplomatic channels, basing its action on paragraph 2 of Article 10. These are difficulties which will not occur immediately, but which will certainly arise in the future.

Sir Hubert LLEWELLYN SMITH (Great Britain). — This explanation seems to me very clear.

M. TSANG-OU (China; speaking in French). — I again ask the Conference to tell me whether I am in agreement with it as regards the interpretation of Article 10, paragraph 2.

THE CHAIRMAN (speaking in French). — Before asking the opinion of the Conference, I propose that M. Tsang-Ou should arrive at an agreement with the jurists and give us the result of this agreement to-morrow afternoon.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — The Chairman says that the question will be dealt with to-morrow afternoon. The Chinese Delegate, for his part, asks me to insert this text in my Report, and this appears to me a legitimate request. But I am to read my Report to-morrow afternoon also, and I shall have no time to do what is necessary, unless it is a mere matter of an addition.

THE CHAIRMAN (speaking in French). — It will only involve introducing the text into your Report, whereas it seems to me that this question is too serious for us to settle immediately without taking the opinion of the jurists. It is therefore decided that M. Tsang-Ou will come to an understanding with these gentlemen.

#### PROPOSAL OF SWISS DELEGATE REGARDING DENUNCIATION

M. VALLOTTON (Switzerland; speaking in French). — I have been taken somewhat unawares, as I intended, before submitting to you the question with which I wish to deal, to submit it unofficially to some of the jurists of the Conference.

Hitherto questions of the kind which form the subject of the Draft Convention, such as, for instance, the régime of international rivers, were regulated by means of conventions, which, as you know, always implied recognition of the rule *rebus sic stantibus*, and these conventions remained in force until the situation which led up to the signing of the Convention came to an end. We are substituting for this system that of conventions open to denunciation,—a system which obviously has its advantages, but to which objections may also be raised. The Convention may be denounced by one of the Contracting Parties, even though the situation which gave rise to the Convention remains in force. When we come to consider the Convention on the Régime of Navigable Waterways, amongst others, the Conference may possibly adopt certain proposals which will be submitted to it, and the object of which is (I neither criticise nor approve these proposals; I merely quote them in passing) to establish a system of international co-operation, particularly as regards works of upkeep and improvement. As regards certain works this international co-operation will necessitate an understanding. As one Delegate has already stated on several occasions, this will perhaps involve the State which has undertaken the work in fairly extensive obligations. We must therefore be quite clear as to the mutual engagements which we are to undertake. The Swiss Delegation wonders whether

under this system we have provided for the consequences of denunciation as regards a State which, *bona fide*, undertakes extensive technical and financial obligations towards other States. It seems to me that if we do not wish to lay ourselves open to this justifiable criticism on the part of the Governments which have sent us here, it is essential to introduce into these Conventions a text which will not leave room for any subsequent discussion on the consequences of denunciation. I proposed to some of the experts here the following text, which I give you for what it is worth and which I think is by no means beyond criticism. It would involve introducing a general article into our Conventions, worded as follows :

*Those rights and obligations which exist at the time of the conclusion of the present Convention and which may be affected by the latter—they may be detailed here, and either restricted, abolished or increased—shall be revived by the fact of the denunciation of the present Convention...*

This is the first principle. There is a second one which appears to me of importance :

*Such denunciation shall not, save by agreement to the contrary, have the effect of freeing a State from bilateral engagements which may have been undertaken under the authority of the above-mentioned Convention. Such State shall be bound to carry out its engagements to the full.*

I consider that it is too early to begin a discussion of this text now. I propose that it be circulated in order to allow time for reflection.

THE CHAIRMAN (speaking in French). — Would this mean adding an article to the Convention itself?

M. VALLOTTON (Switzerland; speaking in French). — Yes, but it refers particularly to the Convention on Navigable Waterways, which introduces into the question of works a new principle which I, for my part, consider to be open to dispute,—the principle of participation in works of improvement involving long term engagements in respect of upkeep,—engagements which indeed may even last beyond the duration of the Convention itself. There is in this a danger against which all those must be prepared,—and I think that this includes all the members of the Convention,—who wish to fulfil their engagements and who also require that others should do the same.

THE CHAIRMAN (speaking in French). — As M. Vallotton's proposal is of a formal nature, I propose that it be referred to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — I introduced it to-day because it appeared to me necessary to consider whether it should be introduced everywhere or only in the Convention on Navigable Waterways.

M. PERIETZIANO (Roumania; speaking in French) — I think that the question raised by M. Vallotton is not merely a question of drafting, as it involves a principle which I am certain will later be contested. I will not say now that I am opposed to it, because I have not considered the question, but I think that it should be referred to the Committee which is dealing with navigable waterways. The Drafting Committee can only prepare a wording which will exactly express the intention of the Conference, but we are faced here with a proposal of a fundamental nature, and this proposal should therefore be referred to the Committee on Navigable Waterways. Indeed I cannot understand why it is brought before this Committee, which is not dealing with navigable waterways.

M. BIGNAMI (Italy; speaking in French). — I fully support the Roumanian Delegate's statement, and I ask that this important question shall be referred to the Committee on Navigable Waterways.

THE CHAIRMAN (speaking in French). — Does M. Vallotton agree to consider his proposal as referring particularly to navigable waterways? If so, does he agree with the Roumanian and Italian Delegates that his proposal should be referred to the Committee on Navigable Waterways?

M. VALLOTTON (Switzerland; speaking in French). — It is very difficult to reply to this question unless my proposal has been considered by some of the jurists. There are two different ideas in the text, and as I do not consider myself qualified to arrive at a decision, I should prefer more competent persons than myself to enlighten me in this matter.

THE CHAIRMAN (speaking in French). — In that case I will repeat my proposal to refer this question in the first place to the Drafting Committee, and to-morrow we will see whether it should be submitted to the Committee on Navigable Waterways.

M. AVRAMOVITCH (Serb-Croat-Slovene State speaking; in French). — The shortest and best plan would be for M. Vallotton to come to an understanding with the jurists as regards the grounds of his amendment, and for the amendment to be then submitted to the Committee on Navigable Waterways, as these gentlemen have proposed. But do not send it to the Drafting Committee; that would mean obtaining a preliminary verdict of an official character, and this we wish to avoid. M. Vallotton may come to an agreement with the jurists, but in a private capacity.

THE CHAIRMAN (speaking in French). — I can assure you that there is no question of prejudging anything. Let us refer the matter to the jurists instead of the Drafting Committee,—the Officers of the Conference would be only too pleased. Let M. Vallotton come to an understanding with the jurists, and to-morrow we shall be able to make a proposal.

M. CARACOSTEA (Roumania; speaking in French). — Will the question be referred to the Committee on Waterways?

THE CHAIRMAN (speaking in French). — We will see later if it will have to be referred to the Committee on Navigable Waterways only, or to the Transit Committee as well.

Does anyone else wish to speak?

The Officers of the Conference think that under the circumstances it would be better not to take a vote. This will be done at the earliest to-morrow afternoon.

*The meeting adjourned at 7 p.m.*

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PART III

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REPORT

OF THE

PLENARY COMMITTEE

TO THE CONFERENCE

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DISCUSSION AND ADOPTION

OF THE

CONVENTION

ON

FREEDOM OF TRANSIT

# NINETEENTH MEETING OF THE CONFERENCE

(Saturday, April 9th, 1921, at 5 p.m.)

## REPORT OF PLENARY COMMITTEE ON TRANSIT — DISCUSSION OF ARTICLE 1.

*The Meeting opened with M. Hanotaux, President, in the Chair.*

THE PRESIDENT (speaking in French). — Gentlemen, the agenda for to-day includes the examination of the Draft Convention on Freedom of Transit. I will first call on M. Neujean, the Belgian Delegate, and Rapporteur on this subject, to read us his Report.

### REPORT OF PLENARY COMMITTEE ON TRANSIT

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — Gentlemen, I will begin by expressing my thanks to the Conference for the honour which it has done me in entrusting me with the preparation of a Report of such importance. I regard it as an act of homage to the gallant and industrious nation which I am privileged to represent. I offer you my cordial thanks.

It was a wise inspiration which led the Council and the Assembly at Geneva to constitute a Committee for the purpose of drawing up Conventions on the régime of transit, of navigable waterways, of ports, and of railways, and to convene a Conference at Barcelona to discuss these Conventions. There is no problem which possesses greater interest for the whole Comity of nations; this is particularly true in regard to transit. Facilities for trade, the multiplicity and convenience of transport routes are among the most potent factors of civilisation. The close similarity between the commercial legislation of the various States of both continents is a fact familiar to all who make a study of comparative law, and this similarity is becoming more marked every day. It is a phenomenon due to the constantly increasing development of commercial transactions between peoples of different race and nationality. The density of population in certain parts of the globe, the diversity of products and of natural resources, involve a constant increase in transactions, and, as these extend, they draw the nations together and create between them ever closer bonds in the shape of mutual aims and interests.

The League of Nations once endowed with life, its first duty was to endeavour to lay down certain definite but at the same time elastic principles calculated to simplify international relations. This difficult but noble task has been entrusted to you by the Assembly at Geneva. If you succeed in bringing into being the Draft Convention of which the main lines were sketched by the distinguished men who took part in the preparatory work at Paris, and which is now laid before you by your Committee in an amended and perfected shape, you will have the profound satisfaction of having accomplished this task worthily and wisely. For my part, I consider myself honoured in having contributed, however little, to this work, for I am convinced that it is destined to be the herald of a new era.

I am one of those who believe in the League of Nations. It is the League which is going to establish the reign of peace and an era of material and moral well-being throughout the world. Whether that be sooner or later will depend upon a generation younger than mine. There are some people who smile at the idea of the League of

Nations, who deride it as a chimera of pacifist dreamers. I ignore these sorry minds; I pity them. Scepticism will never lead to progress; it condemns to inaction. Progress can only be achieved by the united efforts of mankind. Why should not the principle of mutual help, which has proved of such inestimable benefit to individuals, be adopted by communities in their dealings with one another? The interests of mankind form one united whole, and the application of this established truth by many of the nations represented here has already borne fruit. That is the conquest of yesterday. As with individuals, so with nations. Countless interests in common, closer and ever-increasing intercourse, are daily making them more dependent on each other. The nations are wiser now, and better able to appreciate the community of interests which links them together; the appalling upheaval which has shaken the world to its foundations has taught them a rude lesson. When these disasters have been repaired, and everything has been restored to a normal footing, let us hope that they will make up their minds to meet together in conferences such as this, and seek a joint solution for all international questions likely to produce serious disputes. That will be the conquest of to-morrow. Alas! we have not yet attained this ideal, although the present Conference is a step in the right direction. Difficult questions, involving local prejudices and interests, have already been solved in a spirit of conciliation which speaks for itself.

No doubt certain people, of whom I am one, considered that the *Green Book* had been wisely conceived, and contained a just and even moderate application of the principles of liberty and equality which should prevail in these matters. They will no doubt regret that still further modifications have been made in the draft, but they can console themselves by reflecting that progress is not achieved in a day, and that the good seed will eventually bear fruit. Article 23 of the Covenant of the League of Nations has emphasised in definite terms the importance of transit. The ideal state of affairs would be the assimilation of the conditions applicable to transit traffic and those applied to internal traffic. If the principle were admitted that the existence of political frontiers must not be used by a State as a pretext for exacting economic tribute from its neighbours, or for arbitrarily diverting the normal flow of commercial traffic, a prolific source of conflict would be eliminated.

The provisions to which my Report refers contain, in their new form, thirteen articles. Taken as a whole, they constitute what the Drafting Committee has accurately termed *Regulations for Transit*. The provisions which deal solely with procedure, and those regarding the putting into force of the Conventions, which were referred to the Drafting Committee, have been detached. The Drafting Committee will submit to you revised drafts on these subjects; they will form a kind of setting for the technical regulations which alone form the subject of my Report.

The titles, which in the *Green Book* draft were placed at the head of each Article, no longer figure in the present draft. The jurists have not been able to find any heading which would convey adequately the main principle contained in each article. They have, therefore, thought it preferable to do without them. Such headings, moreover, are only of use in connection with the preliminary consideration of legislative measures. If they were allowed to remain, there would be a risk of their occasioning serious errors of interpretation. In view of these considerations, your Drafting Committee has decided to propose the omission of the headings.

In approaching the detailed study of these Draft Regulations, let us first note the following general considerations :

(1) Although the principle of freedom of transit has been laid down, the present Convention applies solely to commerce and transit by rail and water; the almost insurmountable difficulties which would have been involved by its application to other means of communication, —*i.e.*, air transport and ordinary roads,—have prevented their inclusion.

The word *transit* is employed in the Regulations to indicate both *transit by rail* and *transit by navigable waterway*, or again, *transit by a combination of these methods*. It includes occasions where, at the junction of a railway and a waterway, recourse to some other means of transport is necessary for a short distance, in order to make the connection. It was indeed hardly necessary to state this, for it is upon common sense that we must chiefly rely in interpreting texts. Who, indeed, would argue, for instance,



that goods unloaded from a vessel on to a truck by means of a crane should be deprived of the benefits of the Convention, because a crane is neither a railway nor a vessel?

(2) The Convention does not prejudice the sovereign rights of the States across which transit takes place, nor the executive powers conferred upon them by their own legislation as regards transit routes. In the French text, the expression *instruments de transport* has been substituted for the words *moyens de transport*, which figured in the original text. It was found desirable to avoid using this latter expression in two different senses, at a distance of only a few lines. The Drafting Committee, in making this alteration, acted in accordance with a view which I expressed at the beginning of the general discussion. *Instrument*, moreover, conveys better the idea of a *vehicle which transports*, which is the meaning to be conveyed here; whereas *moyen* signifies more exactly the route by which transport is effected,—for example, rail, navigable waterway, road or air.

(3) The Convention does not create a super-State. In carrying out the Convention each Contracting Party is free to take such measures as are necessary and as are in conformity with its own legislation. Disputes alone are, if need be, to be submitted to the League of Nations.

(4) The Convention confines itself to regulating the right of using transit routes; it does not place upon States across which transit takes place any obligation to construct new routes, or to improve those already in existence; nor does it oblige them to accord to transit traffic priority over their internal traffic; it even recognises that, *in exceptional cases*, internal transport which is of *vital* importance to a country may enjoy a right of priority.

(5) As regards transit, the Conference has decreed equality of treatment in all the Contracting Countries. At the same time it does not intend to hinder free competition, provided the latter be carried on fairly; indeed, if the Conference had had such an intention, it would have been powerless to carry it out. So much for general observations. Let us now consider the details of the draft.

In Articles 1, 2 and 3, your Committee has omitted any mention of *mails and postal parcels*. This does not mean that mails and postal parcels are excluded from the benefits of freedom of transit; the reason is that they have already been dealt with by the recent Madrid Convention. It was necessary to avoid the divergencies of interpretation and the conflicting decisions which might result from the existence of two different conventions dealing with the same question.

The word *baggage* has been introduced in order to indicate that packages carried in connection with passenger traffic, and not usually comprised in the term *goods*, are also subject to the provisions of the Convention. The Serb-Croat-Slovene Delegation had proposed the omission of the word *vessels* in the first articles, on the ground that vessels could properly only be dealt with in the Convention on Freedom of Navigation, and not in the Convention on Freedom of Transit, and that the proper time to consider this question would be during the discussion of the Convention of Navigable Waterways. In the words of M. Avramovitch :

There is no question of freedom of transit in connection with vessels,—they are in a sense an actual obstacle to transit. In the first place, every vessel flies its own flag, implying that it is under the protection of the country whose flag it flies. In the next place, it has its own captain, and, thirdly, it can go anywhere, whereas the means of locomotion which are used for transit traffic—wagons, coaches and locomotives—do not possess these three characteristics. They have no flag and no commander of their own, and their movements are restricted to definite rail routes. All this is a proof that the present is not the time to discuss the question.

This amendment was rejected by your Committee.

The Drafting Committee added a paragraph to the text of Article 1. It adopted the expression *traffic in transit*, which will take the place in subsequent Articles of the words *persons, luggage, etc.* Thus useless repetition will be avoided, and the wording of all the technical regulations will be simplified.

A revision of the text relating to *territorial waters* was found to be essential, in order to show clearly that the principle of freedom of transit cannot be rendered nugatory by the introduction of restrictive measures in territorial waters.

By the expression *breaking bulk*, we do not mean in any way to imply the idea of any re-packing of the goods.

The attention of the Committee was drawn to the passage in the *Green Book* which states that *produce of fisheries* coming from extra-territorial waters, and landed in a port, shall not be considered as being in transit across the territory of the State to which the port belongs, even if they are destined for another country. In the former country they will be treated as goods for export.

The countries across which transit takes place retain the right to impose *fiscal charges* in connection with any transactions taking place in respect of goods in transit, either during the journey, or in the event of their deposit in a warehouse. This provision is not actually contained in the text of Article 3, as the French Delegation, which proposed it, and the British Delegation agreed that it would be sufficient to note it in the Minutes.

In the course of the discussion on Article 4 (1) it became clear that the adoption of the text was the outcome of the same attitude as that which prevailed when the Provisional Committee originally drew it up. As regards *tariffs*, in particular, it was found impossible at the present time to draw up final and precise regulations regarding the application or non-application of internal tariffs to goods in transit. It seemed sufficient to maintain the general principles embodied in the text of the Convention, which authorise differential treatment for economic reasons, but prohibit it when based on political grounds. The Italian Delegation urged that the Report should specifically mention the existence of a right to refrain from extending to goods in transit certain preferential tariffs accorded to internal traffic on special economic grounds. Several other delegations shared the Italian view, which accordingly was mentioned in the Report of the Sub-Committee. It was clearly understood that Article 4 should only apply to actual transit charges. The words *facilities or restrictions* only apply to such charges; the word *restriction* does not exclude the reservation by a State of certain maritime traffic which it may restrict to vessels flying the national flag.

In order to introduce an equitable allocation of charges for the use of all waterways, the Conference has included in the scope of Article 4 both conceded and State-administered waterways.

The question arose whether combined sea and land tariffs for transit traffic should come under the terms of Article 4. This gave rise to a long discussion, during which the following statement was made by M. Serruys, of the French Delegation, Rapporteur of the Sub-Committee which dealt with this Article :

“We have no desire to prevent the application by a State of internal import or export tariffs, which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.”

The Italian and Roumanian Delegations opposed this view. It would seem, however, that the Committee has adopted the view set forth by the Rapporteur of the Sub-Committee, for it adopted Article 4 in its present form, in spite of the repeated opposition of the Italian and Roumanian Delegations. In adopting the proposed text, the Committee's intention was to ensure that the régime to be applied to traffic in transit should enable it to benefit by all the advantages attendant upon free competition.

In Article 5, the words *that passengers in transit are in a position to complete their journey* have special reference to the case of emigrants who may lack the necessary resources to enable them to complete their journey.

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(1) Following on the discussion and an exchange of views which took place between M. Neujean (Belgium, Rapporteur) and M. Sinigalia (Italy) (see p. 212), the text of this paragraph was modified as follows :

The adoption of Article 4 was the outcome of the same attitude as that which had led to the adoption of the provisional draft. You have thought it inexpedient at present to decide whether or not internal tariffs are necessarily to be applied to goods in transit. You have thought it sufficient to maintain the general principles embodied in the text of the Convention, which authorise differential treatment for commercial reasons, but prohibit it when based on political grounds. The Italian Delegation, supported by other Delegations, urged that the Report should specifically mention the existence of a right to refrain from extending to goods in transit certain preferential tariffs accorded to internal traffic on special economic grounds.

A supplementary paragraph was added to Article 5, stating that the Convention shall not in any way restrict the right of the Contracting States to conclude international Conventions prohibiting the import or export of certain categories of goods, such as opium, or other harmful substances, or arms. Similarly, there is nothing in the Convention to prevent the carrying out of measures in accordance with the terms of international Conventions intended to abviate any infringement of industrial, literary or artistic proprietary rights, or dealing with false trade-marks, false marks of origin, or other methods of unfair competition.

The expression *general international Convention* must here be taken to mean an international convention to which any State may accede.

The object of an amendment submitted by the Italian Delegation was to authorise a State across which transit takes place to take special precautions with regard to goods which are the subject of a State monopoly. The Committee, although it recognised that such goods might be subjected to special supervision, and although it inserted a special passage in Article 5 authorising this, nevertheless intended it to be understood that such supervision must neither delay nor prevent the transit of such articles.

Several Delegations were anxious that anything which might prevent the concession of haulage service monopolies on waterways used for transit, should be expressly omitted from the Convention on freedom of transit. Your Committee has decided that this question lies outside the scope of the present Convention, and that it must confine itself to proclaiming the principle of complete freedom of transit as applicable in every contingency. This opinion is clearly expressed in the following passage :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question whether, and under what conditions, such services may be established is not decided by the present Regulations. A formal decision was taken on this point.

No fundamental modification in the draft text of *Article 6* was made by the Committee.

*Article 7* in its original form provided for certain special exceptions in the event of an emergency necessitating the adoption of measures for national security. This Article has been considerably amended. It now allows the imposition of restrictions on freedom of transit whenever the vital interests of a country are involved. Each State remains free to decide for itself what circumstances constitute a national emergency or imperil its vital interests. The jurisdiction provided for may, however, be called upon to decide whether any measures restricting freedom of transit have been adopted *bona fide*.

The present text of *Article 8* is the outcome of a compromise,—the result of concessions obtained not without considerable difficulty. Certain delegates thought that complete freedom of action should be reserved for belligerents in time of war, whilst others wished to determine, by means of strict and detailed regulations, the methods by which transit was to be maintained during periods of hostilities. Finally, a formula was adopted by a large majority, to the effect that the Convention does not regulate either the rights or the duties of belligerents in time of war. After this reservation, the article goes on to declare that the present Convention on Freedom of Transit shall remain in force in time of war, in so far as such rights and duties may permit. That really appears to be as far as the Conference can go in the matter. As a matter of fact a majority in favour of this formula (1) was only obtained after the adoption of the Recommendation *that as soon as possible the League of Nations shall invite its*

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(1) After discussion, this paragraph was modified as follows (see p. 209).

It was only with difficulty that a majority in favour of this formula was obtained,—and this only after the adoption, by 23 votes to 5, of the following motion, which it was decided to include in the Final Protocol :

*The Sub-Committee unanimously begs the Conference to adopt the following Resolution: That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new Conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.*

*Members to meet for the purpose of drawing up new Conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.*

Those in favour of the maintenance of existing Conventions would only undertake an obligation to draw up future Conventions in accordance with the statute which we are framing; the arguments which they advanced in support of this view were mainly legal. The advocates of the policy of turning over a new leaf in international relations would have preferred the complete abandonment of all previous agreements and treaties, and the substitution for them of the new General Convention and any special Conventions which may be based upon it. Between these two views numerous formulas were proposed which were all more or less in the nature of a compromise. The Conference recognised that it could not demand the abrogation of old agreements, even if they were in contradiction with the provisions of the new Convention. In this connection, the Italian Delegation, whilst, as a conciliatory measure, accepting the text adopted, desired nevertheless that a declaration should be placed on record, to the effect that a Power which has signed a Convention with one or more other Powers is not obliged to cancel any treaty, at the request of one of the other signatory Powers, and that it is only under an obligation to consider whether such treaty can be brought into accord with the Convention on Freedom of Transit. Your Committee has asked the Contracting States to undertake to modify these agreements as soon as possible in order to harmonise them with the texts adopted by you, and to undertake in the future only to conclude agreements or treaties which are in conformity with the new Convention. It has, however, recognised that Contracting States may, in exceptional cases, sign treaties in contradiction with the provisions adopted at Barcelona, provided they are justified in so doing by geographical, economic or technical considerations. This was a concession reluctantly made in order to provide for contingencies which cannot be foreseen in all their details.

Some members considered it unnecessary to retain the other exception which is specified in Article 12 (new text) in favour of devastated areas. Article 2 only allows transit over existing routes which are suitable for this class of traffic. Moreover, Article 7 allows of deviation from the general rule, when the vital interests of a country are at stake, whilst it had also been decided to insert in the Final Protocol a reference to the right of priority reserved for *traffic of vital importance to a country*. This would have been sufficient to ensure the exception claimed by certain devastated countries. *Article 12* was, however, retained.

The words *by enemy troops* have been omitted. It was indeed more logical to place every kind of devastation resulting from the war in the same category. In retaining these provisions, the Committee was following out a principle contained in the Covenant.

It is not to be imagined that in the course of years, the application of a general Convention on Communications and Transit will never give rise to difficulties between the Contracting States, and to divergent interpretations, or that the possibility of a conflict of interests will be finally eliminated. It was necessary to provide for the settlement of such disputes and the solution of such difficulties, and this is the object of Article 13 of the Convention. The drafting of this article entailed considerable difficulty. The Committee which was called upon to bring it into accord both with existing decisions and with certain specified contingencies, succeeded in drawing up a text which obtained the approval of the great majority of the Delegations. The Article provided that disputes *shall be brought before the Permanent Court of International Justice unless... steps are taken for the settlement of the dispute by arbitration or some other means*. That is the text as finally adopted. By *settlement* we understand a final, irrevocable solution of the question.

The question of disputes between Contracting Parties necessarily involved that of reconciliation between the Parties prior to any form of judicial action. To whom should the task of attempting to bring about this reconciliation be entrusted? It was necessary to preserve the rights and prerogatives of the Council and Assembly of the League of Nations in this matter. How should we designate the body to be entrusted with the preliminary task of attempting to clear up disputes and bring about a friendly solution? It was essential to take into consideration the existence of vague feelings of distrust, and susceptibilities which might have to be respected,

and so your Committee adopted the following text, which was the outcome of much reflection on the part of the Sub-Committee :

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit.

In a report which he read to your Committee, M. van Eysinga commented upon the words *having due regard to the rights... of the Council and Assembly*. In accordance with your decision, this commentary will be inserted in the Final Protocol. It therefore seemed to me unnecessary to reproduce here the arguments advanced by the distinguished Dutch jurist.

It was also necessary to consider emergency measures to ensure the continuance of transit in the event of a dispute. The Plenary Committee agreed that the same Advisory and Technical Organisation should be called upon to recommend such measures, by means of what it styles a *provisional opinion*.

The text adopted for Article 13 was considered sufficiently complete in itself to allow of the omission of Article 16, which had appeared in the Draft Convention; this omission was agreed upon unanimously by your Committee.

And now I have come to the end of my task. I should like to thank very heartily those who have assisted me : General Mance, who supplied me with very full notes on everything that took place, and my collaborators MM. Pierrard and Stièvenard. I apologise for having taken up so much of your time. I should have liked to spare you still further, but there was a great deal of material with which we had to deal. I have tried to extract the essential elements, and to present you with an objective summary of the work of your Committee. It is perhaps incomplete. If so, you must be kind enough to supplement it by reference to the very clear statement in the *Green Book*, to the verbatim reports of the Meetings and to the excellent speech which M. London delivered in opening the meetings of the Committee, over which he presided with unflinching courtesy and authority. A reference to these sources will, I am convinced, lead you to vote unanimously for the carefully prepared Draft Convention which is now submitted for your approval. By so doing you will fulfil the desire of that illustrious historian, that genial and profoundly human philosopher, the President of our Conference, for "you will have partially succeeded, in an exclusively practical and technical sphere, in establishing harmony between those two political forces which the law of nature and the laws of history maintain simultaneously in being,—internationalism and nationality."

Once more, in the forceful words of M. Gabriel Hanotaux, let us hope that in the near future we may be able to achieve "the exact point of fusion between the idea underlying the creation of the League of Nations and the interests of the various peoples."

#### A N N E X (1)

##### Supplementary Report on Transit Convention.

The Committee has not confined itself to amending the texts submitted to it for discussion. It proposes to expand them by the addition of certain new provisions, the effect of which will be to exempt from the application of the Convention certain territories where the enforcement of the general régime would give rise to almost insurmountable difficulties. This applies to the portion of British India comprised in the Delta of the Ganges, which contains eight foreign settlements, occupying a very small area in proportion to the extent of the Empire; these settlements are enclaved in Indian territory under very unusual conditions which do not permit of the organisation of an adequate service of fiscal supervision. Administrative difficulties will also

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(1) It was considered better to append this annex to the Report, although it was issued at a later date.

be encountered in Indo-China. The frontier of that country is of great length in comparison with its area, and it is impossible in many cases to penetrate into the interior except by utilising native craft; this gives rise to great difficulties and makes it impossible to exercise any continuous supervision over transit operations. The Sub-Committee appointed to examine the amendments prompted by the above facts was of opinion that the unusual conditions prevailing in each of the two regions in question justified the adoption in their favour of an exceptional régime for transit. Taking the view that a general formula would be preferable to an enumeration which might appear arbitrary, the Sub-Committee decided to provide for deviations from the general rule by means of the following clause :

In view of the fact that within or immediately adjacent to the territories of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with those territories, and forming detached territories or settlements of other parent States, to which it is impracticable, for reasons of an administrative nature, to apply the provisions of this Statute, it is agreed that these provisions shall not be applied to the above-mentioned areas or enclaves.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where, in consequence, it is impossible to provide customs and police control.

The States concerned, however, shall apply in the case of such areas a régime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

This wording was subsequently adopted by the Plenary Committee. In conformity with the spirit of the last paragraph, it was also specified that where transit dues are at present in force in any of the territories thus excepted, these dues should be reduced or even entirely abolished as soon as circumstances permit, and that no new transit dues should be imposed in any of these territories. It was also recognised that the new text had been drawn up in order to meet the special difficulties of British India and Indo-China. It may of course also be applied, as an exceptional measure, to any other territories where similar difficulties arise. But it was agreed that an extension of this kind could only take place under similar conditions, and then only with the consent of the States which would be affected by the application of this exceptional régime.

As amended, *Article 10* of the draft convention on freedom of transit provides that conventions, agreements and treaties concluded by Contracting States on questions of transit before May 1st, 1921, shall not be abrogated, subject to the terms of Article 19 of the Covenant. At the request of the Portugese Delegation, the Sub-Committee, and afterwards the Plenary Committee, recognised that this provision should apply to the Treaty of June 11, 1891, between Great Britain and Portugal, by the terms of which and *ad valorem* duty of not more than 3 % may be levied on goods in transit to Rhodesia or on the Beira-Matadi railway.

The Committee also took note of the remarks of the Portugese Delegation with regard to the colony of Angola, and as a result no State can be compelled, under the terms of the proposed Convention, either to construct special railways in order to facilitate transit, or to concede territories for such construction. The above are merely deductions—affecting particular cases—from the general principles embodied in the Convention.

As a result of amendments submitted by the Delegations of Great Britain and China, a new Article was proposed, in the following terms :

It is understood that this Convention must not be interpreted as regulating in any way the rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign State, whether or not those territories are individually Members of the League of Nations.

Finally, the Chinese Delegation discussed with the Committee the possibility of applying the Convention on Transit to certain ports leased to foreign powers and situated on the frontiers of China; the territory belonging to these ports is very small and their population is considerable, and a Chinese customs service has been established in them. As a result of these conversations, it was decided that the difficulties to which the very peculiar position of these ports may give rise shall be settled in accord-

ance with the principles laid down in the Commentary contained in the *Green Book*. The following passage occurs on page 39 of that document :

The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application... Where, for example, sovereignty and authority are apportioned between different States, as a result of settlements, which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

The same commentary further mentions that in the definition of transit *the word "frontiers" refers to political frontiers, though there are a few specifically mentioned exceptions in other texts, such as in the case of free zones in ports.* (*Id.*, p. 41.)

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THE PRESIDENT (speaking in French). — We are all grateful to the chief Belgian Delegate for the Report which he has been good enough to lay before the Conference; it is remarkable for its clarity and simplicity, and is bound to prove of the greatest possible value.

I feel sure that he has replied to most, if not all, of the questions which are likely to arise in connection with the subject, and he has really accomplished a remarkable feat by exposing in such simple and clear language a matter so complex, in which such a variety of interests are involved. I am persuaded that the result will justify his efforts, and I have not the smallest doubt that the Conference will set the seal upon this brilliant piece of work by adopting it in its entirety.

I call upon Sir Hubert Llewellyn Smith, the British Delegate, who wishes to make certain observations.

Sir Hubert LLEWELLYN SMITH (Great Britain). — May I begin by expressing the very cordial thanks of the British Delegation to M. Neujean for the care, skill and labour which he has expended on producing this excellent and extremely useful Report. I think that we shall all be able to accept it, with very small modifications, as covering all that is necessary for the Transit Convention. I suppose that it will be to the advantage of the Conference if any small points of amendment or criticism are suggested at once and entered in the Minutes; we naturally do not propose any formal amendments.

In particular, with regard to that part of the Report which deals with Article 5, I think that one point has been omitted,—not by the fault of the Rapporteur, for the records of the meeting itself are not very explicit on the subject. Those of you, however, who were present at the discussion of that article, will certainly remember that the British Delegation proposed an amendment to emphasise the fact that the terms of Article 5 applied to the transit of deleterious spirits. After studying the question, the Plenary Committee decided unanimously that the transit of these goods was covered by the words *public health*. It was further considered that no amendment was necessary in order to establish the right of a State to exclude counterfeit coinage from the benefits accorded to goods in transit. If the Rapporteur could introduce a short paragraph on these lines, I should be grateful to him.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I see no objection to making an addition on the lines proposed by the British Delegate.

THE PRESIDENT (speaking in French). — Is not the idea covered by the words in the text *dangerous drugs*?

Sir Hubert LLEWELLYN SMITH (Great Britain). — We would rather have it in the Report, because as a matter of fact the record of the meeting does not refer to the matter in very explicit terms.

I have only one other point, and that is a small one in connection with Article 8. The Recommendation adopted on the subject of the summoning of a Conference to consider the rights and duties of belligerents and neutrals in time of war was not adopted unanimously, and I should like the words *by a majority* added. If you agree, we could even put the names of the States which voted in the minority.

M. CARLIN (Switzerland; speaking in French). — If the words *by a majority* are to be added, I would ask for the words *by a large majority*.

THE PRESIDENT (speaking in French). — We will state the figures,—23 to 5 (1).

Sir Hubert LLEWELLYN SMITH (Great Britain). — Those are the only points to which we wish to call attention, and I have to thank the Rapporteur very sincerely for the conciliatory spirit he has displayed in accepting the various suggestions I have made. I finish as I began by thanking him most cordially for his excellent work.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is M. Neujean's Report to be taken as dealing with all the points which have arisen during the discussion in Committee and which have been adopted, or mentioned in the records? The Chinese Delegation and ourselves asked for a commentary on the proceedings. Is this Report to be considered as a commentary or is another one to be made? If the former, does this document cover all the points and was it based on the records of the Meetings?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I am surprised at the remarks of the Serbian Delegate. No parliamentary report ever reproduces every point appearing in the documents upon which it is based. If I had reproduced the whole contents of the Minutes, my Report would have been of inordinate length, and I should have wasted a great deal of time. As I have been careful to state, I have published the essential points of the records,—all, in fact, which were the subject of discussion, and I even added at the end of my Report that it could with advantage be supplemented by a study, both of the *Green Book*, which in reality amounts to a commentary, and of the Statement made by the Chairman, M. Loudon, which is a complete and lucid report in itself. These three documents together constitute a commentary on the proceedings. Such is the invariable procedure, both in law and in parliamentary work.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am grateful to the Rapporteur for his explanation. As I thought, his General Report is simply a preface to the discussion on the Articles, and does not cover all the points appearing in the records of the meeting. It is a question upon which further light might with advantage be thrown. The Rapporteur has spoken of the *Green Book* and of Mr. Loudon's Statement, which are fully appreciated by us, but in my opinion more weight should be attached to what was said in Committee and at the meetings of the Conference. The principles embodied in the *Green Book*, and the commentary contained therein, have been considerably amended. I wished to emphasise that, in my opinion, most weight should be attached to the records of the Plenary Meetings and of the Committee Meetings.

THE PRESIDENT (speaking in French). — You are quite right. The records form part of the archives and are available for reference.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — May I ask a question? Will a further commentary be made on the General Conventions,

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(1) See note on p. 205 for final text of Report.



as was done in the case of the Draft Conventions, and will this commentary be discussed here?

THE PRESIDENT (speaking in French). — A Report is made upon each Convention. The Report on the Transit Convention has been circulated and read, and we are now going to read the Articles.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — That being so, I will reserve my remarks until the discussion on the Articles.

M. BIGNAMI (Italy; speaking in French). — I congratulate M. Neujean most sincerely on his brilliant Report. I would ask the President to allow M. Sinigalia to state the views of the Italian Delegation.

THE PRESIDENT (speaking in French). — M. Sinigalia will now speak.

M. SINIGALIA (Italy; speaking in French). — In the admirable summary which has just been read to us, the Rapporteur states in connection with combined rail and sea tariffs (1), that, as a result of a lengthy discussion upon the report of the Sub-Committee on the amendments dealing with combined transit scales, the following declaration was inserted in the report :

We have no desire to prevent the application by a State of internal import or export tariffs, which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.

This is surely not to be regarded as a definite decision. My remarks must not be taken as being in any way a reflection on the statements made by the Rapporteur. I recollect that, at the Meeting which was held on March 19th (2) on the subject of transit, the discussion became somewhat confused, and this question was dealt with from several different points of view. It was, I think, recognised at that time that the question might equally well have been raised during the discussion of the draft conventions on railways and ports respectively, or in connection with the convention on navigation; the opposition encountered was solely due to a desire to keep the question of transit separate from that of flag rights or railway tariff scales. No actual decision was then taken,—it was merely decided to postpone the question, or, if you like, to refrain from prejudging it. I may be wrong, but I am sorry not to be able to share the view taken by the Rapporteur. If I am right, may I request that, in the record of this Meeting, the fact should be made quite clear that the question is not in any way prejudged by the discussions which have taken place, more especially since, in Article 4 of the Railway Convention, the Committee appointed to prepare that Convention stated that : *this stipulation must not be considered as affecting in any way the question of combined rail and sea tariffs*. A wrong impression would be created by the apparent contradiction existing between a desire—which is evident from the above-mentioned Article 4—not to prejudge the question of combined rail and sea tariffs in connection with imports and exports, and a decision relating to traffic in transit which involves an entirely contrary effect, since, of course, railways are also engaged in transit traffic. This would result in the creation of an entirely unjustifiable mixed railway tariff system.

The Italian Delegation does not desire to promote a discussion on the principle involved, which is perhaps not within the competence of this Conference, but it requests that the possibility of a discussion of this nature being held on some future occasion and in some suitable place, should be recognised. The Italian Delegation would also like attention drawn to the fact that the Committee was not unanimous on the question.

Finally, we would add that the most resolute attempt to maintain preferential treatment could only be illusory and would not go beyond mere theory, since all forwarding agents who are conversant with the best methods of transport would still,

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(1) See p. 204, para 6.

(2) See pp. 112 *et seq.*

by means of re-entries and re-forwarding, be able to attain the result which it is desired to prevent, and there is no means of preventing this without infringing on the liberty of the individual.

With regard to that part of the Report which deals with Article 5, the Italian Delegation would like to propose a small change in the French text, namely, in the last line of the fourth paragraph, the substitution of the words *ni entraver* for the words *ni gêner*.

THE PRESIDENT (speaking in French). — Is anyone opposed to this change?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I cannot see much difference between the words *gêner* and *entraver*, but I see no objection to making the proposed alteration.

With regard to the first point, I am sorry that the Italian Delegate should have made this remark. In order to avoid any misunderstanding I took care to mention the long discussion on the report of the Sub-Committee for the examination of amendments concerning combined scales of transit tariffs as a result of which the Rapporteur made the statement beginning *But we do wish to prevent the establishment of transit tariffs differentiated...* I am sorry, not for the sake of the Conference, but for the sake of the Italian Delegate; for both the Sub-Committee and the Plenary Committee decided against his view. I can do nothing to alter their decision; I see no possibility of modifying this sentence. You may make reservations, in the hope that a change may be made in the near future, but the Report contains the decision which was taken; it is a correct summary of the record of the meetings, and I do not see how it can now be added to or abridged.

THE PRESIDENT (speaking in French). — M. Sinigalia's remarks will appear in the Minutes of this Meeting.

M. SINIGALIA (Italy; speaking in French). — In the Minutes of the Plenary Committee I cannot see any mention of a vote on this subject. There was a discussion, but no decision was taken.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I have reproduced almost the exact terms of the records of the meeting. I have not them here before me, but the discussion resulted in the following declaration by the Rapporteur: *But we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.* This declaration was made by the Chairman of the Sub-Committee on behalf of the Sub-Committee, and it settled the point.

M. SINIGALIA (Italy; speaking in French). — I have looked through the records of the meeting in order to find these words, but I have not been fortunate enough to come upon them. Perhaps a verbal declaration was made, but the Committee did not take a vote. In my recollection the Meeting rose without coming to a decision on the subject.

Mr. MANCE (British Empire). — I have not the Minutes before me, but I must say that my memory has strangely deceived me if no vote was taken on the subject. Perhaps one or two Members here will state whether they can confirm that recollection.

M. SINIGALIA (Italy; speaking in French). — If it is stated that a vote was taken, I should like the Minutes to be read aloud.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — That is the reason why I raised the question of the Minutes just now.

THE PRESIDENT (speaking in French). — It is obvious that this is not the place to clear up this matter; it is a question for the Committee. The simplest way would be for M. Sinigalia and the Rapporteur to consult the text together for a few minutes; that should suffice to clear up the matter (1). The incident is closed. M. Tsang-Ou, the Chinese Delegate, will now speak.

M. TSANG-OU (China; speaking in French). — I understand that the object of this meeting is to adopt a final text for the Convention on Transit. The official text is in English and French, and is subject to ratification by the legislatures of each country. In view of the fact that in my country the Members of Parliament do not all speak English and French, I shall have to translate the text into Chinese. I should like to know which documents are to be considered as authoritative and read in conjunction with the Transit Convention,—that is to say, which documents are to be regarded as possessing legal value in the event of disputes between the Government and the Chamber, or between my own and another Government. To take one example, the mere word *authority* puzzles me, and so does the word *sovereignty*. I shall have to expound their meaning, and as I cannot do this in my own way, I must base my explanations on some kind of Commentary, that is, an analytical summary of the texts we have adopted and the discussions which have taken place. This was done for the *Green Book*. It is essential for me to know the exact scope of every article, otherwise I shall be completely at a loss.

THE PRESIDENT (speaking in French). — I must admit that I should be very much puzzled to know how to translate the words *authority* and *sovereignty* into Chinese. Your intimate knowledge of the French and English languages places you at a great advantage over me. Any suggestions I may make will therefore be offered in a very humble spirit. I think that no Commentaries in the true sense of the word exist with regard to law and international texts. The gradual accumulation of jurisprudence constitutes a Commentary. A Commentary is always *post legem*; it does not accompany the law but follows it.

M. POLITIS (Greece; speaking in French). — An authentic interpretation does not exist.

THE PRESIDENT (speaking in French). — There is, for instance, no Commentary on the Civil Code; the Law is what we make it here. With regard to jurisprudence, all our documents will possess the degree of authority which jurisprudence bestows upon them, neither more nor less.

M. TSANG-OU (China; speaking in French). — In that case, if I take the text of the Convention, the Report of the Rapporteur-General, and the *Green Book*, shall I have before me all the official documents of the Transit Convention? That is the question I would ask.

THE PRESIDENT (speaking in French). — The law or, if you like, the Convention, is not accompanied by any commentary bearing an official character. Apart from this, there are documents which may serve to enlighten yourself and your Government and Parliament, and you may make what use you please of them; but the Conference cannot lay down that they constitute a commentary on the law. I appeal to the jurists and ask them whether it can be said that there exists an official commentary on a law.

M. TSANG-OU (China; speaking in French). — I understand, Mr. President. You say that a commentary does not exist, that only the official text of the Convention has a legal value, but that, in interpreting this text, I am free to consult the *Green Book* and the records of the meetings. If a dispute should arise, the case will be submitted to international jurisdiction, and it will be said, "You translated wrongly;

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(1) See note on p. 204 for the final text adopted as a result of this consultation.

that should not be so interpreted.” I shall reply that I found in the *Green Book* the word *authority*, and that that word occupied my mind, because for me it signified a very great deal. I should therefore like to be told, “You may take as a foundation the text of the Transit Convention, the *Green Book*, the *Blue Book* (1), because these are official texts.”

THE PRESIDENT (speaking in French). — I cannot say that. For example, everyone knows the Civil Code, commonly known as the *Code Napoléon*. You know that there are famous commentaries upon it,—summaries of the discussions which took place at the State Council in the presence of the First Consul, Bonaparte. When an Article of the Code is under discussion before a court, it often happens that the Minutes of the State Council are quoted, but although the debates which they report took place before the Head of the State, no one has ever claimed that they had any official value. It is only the law, that is to say, the Convention, which has official value.

M. SCASSI (Greece; speaking in French). — That is quite evident.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — When I asked whether there would be a commentary on these Conventions, I had in mind purely the practical side. I remembered that we had drawn up Conventions which would be carried out by practical men and not by legal advisers. It is, therefore, technical men who should draw up the Draft Conventions and apply their provisions. It is indispensable that every document should be accompanied by an explanation, a commentary or statement of reasons. Why have we so often referred to the *Green Book*, which has already become history? Why does the British Delegate request that such and such a word may be changed in such and such a passage of the General Report? Because these documents have value. But do not let us discuss the matter any further. It would give me great pleasure if we could all agree to request the Officers of the Conference to draw up a Report based on the records of the meetings. The General Report submitted to us by M. Neujean should serve merely to open the discussion on the articles, but the Report to which I refer would be prepared by the Officers of the Conference, and would be based upon the records of the meetings. Do not let there be any misunderstanding. The *Green Book* is sacred to all of us, as far as it can be sacred. In brief, I appeal to the Officers of the Conference and to the President to grant as a commentary,—a kind of statement of reasons,—which may serve as a basis for interpreting the Conventions.

M. SCASSI (Greece; speaking in French). — That is impossible.

M. ALVAREZ (Chile; speaking in French). — I do not understand the discussion that has arisen in this matter. Precedents are unanimous on this point; only actual texts are official. There is no official commentary; there are only certain documents which may be termed semi-official. These latter are of two kinds: firstly, the preparatory work of the Conference, which comprises the early drafts, the work of the Sub-Committees and Committees, the debates which took place; and, secondly, Reports of Committees, and in particular the General Report accompanying the final texts of the Convention as submitted to the approval of the Plenary Meeting. The Rapporteur may upon occasion add to the text of the Convention a short commentary drawn up by himself and reflecting the views of the Committee. This was done with some of the Conventions submitted to the second Hague Conference, and also with the scheme put before the Naval Conference in London in 1909. All these commentaries and also other precedents are not official commentaries, but are what is termed “semi-official” documents. They are of value in helping us to understand the spirit and exact scope of some of the Articles of the Convention. Besides, it would be almost impossible to draw up an official commentary emanating from the Conference itself. I would therefore ask the Conference not to delay longer over this discussion.

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(1) Resolutions of the Assembly.

M. SCASSI (Greece; speaking in French). — Hear, hear.

M. ALVAREZ (Chile; speaking in French). — We have, then, on the one hand the Report approved by the Conference and stamped by it with a semi-official character, and on the other hand the preliminary documents which have a scientific and practical value.

M. SCASSI (Greece; speaking in French). — Hear, hear.

THE PRESIDENT (speaking in French). — I note that everyone is in agreement, since M. Avramovitch is also joining in the applause.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am applauding because the Chilean Delegate asked that a General Report should be adopted by the Conference.

M. ALVAREZ (Chile; speaking in French). — You are under a misapprehension; I referred to the Report drawn up by M. Neujean.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then it must be completed.

M. ALVAREZ (Chile; speaking in French). — You are not entitled to do it.

THE PRESIDENT (speaking in French). — Perhaps I could throw some light on the debate by expressing what is in everyone's mind,—that the Secretariat, under the supervision of the Officers of the Conference, will prepare a volume to include the text of the Conventions, M. Neujean's semi-official Report and all the previous texts. This volume will contain both official and semi-official matter, and in this way all the information for which M. Tsang-Ou has asked will be collected together.

M. TSANG-OU (China; speaking in French). — I am not afraid of technical responsibility, but of the responsibility of interpreting the documents correctly.

THE PRESIDENT (speaking in French). — The incident is closed. The volume shall be published under the supervision of the Officers of the Conference, for such a volume is indispensable.

M. CARACOSTEA (Roumania; speaking in French). — It will be remembered—M. Loudon was present at the time—that I had occasion during the discussion to submit an amendment with regard to certain agricultural countries, and it was decided to insert this amendment in the Final Protocol. I was myself satisfied with this procedure, but now, in view of the explanations we have just heard, I am wondering whether the Final Protocol really has any value at all?

THE PRESIDENT (speaking in French). — It carries the same weight as the Convention.

M. SCASSI (Greece; speaking in French). — It is incorporated with it.

M. CARACOSTEA (Roumania; speaking in French). — Thank you, Mr. President.

M. LANKAS (Czecho-Slovakia; speaking in French). — I hope you will forgive me for making some remarks on this incident, which is of great interest, and the origin of which it would not be amiss to recall. All, or almost all, the work in Paris was done by Sub-Committees, and no shorthand report was taken of their proceedings. The Secretary-General made notes, and at the conclusion of our labours he presented an exceedingly profound and detailed study of all the proposals adopted. This work could really constitute a commentary on the Conventions. Here, however, the situa-

tion is quite different. We have records of the Meetings; there is no advantage in making a commentary similar to the *Green Book*, and indeed it is not even possible to do so. What we can do is to set down the guiding principles of our debates. It is not that I wish to detract from the value of the *Green Book*, but we cannot write another *Green Book* here.

THE PRESIDENT (speaking in French). — Does anyone else wish to comment on M. Neujean's Report?

### DISCUSSION OF ARTICLE 1

We will now begin the study of the text of the Draft Convention on Freedom of Transit as adopted by the Drafting Committee. We will read it out article by article, on the understanding that the vote will be taken according to the rules adopted at a previous Meeting on the Rules of Procedure.

Persons, baggage, and goods, and also vessels, coaching and goods stock, and other means of transport shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations *traffic in transit*.

M. LANKAS (Czecho-Slovakia; speaking in French). — As I ventured to say, I will return to the question of mails and postal parcels, but I will be brief. The Report presented to us states that the words *mails and postal parcels* have been deleted, not because mails and postal parcels are to be excluded from the benefits accorded to freedom of transit, but because they have already been dealt with in the recent Madrid Convention. I had urged the retention of the words *mails and postal parcels* in the Convention on Freedom of Transit, but the Plenary Committee decided otherwise. I do not want to return to this question by again requesting the insertion of these words. I have studied the Madrid Convention. Freedom of Transit is certainly dealt with there, but, I must add, in rather a summary fashion. This is what the Madrid Convention says: *Freedom of transit for "mails and postal parcels" is guaranteed*; and that is all. I agree with you that it is unnecessary to make any addition to the actual Convention, but I do think it would be desirable to reproduce in the Final Protocol the exact terms of the excellent Report with which we are at present dealing, namely: *Your Committee has omitted any mention of mails and postal parcels. This does not mean that mails and postal parcels are excluded from the benefits of freedom of transit; the reason is that they have already been dealt with by the Madrid Convention.* May I request the French Delegate to be good enough to give his views on this subject?

M. BONNET (France; speaking in French). — You will recollect the circumstances in which the words *mails and postal parcels* in Article 1 were deleted. The Madrid Convention, which was signed last December, provided that transit for mails and postal parcels should be free, and it therefore seems superfluous to make any mention of them in our Convention, especially as, had we done so—and the Italian Delegation shared the view of the French Delegation on this subject—there might have arisen as a result differences of interpretation between the Madrid Convention and the Transit Convention which was to be drawn up at Barcelona. It will always be understood, therefore, that mails and postal parcels are to benefit by freedom of transit in the same manner as any other class of traffic. We see no objection to the inclusion of this statement in the records of the meetings; indeed, it is already clearly indicated in M. Neujean's Report. I must, however, point out that the Madrid Convention was concluded, not between Postal Administrations, but between States. The Regulations for the carrying out of the Convention were concluded between administrations, but the Convention itself was concluded between Governments. Freedom of transit is therefore guaranteed in all countries which are members of the Postal Union, and as that Union

is open to the membership of all countries which desire to join it, freedom of transit is thus guaranteed as completely as possible.

THE PRESIDENT (speaking in French). — Mention of this will be made in the records of the meetings.

M. LANKAS (Czecho-Slovakia; speaking in French). — If it is sufficient for these explanations to be entered in the records of the meetings, I will not press my point further.

THE PRESIDENT (speaking in French). — In my opinion, mention in the records of the meetings is sufficient. The entry will be made as the result of a decision by the Officers of the Conference.

M. ORTUÑO (Spain; speaking in French). — I simply wish to put the following question to M. Neujean : the last paragraph of Article 1 reads as follows : *Traffic of this nature is termed in these Regulations "traffic in transit"*. At the beginning mention is made of a *Draft Convention*. The Regulations which we are now discussing—and I fully realise now why they are called *Regulations*—will be transformed into a *Convention*, after they have been supplemented by certain documents at present missing. It seems to me that instead of referring here to the *present Regulations*, it would be clearer to speak of the *present Convention*, since these Regulations will soon be in their final form.

THE PRESIDENT (speaking in French). — That is a point which has specially examined at the request of Sir Cecil Hurst and along the lines indicated by him; it is he, therefore, who can best enlighten us upon it.

Sir Cecil HURST (Great Britain). — The text of the Report submitted by M. Neujean to the Conference made it clear that it dealt only with those of the Articles adopted by the Committee which treat of what I may term the technical aspects of the transit question. The Conference will remember that the articles on transit were laid before the Conference and were discussed by the Committee in the form of a *Draft Convention*. That *Draft* contained a number of provisions which dealt with the principle of freedom of transit, and with the exceptions that were admitted to that principle. It contained also a series of articles dealing with the machinery by which the stipulations of this first group of articles were to be set in motion, namely, the question of the signature of the *Convention*, that of the accession of States to the *Convention* at a later date, of the ratification of the *Convention*, of denunciation, and so on.

For the purpose of my remarks I may term this second group of articles the *Formal Articles*. They constitute an entirely different group of articles from the *Technical Articles*. When the Plenary Committee dealing with these transit articles reached these *Formal Articles*, it referred them to the Officers of the Conference for consideration as to the best form in which they should be laid before the Conference for adoption. There is now under discussion by the Conference only the earlier group of articles, which I described just now as the *Technical Articles*, but it is natural that the Conference should wish to know the form in which there will be proposed to it at a later date the group known as the *Formal Articles*. The proposal that will ultimately be made to you is that the *Formal Articles* should be grouped together and should form a *Convention*; that the *Technical Articles* should be grouped together and should form *Regulations*, the *Convention* to bestow a legally recognised existence upon the *Regulations*. This is a system which has been followed on several previous occasions, the last and the most conspicuous example being the Protocol for the adoption of the Statute of the Permanent Court of International Justice, which was adopted by the Assembly at Geneva last December. Some of you were at Geneva, and you will remember that this Statute was adopted by a Resolution of the Assembly, and is to be brought into being and recognised as a *Convention* binding the different Powers, by being annexed to a Protocol to be signed by the plenipotentiaries of these Powers. Another example even more closely analagous to that with which we

are now dealing is that of the *Convention concerning the Laws and Customs of War on Land*, which was adopted by the second Peace Conference in 1907. There, the whole group of articles dealing with these laws and customs constitutes Regulations attached to a comparatively short Convention, under which all the High Contracting Parties agree to bring those regulations into force. If this system is adopted, all the transit articles will constitute *Transit Regulations* to be annexed to a Convention. This Convention will contain the obligation entered into by the High Contracting Parties to accept all the obligations embodied in the Transit Regulations. There will also appear in the Convention the provisions on ratification, on the accession of States which either have not been represented at this Conference or to which the Council of the League may ultimately decide to communicate the text of the Convention officially, and on denunciation, as also those concerning the keeping by the Secretary-General of a register showing which Powers have accepted the Regulations, and so on.

This grouping into two separate departments; the first containing the Formal Articles in the form of a Convention, and the second the Technical Articles in the form of Regulations, will not alter or prejudice in the slightest degree the legal position or the legal rights and obligations of the Parties which accept the instrument. That is the proposal which will be brought before the Conference at a later date for discussion.

Now may I indicate the special reasons which led the British Delegation to propose the adoption of this method? You will remember that at the time when the Covenant of the League of Nations was framed by the makers of the Treaty of Versailles, some of the British Dominions were admitted as separate Members of the League of Nations, and consequently, so far as concerns the technical articles on Transit—those included in the Regulations—those Dominions, being separate Members of the League, should be entitled to participate as separate entities in the rights and duties arising from these articles. On the other hand, the whole of the British Empire is subject to one Sovereign, and all Treaties in respect of the Empire are made in his name. He alone, therefore, can be described correctly as a *High Contracting Party*, even though he contracts through different plenipotentiaries for different parts of the Empire. If the phrase *High Contracting Parties* were used in the Technical Articles, it would be very difficult to make it clear that the British Dominions and India, as separate Members of the League of Nations, counted for the purpose of those articles as separate units, and that other States were not bound to grant to the commerce of such Dominions and of India the advantages provided for in those Transit Articles, without an assurance of reciprocal treatment. In view of the fact that some of the Dominions are not represented at this Conference, it is, of course, right that the representatives of other Powers should ask that, at the time of the signature of the Convention, the British plenipotentiary should make a statement indicating precisely the position of those Dominions in respect of the Transit Regulations.

I have endeavoured to explain to you a question which is most complicated and difficult, and I would ask you, if I may, to be so kind, before you attempt to grapple with the intricacies that surround that institution known as the British Empire, to wait and see in the records of the meeting the text of what I have said, rather than attempt to plunge into a long discussion of the question, when the meeting has already lasted some three hours.

THE PRESIDENT (speaking in French). — If the Conference sees no objection, we will return to the discussion of the Transit Convention at our next meeting.

*The Meeting adjourned at 8.10 p.m.*



## TWENTIETH MEETING OF THE CONFERENCE

(Monday, April 11th, 1921, at 11 a.m.)

DISCUSSION OF REGULATIONS — DISCUSSION OF ARTICLE 1 (CONTD.) — DISCUSSION OF ARTICLES 2 TO 10 — REQUEST OF CHINESE DELEGATE — DISCUSSION OF ARTICLES 11 TO 13 — RECORD OF 13th MEETING, REPORT ON ARTICLE 13 OF REGULATIONS

*The Meeting opened with M. Hanoiaux, President, in the Chair.*

THE PRESIDENT (speaking in French). — We will proceed with the discussion of the Draft Convention on Freedom of Transit. We are beginning a new week, and I sincerely hope it will see the end of our labours. Those of you who were present at the Assembly at Geneva, or at the Transit Committee here, will realise that a time comes when it is necessary to speed up the meetings. During the last week of the meetings at Geneva it was decided that each speaker should be allowed only five minutes, and should not be permitted to speak more than twice on the same subject; similar measures were also taken at the Transit Committee. Such measures of coercion cannot be applied to this Conference, but we are all tired, and are, moreover, feeling the necessity of returning to our own affairs and to our official duties at home; I therefore appeal to speakers to do their best both to shorten the discussion as much as possible, and to prompt the officers of the Conference to hasten on the work. We cannot prolong indefinitely our stay in the hospitable town of Barcelona.

At the close of Saturday's Meeting, M. Ortuño, the Delegate for Spain, made with much justice some remarks which were occasioned largely by a delay in the distribution of documents. The Transit Regulations and the Transit Convention were distributed separately, in accordance with the decision taken by the Conference at the beginning of its work, to the effect that the Formal Articles as a whole should be discussed after the Conventions themselves had been dealt with. As these Formal Articles were intended to refer to all the Conventions, it was thought better to discuss them in this way than in connection with each Convention separately. As soon as the formalities are completed, the Regulations, or rather the Technical Articles, will stand alone, and it would therefore be superfluous to attach the Formal Articles separately to each Convention. They are really only provisional, in that once the Powers have acceded to their terms, the text of them is no longer of importance; they will remain in the archives of the various States. It is the Technical Articles which will be taken into consideration by the Governments and by the tribunals responsible for judging any disputes which may arise. It was for this reason that, in conformity with numerous precedents, the legal experts advised us to deal separately with the Technical Articles of the Convention. As the text of the latter had not been circulated, it was natural that a certain uneasiness should arise, and that it should be asked why the Formal Articles had been severed from the Conventions; this was authorised, as I have just explained, by a decision taken in general for all the Conventions.

You now have the Formal Articles before you, but I would ask you again to postpone the discussion on them until a final text has been established for all the Conventions, in view of the fact that these Formal Articles will apply to all of them. I propose passing without delay to the discussion of the Technical Articles or Regulations, on the understanding, however, that until the Formal Articles have been drafted, approved and signed, the Convention will not be valid. It will only become so when we are all in agreement, and when every point in connection with the Conventions has

been explained. Any enquiries will be welcomed by the Officers of the Conference, who will endeavour to satisfy them in such a way as will not leave any Delegate in doubt upon any point. There should be no kind of mystery upon the subject.

If there is no objection, we will now read the Technical Articles, but they will only come into force when all the Formal Articles have been studied by the Conference with the utmost freedom and, I hope, in all sincerity.

M. Ortuño will now speak.

M. ORTUÑO (Spain ; speaking in French). — In view of the President's remarks, I will endeavour to be brief, and I shall be considerably aided in this to-day by the explanations which he has been good enough to give us on the question which I raised at the last meeting. I must explain, however, that when I spoke on that occasion I had before me a document bearing the title *Draft Convention*, whereas upon reading the first and following articles, I found that the word *Regulations* had been used, and I had no further information on the subject. Sir Cecil Hurst was good enough to reply to my enquiry, the import of which was quite clear to the Conference. I asked to speak in order to say something about the powers which I consider a Drafting Committee should possess, the procedure to be followed,—in fact, to discuss the whole question. The Conference called a certain document a *Convention*, and handed it over to a Drafting Committee, which, without any apparent reason for so doing, handed us back a document entitled *Regulations*,—a totally different thing. This morning, however, I have received the remaining document mentioned by the President. We were told by Sir Cecil Hurst that the Regulations formed only a part of the Convention, and that the latter contained besides certain formal articles, and now the President quite rightly substituted for the word *Regulations* the words *Technical Articles*. I think it would be preferable, and would avoid confusion, to speak of the Convention as consisting of *Formal Articles* and *Technical Articles*. However, the Conference is now in possession of the facts, and we shall know shortly whether it accepts this view.

On looking over the Formal Articles just now, I gained the impression that the fact of signing the Convention implies a formal engagement to observe in their entirety the terms of the Regulations or Technical Articles. It seems to me that the matter is now one of secondary importance, and involves a question of form rather than one of substance. Personally, therefore, I see no objection to accepting this new form for the Convention, and would only suggest that we try to find another word than the word *Regulations*, which may, I think, lead to confusion.

M. WINIARSKI (Poland; speaking in French). — I should have liked to make some remarks on the basic point of the question, but if the Conference accepts your proposal to postpone the matter, I will reserve my observations for the present.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is the word *Regulations* likewise reserved? I do not consider it a suitable word.

THE PRESIDENT (speaking in French). — I really think, after the remarks made by MM. Ortuño and Winiarski, there can be no further objection to reserving the word *Regulations* until later in the hope of finding a better word. What is Sir Cecil Hurst's opinion?

Sir Cecil HURST (Great Britain; speaking in French). — Certainly. Let us postpone the matter, and try to find, if possible, a synonym which will give satisfaction.

M. WINIARSKI (Poland; speaking in French). — I suppose we shall also reserve the expression *High Contracting Parties*?

THE PRESIDENT (speaking in French). — Certainly. The Officers of the Conference will see to it that the words *High Contracting Parties* are retained until the formal articles are discussed.

M. LANKAS (Czecho-Slovakia; speaking in French). — Will the other conventions be drafted in the same way by the Drafting Committee?

THE PRESIDENT (speaking in French). — They will be drawn up in the same way, the questions as to the term *High Contracting Parties* and as to the Regulations being reserved.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — May I ask what the powers of the Drafting Committee are? Without consulting the other Committees, they have drawn up texts completely changing the form of the instrument, and giving the character of Regulations to what has hitherto been treated as a Convention. I have never heard that a Drafting Committee could, on its own initiative, modify the substance or the form of matters referred to it, unless this is done in accordance with decisions taken by the Committee which referred the matters in question.

THE PRESIDENT (speaking in French). — The Drafting Committee has no powers of its own. It proffers its help and advice to the Conference, but the Conference remains supreme in everything. We—the Officers of the Conference and the legal experts—are endeavouring to arrive at a form of words to submit to you, but the powers and the authority of the Drafting Committee are absolutely nil; should the Conference be dissatisfied with any detail of the work done, it has an absolute right of veto. We are grateful to the Drafting Committee for their assistance, but we must remember that it is friendly aid and nothing else.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you. But if this Drafting Committee, which has no authority, makes important changes in the documents which we refer to it, we shall be under the necessity of discussing them a second time, and referring them once again for examination to a Sub-Committee. We shall never come to an end. The Drafting Committee ought to confine itself to making the necessary corrections in the documents referred to it, and should not propose important changes.

THE PRESIDENT (speaking in French). — I can assure you that the Drafting Committee, which has worked under the Chairmanship of your President, is most careful to respect the decisions taken by this Assembly. If there has been any mistake, it is I who must make my apologies, and I assure you that we will do our best from now onwards to fall in with your desires. This will appear in the records of the meeting.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you, Mr. President; my remarks were only intended to avoid any repetition in the work.

#### DISCUSSION OF ARTICLE 1 (contd.)

We can now proceed to discuss the Technical Articles. We had read Article 1 (1) and had paused at the word *Regulations*. As this word is reserved, after reading the Article I will ask whether anyone has anything to say concerning the remainder of the text, which reads as follows :

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations traffic in transit.

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(1) See p. 216.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I wish to draw the attention of the Conference to a proposal made by our delegation upon a question of principle,—that of the exclusion of vessels from the Transit Convention. I refer to the sentence : *when the passage... beginning and terminating beyond the frontier of the State across whose territory the transit takes place*. A vessel cannot possibly fulfil the conditions contained in this definition of transit, because the present Convention regulates transit, whether by waterway or railway; transit by river, and that alone, is regulated by the Waterways Convention. During the meetings of the Committee we asked for the omission of the word *vessels*, which should only appear in the Waterways Convention. I make this remark to fulfil a two-fold duty—that of carrying out the instructions given me by my Government and that of suggesting a course calculated to avoid many difficulties in the future. If the Conference cannot see its way to agree with us, I should like my observations to appear in the Final Act. This is one of the points not mentioned in M. Neujean's Report.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — In drawing up my Report, I did, in fact, wonder whether it would not be best to reproduce everything that was in the records of the meeting,—a much simpler course both for myself and those who collaborated with me. We agreed, however, to summarise the discussion, giving special prominence to those matters which had occupied the attention of the Committee for the longest time. Thus, certain questions are given special mention in my Report. If I did not see fit to mention the Serbian Delegate's remark on the subject of vessels, it was because, after discussing the question, the Committee decided almost unanimously to reject the proposal. If the Honourable Member insists that the incident should appear in the Report, I am willing to give him satisfaction, but in that case it is to be feared that other delegations, which have raised questions of the same kind, or even of quite a different kind, will likewise demand the inclusion of their observations in the Report.

M. POLITIS (Greece; speaking in French). — Certainly they would.

M. NEUJEAN (Belgium; speaking in French). — In that case it will, in my opinion, be most regrettable that the Conference imposed this task on the Rapporteur and all those who have toiled at it day after day.

THE PRESIDENT (speaking in French). — Does anyone else wish to speak on Article 1?

*Article 1 was adopted.*

## DISCUSSION OF ARTICLE 2

I will now read Article 2 :

Subject to the other provisions of these Regulations, the measures taken by States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — What is the meaning of the words *customary... reserves* at the end of the Article? Is this a reference to the reserves existing before the war?

THE PRESIDENT (speaking in French). — Agreement was reached on this text both in Sub-Committee and in Committee. Do the terms employed seem obscure?

M. BONNET (France; speaking in French). — We intended in particular to reserve for customs authorities the right of search.

THE PRESIDENT (speaking in French). — The reference is specially to the right of search in the case of officials boarding vessels for the purpose of ensuring that everything is in order. The matter will be mentioned in the records of the meetings.

M. BIGNAMI (Italy; speaking in French). — I was a Member of the Sub-Committee. This provision was suggested by M. Serruys, who is a recognised authority on the matter, and the intention was to reserve not only customs rights, but also fishing rights or any other special regulations enacted by particular States.

THE PRESIDENT (speaking in French). — This explanation is clearer than my own and must appear in the record of the meeting.

I will put the Article to the vote.

*Article 2 was adopted.*

### DISCUSSION OF ARTICLE 3

I will now read Article 3 :

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

M. SINIGALIA (Italy speaking in French). — At the end of the article, it would be better to say *ces droits et taxes pourront être réduits* instead of *ces droits ou taxes pourront être réduits*.

THE PRESIDENT (speaking in French). — There is a shade of difference in the two meanings; the word *ou* should be retained to show that we are not considering these two classes of dues as a whole, but as alternatives.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to draw attention to the expression *traffic*, which has taken the place of the words *persons, luggage, goods, etc.* Is the word *traffic* a good and adequate rendering of the words *persons, luggage, goods, etc.*? This point might be noted in the records.

THE PRESIDENT (speaking in French). — It shall be done. The original text stands to show the meaning of the word *traffic*, whilst in the general provision on traffic in transit it is understood that the word *traffic* includes all traffic in transit.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It would be desirable to change the word *ou* to *et* in accordance with the request of the Italian Delegation.

THE PRESIDENT (speaking in French). — No; the text proposed by the Drafting Committee is better on this point.

Sir Cecil HURST (Great Britain; speaking in French). — With regard to M. Avramovitch's remark on the subject of the words *traffic in transit* at the beginning of Article 3, may I refer you to the last paragraph of Article 1, where you will find a definition of these words. This paragraph was added by the Drafting Committee on a proposal, made by the legal experts, to add the following paragraph to Article 1: *traffic of this nature is termed in these Regulations traffic in Transit.*

The legal experts desired the Drafting Committee to adopt this text in order to simplify the wording of all the Technical Articles, but the meaning of the words *traffic in transit* is sufficiently defined by the last paragraph of Article 1.

THE PRESIDENT (speaking in French). — May I say once for all that the words *traffic in transit* as defined in Article 1 cover all kinds of traffic.

If there are no further objections, I will put Article 3 to the vote.

*Article 3 was adopted.*

#### DISCUSSION OF ARTICLE 4

I will now read Article 4 :

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have only one very small observation to make on the English version of Article 4. At the beginning of this article the words *routes operated* seem to me to be rather an awkward rendering of the words *voies exploitées*, but I cannot for the moment suggest better words. Would it not be possible to adopt these articles, whilst reserving this expression?

THE PRESIDENT (speaking in French). — We will, then, reserve these words in the English text.

I put Article 4 to the vote.

*Article 4 was adopted.*

#### DISCUSSION OF ARTICLE 5

I will now read Article 5 :

No Contracting State shall be bound by these Regulations to afford transit for passengers whose admission into its territory is forbidden; or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in these Regulations shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

Sir Louis KERSHAW (India). — In the English text of the Article I find the words *reasonable precautions* as a translation of the French words *précautions nécessaires*.

THE PRESIDENT (speaking in French). — The rendering of the word *reasonable* by the word *nécessaires* was suggested by Sir Hubert Llewellyn Smith at the Drafting Committee, and I hope the Indian Delegate will accept it. His remark will be registered in the records of the meeting.

I will put Article 5 to the vote.

*Article 5 was adopted.*

#### DISCUSSION OF ARTICLE 6

I will now read Article 6 :

These Regulations do not of themselves impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

Has anyone any remarks to make on Article 6?

I will now put the Article to the vote.

*Article 6 was adopted.*

#### DISCUSSION OF ARTICLE 7

I will now read Article 7 :

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country, may, in exceptional cases, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

M. BIGNAMI (Italy; speaking in French). — It is understood that Article 7 is defined by the Rapporteur when he states that *Article 7... now allows the imposition of restrictions on freedom of transit whenever the vital interests of a country are involved*. It is essential that this should be the interpretation given to the text.

THE PRESIDENT (speaking in French). — It is understood that the Report to which M. Bignami has just alluded will be published, and the text of Article 7 will be defined by the commentary he has just quoted.

M. BIGNAMI (Italy; speaking in French). — Thank you, Mr. President; that will make the text much clearer.

M. LANKAS (Czecho-Slovakia; speaking in French). — It would perhaps be well to bring the terms of the Report into line with the relevant portion of Article 15 of the Draft Convention on Waterways.

THE PRESIDENT (speaking in French). — This shall be done. The text of the Waterways Convention reads : *for a period as short as possible*. The two versions will be identical.

M. LANKAS (Czecho-Slovakia; speaking in French). — Thank you, Mr. President.

THE PRESIDENT (speaking in French). — Are there any further remarks on the subject of Article 7?

I will put it to the vote.

*Article 7 was adopted.*

### DISCUSSION OF ARTICLE 8

I will now read Article 8 :

These Regulations do not prescribe the rights and duties of belligerents and neutrals in time of war. The Regulations shall, however, continue in force in time of war so far as such rights and duties permit.

M. VALLOTTON (Switzerland; speaking in French). — The second part of this Article, consisting of a Recommendation which was to form an integral part of the Article, has obviously been omitted.

M. CARLIN (Switzerland; speaking in French). — May I follow up M. Vallotton's remarks by observing that the Recommendation for which we voted has certainly been omitted. I may recall that it read as follows :

The Conference recommends that the League of Nations shall, as soon as possible, invite its members to meet with a view to drawing up new Conventions for the regulation of the Rights and Duties in regard to transit of belligerents and neutrals in time of war.

This Recommendation was appended to Article 8 as a compromise, in order to allow of the acceptance by certain States of the first paragraph as submitted to the Plenary Committee by the Sub-Committee. It was at the meeting of March 22nd that the Plenary Committee of the Conference, under the chairmanship of M. Loudon, dealt with the question. The impression gathered from the records of that meeting, which I have here before me, was undeniably that the Recommendation was to be embodied in the Article, whereas the Drafting Committee has made no reference whatever to it. Of course it may quite conceivably be considered that a Convention cannot logically include a Recommendation, and it was probably this consideration which gave rise to the decision of the Drafting Committee.

THE PRESIDENT (speaking in French). — This Recommendation was yesterday, at my request, relegated to the Final Protocol. I drew the attention of the Conference to the question whether the two Recommendations which have been adopted should be separated from the text of the Convention. These two Recommendations were not omitted at all. They have been adopted for insertion in the Final Protocol.

M. CARLIN (Switzerland; speaking in French). — May I thank the President for his explanation? It cannot, however, be denied that in the draft Regulations at present under discussion, the Recommendation is actually omitted. My point is this : the general impression was that this Recommendation would appear in Article 8, and would form one of its paragraphs; if my colleagues will consult the records of the meeting of March 22nd, they will, I think, agree with me. As I said just now, the Drafting Committee may indeed have considered that a Recommendation could not well be embodied in Article 8. I would recall, nevertheless, that some Conventions, particularly the one on Railways, consist entirely of Recommendations, every Article beginning with the words *The Contracting States consider it desirable...* For this reason I fail to see the objection to including the Recommendation in the Article itself in some such form as the following : *The Contracting States consider it highly desirable that the League of Nations...* May I recall the fact that this Recommendation was adopted at the meeting of March 22nd by a large majority,—twenty-three votes to five. Should the Conference, however, still see an objection to including it,—the contention of the Drafting Committee having perhaps more force when applied to



Technical Regulations than to a Convention, —I should be willing, speaking on behalf of the Swiss Delegation, to declare myself satisfied if the Recommendation were included in the Final Protocol.

THE PRESIDENT (speaking in French). — The Recommendation will now be inserted in the Final Protocol, and not merely in the records of the meeting.

If no-one has any further observations to make on the subject of Article 8, I will put it to the vote.

*Article 8 was adopted.*

#### DISCUSSION OF ARTICLE 9

I will now read Article 9 :

These Regulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Has no-one any remarks to make on Article 9? I will put it to the vote.

*Article 9 was adopted.*

#### DISCUSSION OF ARTICLE 10

I will now read Article 10 :

The coming into force of these Regulations will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before..... 1921 (subject, however, to Article 19 of the Covenant).

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of these Regulations the modifications required to bring them into harmony with such provisions, so far as the geographical economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of these Regulations, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of these Regulations.

M. CARLIN (Switzerland; speaking in French). — In order to bring Articles 1 and 2 into complete agreement with each other, I propose that at the beginning of the second paragraph, for the words in the French text *en raison de ce maintien* should be substituted the words *en raison de cette non-abrogation*. There is no mention in the first paragraph of agreements remaining in force, only of their not being cancelled. It seems to me that the wording I have suggested would be better.

THE PRESIDENT (speaking in French). — It is certainly better from the point of view of the French; it is more accurate.

M. SCASSI (Greece; speaking in French). — Would not the wording be still better if for the words *en raison du maintien* we substituted the words *en conséquence*?

THE PRESIDENT (speaking in French). — It would certainly be preferable.

M. LANKAS (Czecho-Slovakia; speaking in French). — A little further on we have *accords ainsi maintenus*, and I therefore consider it would be better to keep the word *maintien*.

THE PRESIDENT (speaking in French). — The word *maintenu* here is French; the word *maintien* is not. The words *en conséquence* which have been proposed appear to me to give satisfaction.

M. BIGNAMI (Italy) (speaking in French). — I do not think we can make the proposed change, because the second paragraph does not follow on from the first.

Sir Cecil HURST (Great Britain). — There would certainly be a discrepancy between the English and French texts, because the expression *en conséquence* is weaker than the English expression *in consideration of*.

THE PRESIDENT (speaking in French). — As several delegates seem to be of opinion that the text would not be so clear if the expression *en conséquence* were employed, the Conference might adopt M. Carlin's motion to substitute for the words *du maintien* the words *de cette non-abrogation*.

M. PIERRARD (Belgium; speaking in French). — Who is going to fix the date at present left blank in the first paragraph of this article?

THE PRESIDENT (speaking in French). — The question has been under consideration by the Officers of the Conference, but the choice of the date has been left to the Conference. We are inclined to think that the best date would be May 1st, 1921, and we therefore propose it.

M. PERIETZEANO (Roumania; speaking in French). — The best date would be to-day.

THE PRESIDENT (speaking in French). — We might choose the date of signature, but not to-day's date.

M. CARLIN (Switzerland). — May 1st seems to me rather too near at hand. The intention of the Conference is to maintain in force any agreements which might be entered into before the coming into force of the Convention to which these Regulations will be appended. In my opinion it is difficult to fix a date since, according to the text, the Convention will not come into force until it has been signed by five Powers.

THE PRESIDENT (speaking in French). — You have the choice of three dates : a fixed date, the date of signature or the date of the coming into force of the Convention. The best one is the date of signature, because from that time onward the States will have had due notice.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I hope that the Conference will decide to insert a fixed date, and not the date of signature of the Convention or the date at which it comes into force. Both these dates are at present doubtful, and it is of the greatest importance that the date in this article should not allow of any evasion of its terms by the conclusion of Conventions between the present time and the date fixed. Personally, I should greatly prefer the present date, as was suggested by the Roumanian Delegate, or a date in the past, such as April 1st, which would certainly prevent any evasion of the kind I have just mentioned. But as a compromise I should be prepared to agree to May 1st. We want to prevent the possibility of the conclusion, during the interval, of understandings which would then benefit by the stipulations of Article 10 with regard to existing Conventions; for it was clearly neither our own intention nor that of the Sub-Committee to give to Conventions concluded after the discussion at Barcelona the benefit accorded to Conventions already existing.

M. MATSUDA (Japan; speaking in French). — With regard to Article 10, our Delegation declared that it would not agree that treaties should be kept in force when they were contrary to the principles of the Convention. I received instructions to

this effect from my Government, and communicated with them, and to-day, actuated by a spirit of conciliation, we are prepared to accept the article. If, however, an indeterminate form of words were proposed for the date in question, whereby treaties might be concluded before the date of the coming into force of the Convention,—if it were proposed, for instance, that the terms of this Convention should not be applied until next year, or even several years later,—we could not accept this, because it would be contrary to the principles which we desire to see applied. I therefore support the motion of the President, seconded by Sir Hubert Llewellyn Smith, to adopt May 1st as the date.

M. PERIETZEANO (Roumania; speaking in French). — If any date is inserted in this article, it should be to-day's. Paragraph 3 contains the following words: *Contracting States also undertake not to conclude in future...* To me, the future and the past are separated by the moment at which we are speaking. Then there is another reason. A pledge does not need to be signed in order to become valid, and the document and signature together are the concrete proofs that an engagement has been entered into, but that engagement exists from the moment when the two parties have come to the agreement. In this case, the two parties are States. We do not possess full powers to pledge our Governments,—it was agreed that the Convention should be adopted subject to subsequent ratification,—but nevertheless the pledge exists from the moment when the vote is taken. Certain documents may indeed be signed afterwards, in order to exclude any possibility of dispute, but the actual pledge exists from the moment of voting, and therefore, from that moment begins the future time mentioned in paragraph 3; and, moreover, agreements made after that moment which are contrary to the provisions of this Convention, will be void in law. I do not see why an interval should be allowed during which conventions could be concluded contravening the terms of the present one. We must not incur the risk that before May 1st a State whose representative here had voted for the Convention should conclude a Convention of a contrary nature. If a special date is not appointed in the first paragraph of this article, and if that of the date of signature is adopted instead, the date will be different for each State, for every State will not sign the Convention on the same date. In my opinion, the date we choose should be that upon which all the States represented here voted at Barcelona for the Convention.

THE PRESIDENT (speaking in French). — I consider that the date May 1st gives us a convenient *via media* which conforms to all the requirements we have just heard expressed. The Conference will surely be able to accept it.

M. PERIETZEANO (Roumania; speaking in French). — The date May 1st should also be mentioned in paragraph 3, since the "future" is mentioned there.

THE PRESIDENT (speaking in French). — The "future" signifies any time after the engagement has been entered into, and that is May 1st.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — Under the terms of No. 6 of the formal articles, the Convention will not come into force until it has been ratified by five Powers, and the exact date of this coming into force will be ninety days after the receipt by the Secretary-General of the fifth ratification. How, then, can we now fix a special date and say that after May 1st certain agreements concluded between States will be invalid?

THE PRESIDENT (speaking in French). — That is by no means the same thing. The date which we are now fixing has nothing to do with the actual Convention, or with the date of signature of the Protocols.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — But have we here the power to fix a date prior to the coming into force of the Convention?

THE PRESIDENT (speaking in French). — Certainly. If the Convention never came into force, this clause would be void. We are merely fixing the date after which the different Powers may not do this or that.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — I should have thought that the date to be inserted in this Article 10 ought to be subsequent to, or at least identical with, that of the coming into force of the Convention.

THE PRESIDENT (speaking in French). — The Conference will realise that the first paragraph of Article 10 has no connection whatever with the actual fact of the Treaty being signed : it is merely a question of registering the promise given by the different Governments not to conclude other conventions. Naturally if the Governments failed to ratify the Convention, the promise would lapse automatically, but that does not relieve us of the necessity of choosing a moment from which it will date.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — I understand your interpretation, but I still think that this date ought to be subsequent to that of the coming into force of the Convention.

THE PRESIDENT (speaking in French). — The Conference will give its verdict.

M. SCASSI (Greece; speaking in French). — I think it would be nearer our intention to choose a date prior to the coming into force of the Convention, for instance April 1st. Every délegation would then probably be satisfied.

THE PRESIDENT (speaking in French). — In any case the date must be an arbitrary one, and there is no more reason for choosing April 1st than May 1st, but May 1st seems to me to have the most support, and I shall, therefore, propose it.

M. WINIARSKI (Poland; speaking in French). — I have the same apprehensions as the Venezuelan Delegate. I think that the Conference would do well to reflect a little before pronouncing upon what I consider a serious question. States are not bound until ratification has taken place, and it may happen that for some reason or other a State does not ratify for six or seven months. Would there not be a certain danger in paralysing the whole international activities of the various Governments during that period? The fairest method would appear to me to be to fix a date subsequent to ratification.

THE PRESIDENT (speaking in French). — It is quite clear that, if a State does not ratify, no engagement exists. If a State wishes to ratify, it must enter into the spirit of the present Convention by concluding no further Conventions after such and such a date.

M. WINIARSKI (Poland; speaking in French). — It appears to me dangerous to allow this period of uncertainty.

THE PRESIDENT (speaking in French). — Would the Conference like to postpone further discussion on the point to a subsequent meeting? As every possible view on the subject seems to have been brought to light, we will proceed to vote. I put the following question to the vote : does the Conference wish to defer this question of the date, or to settle it now?

*The Conference decided by 19 votes to 9 to vote immediately on the question of the date.*

THE PRESIDENT (speaking in French). — I put to the vote the date proposed,— May 1st.

M. SCASSI (Greece; speaking in French). — Why not April 1st? It is always better to be cautious,—to lock the door and take the key; it should never be left in the lock.

THE PRESIDENT (speaking in French). — The voting has begun, and you cannot speak now.

*The date May 1st was adopted by 19 votes to 7.*

I will now put to the vote Article 10 as amended.

*Article 10 was adopted.*

### REQUEST OF THE CHINESE DELEGATE

M. TSANG-OU (China; speaking in French). — On April 4th the Chinese Delegation circulated a proposal on the subject of the interpretation of Article 10, which is of great importance for certain countries, particularly our own. It is not in the form of a statement or proposal put forward by the Chinese Government, but is merely an attempt to determine the exact meaning of Article 10. It reads as follows :

It is agreed that the opening of routes of communication and ports which are to be available for free transit and navigation by virtue of the coming into force of the Barcelona Convention, must not be interpreted as extending in any way the rights of those Contracting Powers which already, by the terms of previous treaties, enjoy preferential treatment upon certain waterways and in certain ports already open to their own trade.

On routes and in ports newly thrown open to traffic, only the régime of the new Conventions is applicable for all the Powers signatory to previous treaties. It is agreed likewise that Contracting Powers which have not signed previous treaties will come exclusively under the régime of the new Conventions, no distinction being made between waterways and ports already opened and those which, in virtue of this régime, will be open to international traffic.

May I remind you that in China some ports are open to foreign commerce and others are not? If the Conference agrees with my interpretation of Article 10, I propose to insert it in my report and to submit it to my Government, which, if it takes the same view on the subject, will probably apply its principles retrospectively.

I will also request that this interpretation should be inserted in the records of the meeting, not as a proposal made by the Chinese Government, but simply as an interpretative passage.

THE PRESIDENT (speaking in French). — It is agreed that the Conference will not come to any decision without knowing the views of the Plenary Committee. I suggest that this proposal be referred for examination to the Plenary Transit Committee, which will meet this afternoon in order to examine M. Bignami's report and the Brazilian proposal (1).

Sir Cecil HURST (Great Britain). — There is a slight error in the English text of Article 10. The words *subject however to Article 19 of the Covenant* have been inserted in error. They do not appear in the French text.

THE PRESIDENT (speaking in French). — Is there no opposition?  
We will omit from the English text the last words of the first paragraph.

### DISCUSSION OF ARTICLE 11

I will now read Article 11 :

These Regulations do not entail in any way the withdrawal of facilities which are greater than those provided for in the Regulations and have been granted, under conditions consistent

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(1) See pp. 186 *et seq.*

with their principles, to traffic in transit across territory under the sovereignty of a Contracting State. The Regulations also entail no prohibition of such grant of greater facilities in the future.

*Article 11 was adopted.*

#### DISCUSSION OF ARTICLE 12

I will now read Article 12 :

In conformity with Article 23 (e) of the Covenant, any Contracting State which can establish a good case against the application of any provision of these Regulations in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision to some or all of its territory.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I propose that in the French text of this article the words *à tout ou partie de son territoire* (in some or all of its territory) should be replaced by *étant entendu que les principes de la liberté du transit doivent être observés dans toute la mesure du possible* (it being understood that the principle of freedom of transit must be observed to the utmost possible extent). That is the formula which occurs in all the other exception clauses. I have consulted with the representatives of France, Belgium and Italy, and it seemed to us desirable to make the exception clauses uniform by the invariable addition of a formula of this kind at the end.

M. BONNET (France; speaking in French). — The French Delegation agrees with the British Delegation that the words *in some or all of its territory* should be omitted, and that the sentence should be added which the British Delegate has just read. The Belgian and Italian Delegations are also in agreement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We also agree, but at the beginning of the article I should like to insert after the word *Covenant* the words *of the League of Nations*.

THE PRESIDENT (speaking in French). — It would certainly be clearer if the text read as follows : *In conformity with Article 23 (e) of the Covenant of the League of Nations*. Does anyone else wish to speak on Article 12?

I will put it to the vote in its modified form.

*Article 12 was adopted.*

#### DISCUSSION OF ARTICLE 13

I will now read Article 13 :

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — The Brazilian Delegation would prefer, and, I think, rightly, to alter the first line of the article as follows : *Any dispute between States*.

THE PRESIDENT (speaking in French). — It would certainly be better.

Sir Cecil HURST (Great Britain). — *Between Contracting States*.

M. LANKAS (Czecho-Slovakia; speaking in French). — In that case the word *States* would occur twice in the French text.

THE PRESIDENT (speaking in French). — The sentence might read as follows : *A défaut d'entente directe, tous différends entre États contractants...*

M. REINHARDT (Austria; speaking in French). — Disputes might arise between non-Contracting States, and therefore it would be well to reflect before inserting the word *Contracting*.

THE PRESIDENT (speaking in French). — Yes, non-Contracting States might accept the jurisdiction of the Permanent Court of Justice. We might say *A défaut d'entente directe, tous différends entre États relatifs à l'interprétation...*

M. LANKAS (Czecho-Slovakia; speaking in French). — Yes.

Sir Cecil HURST (Great Britain). — We propose that this wording should only be adopted provisionally, in order that the legal advisers may have time to consider the point further.

THE PRESIDENT (speaking in French). — There are several points to which we shall have to return; we can submit the question of the exact wording to the legal advisers.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the second paragraph, according to the Committee's wording, the text reads *In the manner laid down in Article 40 of the Statute of the Permanent Court*. The Drafting Committee is acquainted with the contents of this Article 40, but we are not. Could not some indication be given of its contents, or might it perhaps be read?

THE PRESIDENT (speaking in French). — I will read it.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting Parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

This constitutes the registration by the Registrar of the opening of the proceedings. The reservation being made in connection with the words *Contracting States*, I will put Article 13 to the vote.

*Article 13 was adopted.*

M. Bignami's report upon the Franco-Indian amendment not yet having been discussed, the vote on the Convention as a whole is deferred until the beginning of the next Meeting.

*The meeting adjourned at 1-45 p.m.*

On the same day, at 5 p.m., the Thirteenth Meeting of the Plenary Committee was held, at which these two Reports were examined. The Record of this Meeting, containing also the text of the Chinese Delegate's Declaration concerning Article 10, and the proposal of M. Valotton concerning Denunciation, appears in Part II, with the other records of that Committee (see p. 186). At the beginning of this meeting Sir Cecil Hurst made a statement on the subject dealt with at the Twentieth Meeting of the Conference; this follows below.

## VERBATIM REPORT OF THE THIRTEENTH MEETING

(Monday, April 11th, 1921, at 5 p.m.)

*The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

### REPORT ON ARTICLE 13 OF REGULATIONS

THE CHAIRMAN (speaking in French). — Sir Cecil Hurst will report to us on the question which was raised this morning at the close of the plenary meeting, with regard to the wording of the first sentence of the Article on the disputes.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — You will remember referring to the Jurists' Committee the question of the wording of the first sentence of Article 13 on the settlement of disputes, which was raised at the close of this morning's meeting. In the first place, were the words *between Contracting States* (*entre les États contractants* in the French text) to be added after the words *any dispute* (*tous différends* in the French text)? The Jurists' Committee considered that if the words *contracting* (*contractants* in the French text) could be dispensed with, there would be no harm in adding the words *between States* (*entre les États* in the French text). In the second place it was proposed to omit after the words *which is not settled directly* in line 2, the words *between the States themselves*. The Jurists' Committee fears that the omission of these words will alter the original meaning of the sentence, which implied an agreement for the settlement of disputes. The sentence in its present form has a wide meaning, and to modify it would be to risk losing the benefit afforded by this article.

THE PRESIDENT (speaking in French). — The phrase would then read as follows : *A défaut d'entente directe entre les États, tous différends entre les États, relatifs à l'interprétation...* instead of *A défaut d'entente directe entre les États, tous différends relatifs à l'interprétation...*

M. NEUJEAN (Belgium; speaking in French). — I should like to propose drafting the article as follows : *A défaut d'entente directe entre les États, tous différends qui surgiraient entre eux...*

Sir Cecil HURST (Great Britain). — The difference between the text proposed by the Rapporteur and the original text is microscopic...

M. NEUJEAN (Belgium; speaking in French). — In fact, there is none.

Sir Cecil HURST (Great Britain; speaking in French). — I do not think that there is any difficulty about this wording from the legal point of view.

THE PRESIDENT (speaking in French). — The proposed wording is quite clear.



M. LASSALA (Spain; speaking in French). — The word in the French text *relatifs* should be replaced by the word *sur*. In the text the word *relatifs* is a long way distant from the word *différends*.

THE PRESIDENT (speaking in French). — We could say *A défaut d'entente directe entre les États, tous différends qui surgiraient entre eux relativement à l'interprétation...*

Has no-one anything further to say on this text? I will put this text to the vote.

*The text was adopted.*

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# TWENTY-FIRST MEETING OF THE CONFERENCE

(Monday, April 11th, 1921, at 6 p.m.)

## DISCUSSION OF THE CONVENTION

*The Meeting opened with M. Hanotaux in the Chair.*

### DISCUSSION OF PREAMBLE AND ARTICLES 1-8

THE PRESIDENT (speaking in French). — We are now entering upon a discussion of the Formal Articles, which constitute the Convention on Freedom of Transit.

[Names of Powers] :

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit, and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose; have appointed as their plenipotentiaries :

Sir Louis KERSHAW (India). — I suggest that some word or words be inserted in this paragraph to make it clear that the Convention applies only to transit by rail or waterway. This intention was expressed in M. Neujean's Report, but in my opinion it would be desirable to make it clear in the Preamble to the Convention.

THE PRESIDENT (speaking in French). — We might employ the following text :

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway, adopted at Barcelona, to the exclusion of transport by road or air.

But can a negative formula be introduced into a Convention?

Sir Cecil HURST (Great Britain). — The present text appears to me quite clear, and I am of opinion that it is not necessary to make an insertion of the kind proposed by Sir Louis Kershaw.

THE PRESIDENT (speaking in French). — I quite agree; this would be a pleonasm. When we affirm a series, we only affirm the terms of that series, and it is obvious that all the rest is excluded. Moreover, this observation, which I make in my capacity as President, will be entered in the records of the meeting and will carry out the conception of a commentary, to which allusion has so often been made. This, I think, is

enough, and I beg the Delegate for India not to insist on the adoption of a negative formula which can not have any practical effect.

Sir Louis KERSHAW (India). — The insertion of the President's statement in the records satisfies me, seeing that the jurists of the Conference prefer that no addition should be made to the text itself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In paragraph 5 mention is made of the *regulations relating*. It is understood that reservation is made of this word *regulations* and everything connected with it.

THE PRESIDENT (speaking in French). — It is quite understood that all that is reserved.

M. SIBILLE (France; speaking in French). — May I draw the attention of the Conference to the following words : *having accepted the invitation of the League of Nations to take part in a Conference at Barcelona, which met on March 10th, 1921, and having taken note of the Final Act of such Conference...*

I think it would be preferable to say *...and having signed*, or at least *...and having approved the Final Act* of this Conference. It would not be admissible for a delegate to sign this Convention, while refraining from signing the Final Act and reserving the right to dispute and criticise it.

THE PRESIDENT (speaking in French). — That point will be reserved, like the question of the regulations. I should prefer the word *approved* rather than *taken note*, as in my opinion this latter term is inadequate.

M. SIBILLE (France; speaking in French). — We agree.

M. LANKAS (Czecho-Slovakia; speaking in French). — The task of the Drafting Committee is to find formulas and texts, while at the same time conforming to the decisions taken by the Committees. You will find in paragraph 4 of the Preamble the following words : *...and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle.*

I ask the Rapporteur to be so good as to tell us whether this amendment was accepted by the Committee. I think I remember, on the contrary, that this text was strongly opposed (1). I accepted it. It is obvious indeed that States must help each other, in order to facilitate the putting into practice of the principles of freedom of communications. I should be very grateful if the Rapporteur would enlighten us on this subject.

Sir Hubert LLEWELLYN SMITH (Great Britain). — As I was the Rapporteur of the Sub-Committee on Article 10, I think I can explain the point raised by M. Lankas. To that Committee was referred not only Article 10, but also the Preamble, because a number of amendments had been moved to the Preamble which dealt with the question of the relation of the present Convention to previous Conventions. The Sub-Committee reported to the Transit Committee that they had embodied in Article 10 all the amendments to the Preamble which could suitably find a place there, and they recommended that the remaining ones, including one moved by the Delegate of Austria and another by the Delegate of Chile, be referred to the Drafting Committee. This suggestion was adopted by the Transit Committee. The Drafting Committee has therefore had these amendments before it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If I remember aright, the Committee never examined the Preamble. This Preamble was referred to the Drafting Committee.

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(1) See p. 98.

THE PRESIDENT (speaking in French). — The Committee referred it to the Drafting Committee, which is now submitting it to the Conference, and the latter is now discussing it.

I will put the Preamble to the vote.

*The Preamble was adopted with all the reservations which were made regarding the word "regulations" and the other formal questions.*

We will now begin to discuss the Articles.

Who [the plenipotentiaries] having communicated their full powers found in good and due form, have agreed as follows :

#### ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on...

Consequently they hereby declare that they accept the obligations of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

THE PRESIDENT (speaking in French). — Are there any observations on this Article? I put it to the vote.

*Article 1 was adopted.*

#### ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding treaties.

THE PRESIDENT (speaking in French). — On behalf of the Swiss Delegation, M. Carlin made a comment upon Article 2. Does he wish to proceed with it?

M. CARLIN (Switzerland; speaking in French). — Certainly.

THE PRESIDENT (speaking in French). — Very well. M. Carlin remarked that this Article referred to the Powers which signed the Treaty of Versailles, and that the neutral Powers which did not sign it, do not appear to be referred to in this Article. If I understand aright, M. Carlin would be satisfied if Article 2 were placed in the Final Protocol and did not appear in the Convention. If this form were accepted, we should refer the Article to the jurists, who would introduce it into the Final Protocol. If, on the other hand, you think that a discussion should be opened on this subject, we will reserve M. Carlin's proposal and also Article 2, and refer the whole to the Committee which will meet to-morrow.

M. PERIETZEANO (Roumania; speaking in French). — I think that this Article should remain in the Convention, because if there are neutral Powers here who are not directly interested in the Treaty of Versailles and the other treaties of peace, they should know, as the others know, that some of the Signatory States to this Convention are exempted from the obligations laid down in it, if they are prevented by the treaties of peace from fulfilling these obligations. It is, therefore, necessary that all the Parties who are signatories to this Convention should know that it will remain a dead letter if any treaty of peace contains a provision in a contrary sense. In these circumstances it is fully understood that, when this Convention is being put into execution, the terms of the Treaties of Peace may be cited, as against those of the Convention, to the Powers who have signed the latter, and this through the very fact of their having signed it. If, therefore, one of the parties which has not signed the Treaty of Versailles asks me, who have signed it, to fulfil an obligation, and if I am prevented from doing so by the Treaty, that Power cannot reply that fact that does not concern it. When it accepts the Convention by signing it, it undertakes to exempt me from all

obligations which would cause me to contravene the Treaty of Versailles which I have signed. This explanation will be found in the *Green Book*.

THE PRESIDENT (speaking in French). — I do not think there is any discrepancy between the Roumanian Delegate's interpretation and the point of view of M. Carlin. The latter does not ask for this Article to be deleted. He asks that it shall be placed in the Final Protocol. If you so desire, we will appoint a small sub-committee to settle this point. Since this is rather a difficult question, it would be better for the jurists and competent persons—M. Carlin and M. Perietzeano—to meet and ascertain whether this Article should be left in its present position or introduced into the Final Protocol. In any case, this is a point of comparatively secondary importance.

M. SIBILLE (France). — I think we might all agree to add a few words to Article 2. In order to meet the observation made by the Swiss Delegation, it would be sufficient. I think, to draw up Article 2 as follows :

The present Convention does not in any way affect the rights and obligations arising for certain Contracting Parties... or...for of some Contracting Parties, out of the provisions of the Treaty of Peace signed at Versailles.

This is simply a suggestion.

THE PRESIDENT (speaking in French). — In my opinion it would be better—and M. Sibille will agree with me—if a small group of persons interested in this question should meet to-morrow, with M. Loudon in the chair, to find the best possible wording. This wording, drawn up under Sir Cecil Hurst, will then have been maturely considered.

M. SIBILLE (France; speaking in French). — I quite agree.

M. LOUDON (Vice-President; speaking in French). — If you wish, I propose that we meet to-morrow at 10 a.m.

M. SCASSI (Greece; speaking in French). — I venture to point out that the text of Article 2 does not appear to me liable to be misinterpreted. It states that *the present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles etc...* These rights and obligations are obviously the rights and obligations of the Signatories of the Treaty of Versailles, and there can be no ambiguity on that point.

THE PRESIDENT (speaking in French). — M. Scassi's remark appears to me quite just. The Treaty of Versailles created rights and obligations for its signatories, and if we say that the present Convention does not in any way affect these rights and obligations, it is quite understood that neutrals are in no way included in this.

M. SCASSI (Greece; speaking in French). — For this reason it seems to me that there is no occasion to refer this article for the consideration of a sub-committee.

THE PRESIDENT (speaking in French). — I think, indeed, that this article can in no way give rise to any ambiguity, but in any opinion it would be quite useful to reserve it and to refer it to the consideration of the small sub-committee under the chairmanship of M. Loudon.

M. CARLIN (Switzerland; speaking in French). — I see no objection to the examination of this article by the Sub-Committee, but I think that we might also revert to the text of Article 14 of the *Green Book*, which appears to me quite acceptable.

THE PRESIDENT (speaking in French). — M. Carlin's proposal, which would consist in adopting Article 14 of the *Green Book*, will be submitted, together with Article 2, for the consideration of the Sub-Committee. Article 2 is reserved until this has been done.

### ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date, and shall be open for signature until... (October 1st, 1921).

Sir Cecil HURST (Great Britain; speaking in French). — At the request of the Officers of the Conference, Article 3 was considered by the Committee of Jurists. We had to deal with a Polish amendment (1), the exact text of which I have not before me, but the general tenour of which was to allow each signatory, at the time of signing, the right to choose one of the two languages, the text of which it would invoke in case of dispute before the Permanent Court. We have given this question close consideration, and we are of opinion that the proposal of the Polish Delegation, far from obviating the difficulties caused by the question of the two languages, would only increase them.

There is no doubt that the interpretation of a treaty drawn up in two languages will give rise to certain difficulties. It is for the Conference and the jurists to take care to avoid any discrepancy between the two texts. If, in spite of all these precautions, discrepancies still exist, it is for the Permanent Court to adjust them. It is, indeed, very difficult to allow one of the two languages to be considered as authentic for a certain number of Powers, and the other language as authentic for the other Powers. How could the Permanent Court give a verdict between the two parties? For these reasons the jurists are unanimously of opinion that the Polish amendment should not be accepted, and that the text of Article 3 should be kept in the form in which it has been submitted to you. Moreover, I repeat, the two texts have been drawn up with so much care that now we do not anticipate any appreciable differences.

M. WINIARSKI (Poland; speaking in French). — I am happy to see, from the explanations which Sir Cecil Hurst has given us, that the Committee of Jurists has not disputed the fact that the Polish proposal was in complete conformity with law. It is merely from a practical point of view that the Committee of Jurists has rejected our amendment. I venture to state precisely what it was that the Polish Delegation asked. In order to avoid any misunderstanding, we proposed that it should be laid down that, when a State declared that it chose one of the two texts, it could not, in the event of a dispute, cite the other text. In other words, if two Powers who had chosen different texts appeared before the Court of International Justice, neither could claim the right to obtain a verdict based upon one text only.

There is another point of view which calls for note. As I had the honour to state before the Committee of Jurists when they sent for me, I consider that it is most desirable to leave the Permanent Court of International Justice as much latitude as possible. Allowance must be made for the various peculiarities of international law. It would perhaps be going too far to desire to create a uniform system of jurisprudence for all the States in the world, and I am afraid such a system is only a chimera. We must therefore speak of this somewhat more prudently and circumspectly, particularly when history, in the person of M. Hanotaux, is presiding over our debates.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to suggest that the date October 1st be changed to December 1st, in order to allow a full six months for the signing of this Convention. We must remember that the period of six months will include the whole summer-holiday season, when very often Parliaments do not meet, and it appears to me that October 1st is too early a date.

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(1) See p. 182.

THE PRESIDENT (speaking in French). — I think that the Conference will see no objection to the substitution of December 1st for October 1st, 1921. As that will bring us almost to the vacation, it is to be hoped that this will be an additional reason for working hard and making rapid progress.

M. SCASSI (Greece; speaking in French). — I do not see the force of the words *shall bear this day's date*, since the Convention may be signed at any time up to December 1st, and the signatures will not all be added on the same day.

Sir Cecil HURST (Great Britain). — This is a form generally adopted for conventions which may be signed by the different Contracting Parties at different periods. It is essential that there shall be one date after which a convention may be considered as authoritative.

THE PRESIDENT (speaking in French). — It is, in fact, more practical when referring to the Convention.

M. SCASSI (Greece; speaking in French). — I will not press the point, and I realise that from this point of view it may be more practical.

M. LANKAS (Czecho-Slovakia; speaking in French). — It is understood that those delegates who sign the Convention have full powers from their Government.

THE PRESIDENT (speaking in French). — That is understood. In any case that will be settled at the time of signing. I will put Article 3 to the vote, calling the date December 1st.

*Article 3 was adopted.*

#### ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 4?

I put it to the vote.

*Article 4 was adopted.*

#### ARTICLE 5

Members of the League of Nations, or the States represented at the Conference of Barcelona, which have not signed the present Convention before... (December 1st, 1921) may accede to it.

The same applies to States, not Members of the League, to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 5?

I put it to the vote.

*Article 5 was adopted.*

## ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the fifth ratification. Thereafter, the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers, not Members of the League, which are bound under the Treaties of Peace to accede to it.

Sir Cecil HURST (Great Britain; speaking in French). — Article 6 prescribes that the Convention must have been ratified by five Powers. This figure was only introduced by way of suggestion, but the Conference may of course accept another figure, either higher or lower. It simply means that the Convention will not come into force until a certain number of Powers have ratified it. The figure itself is of little importance. Everybody knows, for instance, that the Treaty of Peace only required three ratifications in order to be put into force.

M. BIGNAMI (Italy; speaking in French). — Are the five Powers referred to in the second paragraph to include those which in virtue of Treaties of Peace have bound themselves to adhere to the Convention?

THE PRESIDENT (speaking in French). — It means five Powers who sign here spontaneously. The Conference must take a decision as regards the number? Do you accept the number 5?

*The number 5 was adopted.*

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The word *Powers* appears to me bellicose. In accordance with modern ideas, we ought to use in preference the word *State*.

THE PRESIDENT (speaking in French). — There is no objection to the use of the word *State*.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The word *Powers* occurs in both paragraphs, and the rectification would be made in both.

Sir Cecil HURST (Great Britain; speaking in French). — The word *Power* appears to me more correct.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst points out to me that, according to all diplomatic traditions, the word *Power* means the Power which contracts and signs, and that to be formally correct this is the word which must be used, otherwise certain States might consider themselves as not being in a position to sign. The word *Power* covers all cases. We shall have to consider later the cases of certain parts of the British Empire.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I repeat that to me the word *Power* has a bellicose meaning:

THE PRESIDENT (speaking in French). — One objection to the word *State* is that its meaning is too much akin to that of the word *Government*. The word *Power* has a less narrow meaning; it implies a country which is organised and which is qualified to sign. As this is the word which is habitually used, we will keep it, on the understanding that we will consider the special case of the signatures of the Dominions. Are there any further remarks regarding Article 6? I put Article 6 to the vote.

*Article 6 was adopted.*



## ARTICLE 7

THE PRESIDENT (speaking in French). — We will now pass to Article 7, which reads as follows :

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to, or denounced the present Convention. This record shall be open to the Members of the League at all times; copies of it shall be published from time to time in accordance with the directions of the Council.

M. BIGNAMI (Italy; speaking in French). — Is it necessary to place this article in a Convention such as this one? It would be sufficient to give an order to the Secretariat.

THE PRESIDENT (speaking in French). — The record would be kept even if this article did not exist, but it gives it more force.

Sir Cecil HURST (Great Britain; speaking in French). — At The Hague in 1906 a special register was opened, kept by the Netherlands Ministry for Foreign Affairs; in this register all the conventions signed at The Hague were entered. This record is extremely useful. It was our colleague, M. van Eysinga, who has unfortunately left Barcelona, who strongly urged that an Article of this kind should be inserted in the Convention. We introduced it as a result of his suggestion.

THE PRESIDENT (speaking in French). — In any case I ask that the word *copies* should be eliminated from this article. In French this means single copies, written or typed copies. It will be better to put *new editions*. I ask you to entrust this slight change to the Officers of the Conference.

I put Article 7 to the vote.

*Article 7 was adopted.*

## ARTICLE 8

THE PRESIDENT (speaking in French). — We now pass to Article 8, which reads as follows :

Subject to the provisions of Article 379 of the Treaty of Versailles and to the corresponding provisions in the other treaties of Peace, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

M. CARLIN (Switzerland; speaking in French). — I must again express the hesitation which I felt with regard to Article 2. It should be borne in mind that the parties signatory to this Convention are not the parties signatory to the treaties mentioned in the article. The words *as regards the signatories of these treaties* might be added after the words *subject to the provisions of Article 379 of the Treaty of Versailles and the corresponding provisions in the other treaties of Peace*.

THE PRESIDENT (speaking in French). — That will not do.

M. CARLIN (Switzerland; speaking in French). — Would it not be better to refer this alteration to the consideration of the small sub-committee which is to meet?

THE PRESIDENT (speaking in French). — Very well. With this reservation, I put Article 8 to the vote.

*Article 8 was adopted.*

THE PRESIDENT (speaking in French). — The Draft Convention is adopted in the first reading.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Our Delegation has submitted an amendment to the former Article 22, which the British Delegation proposed to omit. We proposed that it should be kept. The question was whether the Article should remain open to revision. This article read as follows :

At least once in ten years the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the Agenda of the Conference the question of its revision or modification.

The question was submitted to the Drafting Committee, which was to invite certain Members to take part in the discussion. We have not yet been invited, and when the final scheme was distributed, we discovered that this Article has been deleted. Moreover, no one has told us the reasons for which it was deleted. I venture to ask for information on this subject, and when I have heard the reply, I reserve the right to speak again.

Sir Cecil HURST (Great Britain; speaking in French). — Article 22 of the original text, which refers to the revision of the Convention, was the subject of two amendments submitted by the French and British Delegations, which asked for this article to be omitted. The discussion which took place appears in the Records (1). The amendments were referred to the Drafting Committee. The reason adduced in favour of omission by the authors of the amendments was that the provisions vesting in the Advisory Committee the power of laying down such alterations as it appeared desirable to introduce into the Convention should be placed in the scheme of organisation rather than in the Transit Convention. It was in the hope of satisfying everyone that the Officers of the Conference proposed that this provision should be inserted in the Scheme of Organisation, of which it constituted Article 8. Under the terms of this Article the Advisory Committee was obliged to watch the working of all the conventions and to submit reports from time to time on any changes which might be introduced into them. The fact that this article in the Scheme of Organisation was adopted by the Conference rendered it needless to retain Article 22 in the Convention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I much regret that I cannot agree with Sir Cecil Hurst. Article 8 of the Scheme of Organisation reads as follows :

In the event of any General Conventions on Communications and Transit prepared under the auspices of the League of Nations being brought into force, it shall be the duty of the Advisory and Technical Committee to report on the working of the said conventions *when it thinks fit*...—the first restriction—...noting the points, *if any*,...—the second restriction, —...on which they *appear*...— the third restriction—...to require modification.

I think that the powers of the Advisory and Technical Committee are somewhat too excessive, and that Sir Cecil Hurst is right on this point. But we desire something to be left for the Conference; we desire the Members of the League of Nations to be in a position to take the initiative as regards revising and modifying the Convention. The Rapporteur will perhaps tell me that he is referring to Article 16; but he will not satisfy me even then, for this Article reads :

These regulations can be modified only by a two-thirds majority of the representatives and the Members of the League, excluding States referred to in Article 2.

Why is it made possible to modify or revise the Scheme of Organisation, but not a convention? The object of the Scheme is merely to support a convention so long

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(1) See pp. 179 *et seq.*

as the latter is or may be useful, and this result cannot be obtained without modification and revision; but at present it appears that we have no other recourse but to denunciation. For this reason, while I appreciate Sir Cecil Hurst's arguments, I ask that the question be referred to a sub-committee and be given fresh consideration. If the President considers this unnecessary, I will ask for a vote on my proposal.

THE PRESIDENT (speaking in French). — As Sir Cecil Hurst pointed out, the question was examined and a vote was taken upon it in the discussion on the Scheme of Organisation. The vote is final as regards the question of revision.

I think I understood from M. Avramovitch's proposal that the Advisory Committee — which, let us not forget, is not the former Permanent Committee, but the new Advisory and Technical Committee, as established by the Conference—would be obliged to prepare a report on revision even if it did not consider it desirable. What is the meaning of the words *thinks fit*? It means *if the question is raised*. The Committee, which will have the confidence of the Conference, since it will be appointed by it, will consider the desirability of raising the question of revision. If this question is not raised, why should the Committee be obliged to prepare a report on a question which does not exist? I think, therefore, that there is no occasion to discuss this question any longer, as it has been settled.

M. WINIARSKI (Poland; speaking in French). — It seems to me that M. Avramovitch is right when he asserts that the question has not been fully dealt with, and as we consider it to be a very important one, I second the proposal to refer it to a sub-committee and not to come to a decision upon it now.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Article 8 of the Scheme of Organisation speaks only of the powers of the Advisory and Technical Committee. I am not opposed to Article 8,—I believe that the powers of the Advisory and Technical Committee should be limited, but I think that Article 8 curtails excessively the powers of the Members of the League of Nations. I am in favour of maintaining Article 8 in its present form, but I claim for the Members of the League of Nations the right to take the initiative as regards revision.

THE PRESIDENT (speaking in French). — It is understood, therefore, that there is no question of revoking the vote which has already been taken as regards the Advisory and Technical Committee. There remains M. Avramovitch's new proposal, in which he asks : *Have the Members of the League of Nations the right to demand a revision?* I thought I understood from M. Avramovitch's remarks that he wished this authority to be vested in the Conference, because the Signatory Powers bind themselves for five years, and I do not see how their right of revision could be exercised during this period. It is not possible to ask for revision during a period for which an undertaking has been given. It would be possible to discuss the question, but no more. If it is the Conference which can call for revision, I ask M. Avramovitch to explain how a Conference which has not been summoned, and which cannot sit, can intervene to call for revision.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I did not speak of the Conference. I said that according to Article 8, the initiative in the matter of asking for revision rests solely with the Advisory and Technical Committee, and I ask it *a fortiori* for the Members of the League of Nations. You say that a signed undertaking has been given for a fixed period; if we continue to renew this by tacit consent, this period may last for ten or fifteen years, and that amounts to saying that no revision will ever be possible. I ask that the Members of the League of Nations should have the opportunity of calling for revision, and I appeal to the Conference to accept my proposal.

THE PRESIDENT (speaking in French). — Perhaps you will draw up a text for this new proposal; it will be submitted to the consideration of a sub-committee,

which will prepare a report. We will discuss this report in plenary session to-morrow morning.

M. REINHARDT (Austria; speaking in French). — I think that according to the Scheme of Organisation the Members of the League may ask for a General Conference to be summoned, and such a Conference could be summoned for the special purpose of revising our Conventions. If I am not mistaken, this provision should satisfy M. Avramovitch.

THE PRESIDENT (speaking in French). — I will ask you to submit this argument to the sub-committee, on which I hope you will sit. Therefore, if there is no objection, M. Avramovitch's proposal will be referred to a sub-committee on which France, Great Britain, Italy and the other nations who asked for this Article to be omitted will be represented.

*The Meeting adjourned at 8.30 p.m.*

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# TWENTY-SECOND MEETING OF THE CONFERENCE

(Tuesday, April 12th, 1921, at 6 p.m.)

DISCUSSION OF ARTICLES 13, 14 AND 15 OF REGULATIONS — DISCUSSION OF PREAMBLE AND ARTICLES 2—9 OF CONVENTION — STATEMENT ON PRINCIPLE OF RECIPROCITY IN EXECUTION OF CONVENTIONS, AND ON EQUITABLE TREATMENT FOR COMMERCE.

*The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.*

M. LOUDON (Vice-President; speaking in French). — Our President, M. Gabriel Hanotaux, is obliged to absent himself, and has asked me to take the Chair at this Plenary Meeting until he can join us.

You will remember that at our meeting yesterday there arose various points which necessitated a conversation between the jurists and the delegates who were more particularly concerned. Accordingly, a meeting took place this morning, over which I presided, and I am pleased to be able to inform you that an agreement was reached upon all points. We discussed first of all the two articles included in M. Bignami's Report, which I read to you yesterday (1) when I proposed a few alterations in the wording of the Regulations on Freedom of Transit. These articles were revised by the Jurists' Committee, and the following is the text agreed upon this morning :

## ARTICLE 14 OF THE REGULATIONS

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Convention, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary customs and police supervision.

The States concerned, however, will apply in the cases referred to above a régime which will respect the principles of the present Convention and facilitate transit and communications as far as practicable.

Does anyone wish to make any observations on this article?

I will put it to the vote.

*Article 14 was adopted.*

## ARTICLE 15 OF THE REGULATIONS

THE PRESIDENT (speaking in French). — Article 15 was read to the Conference yesterday, and the Committee has not made any alteration in it; the text reads as follows :

It is understood that this Convention must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of

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(1) See p. 189.

the same sovereign State, whether or not these territories are individually Members of the League of Nations.

Is there any observation in regard to Article 15?

*Article 15 was adopted.*

THE PRESIDENT (speaking in French). — The second point with which we dealt this morning was that raised by M. Vallotton in regard to the effect which the denunciation of the Convention would have (1). During yesterday's discussion the question arose whether, should occasion arise, an article on this subject should be included in both the Transit Convention and the Convention on Navigable Waterways, and it was agreed this morning, M. Vallotton sharing the general opinion, that an article of this kind should not be included in the Transit Convention. With regard to Navigable Waterways, however, the question would appear to be one of considerable importance, and it was decided that it should be discussed by the Waterways Committee.

### ARTICLE 2 OF THE CONVENTION

The third point, which was in connection with Article 2 of the Convention on Freedom of Transit, was raised yesterday by M. Carlin (2), who expressed his apprehension lest difficulties should arise for those States which were not parties to the Treaties of Peace, should they sign a Convention containing this article in its present form. M. Carlin had accordingly proposed an addition to Article 2, and this proposal found support at the meeting this morning. The Article would read as follows :

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by such Treaties.

The words *the Powers which benefit by* have reference in particular to Luxemburg. Article 3 contained a provision in a similar sense :

*Subject to the provisions of Article 379 of the Treaty of Versailles and to the corresponding provisions in the other Treaties of Peace, the present Convention may be denounced...*

This introduction has been replaced by the following :

*Subject to the provisions of the present Convention, the latter may be denounced...*

M. CARLIN (Switzerland; speaking in French). — It should be remembered that in connection with the new text for Article 2, the Roumanian Delegate felt himself called upon to make a statement, which it was understood should find a place in the Final Protocol. It was to the effect that if a Power which had signed the Convention found itself prevented by a provision of one of the Treaties of Peace from carrying out any obligation which it had assumed in virtue of the Convention, then that Power was dispensed from the obligation, in virtue of the provisions of the Treaties of Peace, in respect of any State which had not signed them. What I should like to emphasize—and to me it would appear self-evident—is that this other State has the right, in its dealings with the State which pleads one of the provisions of the Treaties of Peace in order to escape any obligation, to refuse likewise to carry out the provisions of the Convention. Without this there would not be reciprocity, and a State which had not signed the Peace Treaties would be bound, whilst another State would be at liberty to take advantage of a clause in a Treaty of Peace in order to evade its obligations.

M. PERIETZEANO (Roumania; speaking in French). — We are in complete agreement with M. Carlin.

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(1) See p. 195.

(2) See p. 238.

THE PRESIDENT (speaking in French). — I am pleased to note that M. Perietzeano is in complete agreement with M. Carlin. The Final Protocol will contain a passage in the above sense (1).

M. PERIETZEANO (Roumania; speaking in French). — Then that is agreed.

THE PRESIDENT (speaking in French). — In accordance with the desire which the Conference expressed yesterday, a motion by M. Avramovitch relating to the revision of the conventions which we are engaged in drawing up was examined by the Committee over which I presided this morning, and which was attended by the members of the Jurists' Committee, amongst others.

It was proposed by M. Avramovitch to insert the following article in each of the conventions :

The question of the revision of the present Convention may be placed upon the agenda of a Conference in the conditions provided for by Article 11 of the Scheme of Organisation for General Conferences and for the Advisory and Technical Communications and Transit Committee, which shall decide by a two-thirds majority.

This proposal formed the subject of very careful study. Certain of the members present deemed the provision to be a superfluous one, taking the view that any proposal for revision was necessarily governed by the provisions which the Conference had already voted with regard to the inclusion of any question in the agenda. M. Avramovitch, on the other hand, was apprehensive lest doubt should be thrown upon this interpretation, in view of the fact that mention of the question of revision is not to be found in the provisions referred to above, whereas it is to be found elsewhere. He was therefore anxious that the right to demand the revision of the Convention should rest not upon any particular interpretation of the Scheme of Organisation, but upon a provision actually contained in the Convention. The Committee was able to give satisfaction to M. Avramovitch on this point by producing the following text for insertion in the conventions :

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

This right of demanding revision having been foreseen, should not some method have been provided for including the question in the agenda of a Conference? This is done in the text put forward by M. Avramovitch, but the Committee was of opinion that as the Barcelona Conference had already laid down regulations governing the composition of a Conference agenda, it was clear that these regulations would apply likewise to the case in dispute. The Committee further considered it inopportune to refer, in the text of the conventions themselves, to regulations which cannot be altered in the same conditions as those laid down in the Scheme of Organisation. In deference, however, to M. Avramovitch's desire not to allow any doubt to subsist with regard to the regulations applicable to the point under discussion, the Committee declared itself willing to ask that the following declaration might be included in the Final Protocol or in the Final Act :

It is understood that the Rules laid down in the Scheme of Organisation, particularly in Article 11, as to the placing of a question on the agenda of a Conference, shall also apply in the case of revision when demanded, in accordance with Article 9 of the Convention on Freedom of Transit, with Article... of the Convention on Navigable Waterways, with Article... (of the other Conventions).

M. Neujean has been good enough to draw up an additional report supplementary to that which M. Bignami read to the Conference yesterday. These two reports should be read in conjunction. It is surely unnecessary, therefore, for the Rapporteur to read a supplementary report (2).

M. Avramovitch, the Serb-Croat-Slovene Delegate, will now speak on his proposal.

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(1) See p. 250.

(2) See p. 207. Annex to M. Neujean's Report.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to tender my grateful thanks both to you, Mr. President, and to the Delegates of France and of Great Britain, who had proposed to omit this article, for having now been good enough to agree to the suggestion made by the Delegation of the Serb-Croat-Slovene State. I interpret what has been done as a friendly act calculated to remove any misunderstandings which might arise.

THE PRESIDENT (speaking in French). — I will now put to the vote the text as agreed to by M. Avramovitch, which will become Article 9 of the present Convention.

*Article 9 was adopted.*

The Conference decided to insert in the Final Protocol the declaration on the subject of Article 9 proposed by the Committee.

THE PRESIDENT (speaking in French). — The following is the text of the addition which it is intended to make to the Final Protocol, in accordance with the proposal made by M. Perietzeano, who thus supports M. Carlin's wishes on this point :

Whenever the Convention would appear to conflict on any point with one of the Treaties of Peace, it is agreed that the provisions of the latter will prevail, not only as between the States which signed or benefited by it, as mentioned in Article 2 of the present Convention, but also as regards other Powers.

This is the first time this text has been before us, and as it is only a provisional text, and is to form part of the Final Protocol, it would, I think, be better to defer consideration of it until we have had time to study it more at leisure. We can now proceed to vote on the provisions of the Convention.

### ARTICLE 13 OF THE REGULATIONS

THE PRESIDENT (speaking in French). — The text of Article 13 must undergo another small change. This Article had been referred for consideration to the Jurists' Committee, at whose hands it has now been modified. The text reads as follows :

A défaut d'entente directe entre les États, *tous différends qui surgiraient entre eux...* (Any dispute *which may arise...* which is not settled directly between the parties themselves.)

The last six words are the ones which have been added (in the English text, the words *which may arise*).

... as to the interpretation or application of these regulations... shall be brought before the Permanent Court of International Justice, unless, in a special agreement or a general arbitration provision, etc...

Is there any objection to the addition of the words *qui surgiraient entre eux* (*which may arise*)?

*Article 13 was adopted.*

### ARTICLE 7 OF THE CONVENTION

A change has also been made in the text of Article 7 of the Convention, which reads as follows :

A special record shall be kept by the Secretary-General showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published from time to time in accordance with the directions of the Council.



You will recollect that yesterday there occurred in this text the word *copie*, which is not very good French.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — There occurs in the French text of Article 7 an expression to which objection was made at the last meeting. I refer to the phrase *de temps à autre*. *This record shall be open to the Members of the League at all times; it shall be published from time to time in accordance with the directions of the Council.*

Would it not be better to employ some other expression than that,—for instance, the word *périodiquement*, as already suggested.

THE PRESIDENT (speaking in French). — *De temps à autre* corresponds with the English expression *from time to time*.

M. Gabriel HANOTAUX (speaking in French). — The word *périodiquement* presupposes a date. We might say : *it shall be published whenever considered desirable, or as often as possible*. It is the same thing in French as *de temps à autre*: in fact, it is even stricter. I think that would serve to express the idea.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I should prefer even that to *from time to time*.

THE PRESIDENT (speaking in French). — If the Conference agrees, we will say : *which shall be published as often as possible in accordance with the directions of the Council*.

I will now put Article 7 to the vote.

*Article 7 was adopted.*

#### PREAMBLE

M. LANKAS (Czecho-Slovakia; speaking in French). — I took the liberty yesterday of drawing attention to a sentence in the Preamble which had been inserted by the Drafting Committee, and which was placed before us yesterday for the first time. The question is one which has not yet been discussed, either at a plenary meeting, or by the Committee, or by the Committee on Article 10. It was referred by this last to the Drafting Committee, which has to-day presented us with a text. This text ought, in my opinion, to be made the subject of most careful study. There occurs in the Preamble the following sentence : *. . . that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle*. Whilst the principle of mutual assistance between States and between railway administrations receives my heartiest support, I am nevertheless of opinion that the expression of such a desire is out of place in the Preamble of a convention on freedom of transit. We are well aware that the putting into practice of the principle of freedom of transit is dependent upon the assistance afforded to each other by the different administrations, but I have the impression that the ceremonious introduction of this sentence into the Preamble only narrows the scope of our Convention, and is even calculated to raise differences of opinion. The question will arise as to when this mutual assistance is to be forthcoming on the part of the different administrations. The provision appears to me too loose to be useful, and I also consider that it may be dangerous placed where it is. I would therefore beg the Conference to agree to omit it, inserting it instead either in the records or in the Final Protocol if considered desirable.

Sir Cecil HURST (Great Britain). — May I, as Chairman of the Jurists' Committee, be permitted to explain the origin of this sentence occurring in the Draft Preamble now before the Conference. At the time of the discussion of the Convention in committee, two amendments to the Preamble were put in, and it was decided to refer both of them to the Drafting Committee. The first of these amendments emanated

from the Chilian (1), and the second from the Austrian, Delegation. The Jurists drew up a text calculated to give as complete satisfaction as possible to all, and the amendments were embodied in the Preamble. May I add that, from the legal point of view, principles expressed in a Preamble have no great force. They do not bind the different States; all that they do is to establish leading principles for the future guidance of the States signing the agreement. As a matter of fact, the Chilian amendment with regard to co-operation, and the Austrian amendment concerning mutual assistance between the different States, are both in perfect agreement with the spirit of the Covenant of the League of Nations.

M. REINHARDT (Austria; speaking in French). — Personally, I take the contrary view, namely, that this paragraph is in its right place. We do not want the Convention to be nothing more than a piece of paper containing a clause or two. What we desire is a really practicable Convention. I explained before a meeting of the Conference (2) the motives which led me to present this amendment. I considered it desirable that it should find a place in the Convention, and I should like to thank Sir Cecil Hurst for having been good enough to enlighten us by stating the legal view of the question. In my opinion, both the substance of the amendment and the idea underlying it, which is in its turn prompted by the ideals of the League of Nations, provide arguments in support of those which I have already had the honour to place before the Conference. In conclusion, I would beg the Conference to leave the text as it is.

M. WIELOWIEYSKI (Poland; speaking in French). — Whilst supporting the proposal put forward by the Czecho-Slovak Delegation, I should like to lay stress upon the fact that it is not the principle itself which is called in question; we all understand the necessity of mutual assistance. The question is dealt with in a Report on the subject of railways which has been drawn up by M. Politis and was circulated to-day. The subject is there treated exhaustively, in connection chiefly with the electrification of railways.

We do not in principle object to the Austrian proposal, but we do think that in its present place it contains elements of danger. You must know that anything in general conventions which is not expressed in very definite terms is liable to be interpreted in a sense different from that originally intended. Suppose we approach our neighbour with the words : We have indeed undertaken to facilitate transit for you, but only give us the waggons and we will guarantee the transit. I consider this sentence, which says nothing at all, to be dangerous, and it is for this reason that I deem it our duty to demand its omission. Without it the text will be clearer, and the meaning will be open to no doubt.

M. CARACOSTA (Roumania; speaking in French). — I am in complete agreement with the view taken by my colleagues the Delegates of Czecho-Slovakia and of Poland, and I hold with them that the sentence is out of place here. In my opinion, its inclusion in the text would only lead to difficulties.

THE PRESIDENT (speaking in French). — If there are delegates who consider the sentence out of place here, might it not be inserted in the Report?

M. REINHARDT (Austria; speaking in French). — It has been suggested that the inclusion of this sentence is dangerous. May I observe that this same mutual assistance is being rendered every day. It is only natural that a country which is in need of fuel or of rolling-stock should ask for that fuel or that rolling-stock in whatever quarter there is a chance of finding it, and this is taking place all the time. I therefore fail to understand the objection to retaining this sentence in the Preamble.

M. NEUJEAN (Belgium; Rapporteur; speaking in French). — I think that we might perfectly well subscribe to the wish expressed by the Czecho-Slovak and Polish

(1) See note on p. 92.

(2) See p. 24.

Delegates, in view of the fact that the second sentence is already implied by the first. What does the first sentence say? It reads as follows : *Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States, etc...* After all, what is this co-operation between States, if it is not that mutual help of which mention is made both in M. Politis' Report and in the Report which I myself presented? There is all the more reason to omit the last part, for it is an ill-constructed sentence, the words in the French text *ces derniers* being intended to apply to the noun *États*, which occurs several lines higher up.

THE PRESIDENT (speaking in French). — Would there be any objection to including this last part in the Report?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — It is already in, and I seem to recollect that it also appears in M. Politis' Report.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I myself am entirely in agreement with the view which has been developed here by the Delegates of Czecho-Slovakia, Poland and Roumania. Were the sentence to which such objection is taken to remain in the Preamble, it would appear to bind the different Governments and to impose upon them obligations to which, in my opinion, they could not submit. The Austrian Delegate has said : "If you wish this Convention to be a practicable one..." We also are striving to that end, but a question arises here of relations between States, and this mutual assistance must not become a kind of previous undertaking, as it were. We wish always to be ready to co-operate in rendering all the mutual aid possible, but we do not wish to be bound in advance.

THE PRESIDENT (speaking in French). — We shall now proceed to the second reading of the articles of the Convention on Freedom of Transit, and to the taking of a vote upon them. The moment would appear to me to have arrived for requesting the President, M. Hanotaux, to be good enough once more to resume the President's hammer, that very heavy instrument with which he was kind enough to entrust me at the opening of this meeting.

M. HANOTAUX, *President of the Conference, replaced M. Loudon, Vice-President, in the President's Chair.*

.....

THE PRESIDENT (speaking in French). — It was natural that M. Loudon should preside over your labours until the conclusion of the first reading of the Convention. We will now proceed to the second reading, with the understanding that the Regulations and the Protocol are reserved.

### CONVENTION ON FREEDOM OF TRANSIT

[Names of Powers]:

Desirous of making provision to secure and maintain freedom of communications and transit;

Being of opinion that in such matters general conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations;

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit;

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the final Act of such Conference;

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat;

Wishing to conclude a Convention for this purpose, have appointed as their Plenipotentiaries :

Who, after communicating their full powers found in good and due form, have agreed as follows :

May I say once more that the word *Regulations* and the expression *Contracting States* are expressly reserved.

M. WIELOWIEYSKI (Poland; speaking in French). — Is it understood, with reference to the last paragraph of this Preamble, that the formal portion of it is reserved?

THE PRESIDENT (speaking in French). — It is understood.

#### ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on...

Consequently, they hereby declare that they accept the obligations and undertakings of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 1? I will put it to the vote.

*Article 1 was adopted.*

#### ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

*Article 2 was adopted.*

#### ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until... (December 1st, 1921).

*Article 3 was adopted.*

#### ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

*Article 4 was adopted.*

#### ARTICLE 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

*Article 5 was adopted.*

## ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

*Article 6 was adopted.*

## ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

*Article 7 was adopted.*

## ARTICLE 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst, of the British Delegation, will now speak.

Sir Cecil HURST (Great Britain; speaking in French). — In order to avoid any misunderstanding, I propose to alter the sentence *Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received*, as follows : *Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date of notification*. In this way the sentence cannot give rise to any confusion.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — As the date of notification is already to be found in the document, there would clearly be a redundancy.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst fears there may be two dates,—that on which the notification is made and that on which it is received. It is certainly unfortunate not to have a uniform date.

M. RÉVEILLAUD (France; speaking in French). — It would perhaps be simpler to use the word *received* in both cases, namely, in the middle as well as at the end of the article.

THE PRESIDENT (speaking in French). — M. Loudon suggests *Copies of such notification shall be transmitted forthwith to all the other Parties*. This certainly appears to me simpler, and would not give rise to any uncertainty as to the date itself.

M. SIBILLE (France; speaking in French). — Surely we could retain the text before us by simply altering the last sentence as follows : *The denunciation shall take effect one year after the date on which it was received by the Secretary-General...*

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — Exactly.

THE PRESIDENT (speaking in French). — If no objection is raised to this proposal, it is settled that it is the date of receipt which will count.

Does anyone else wish to speak on Article 8?

I put it to the vote in the modified form proposed by M. Sibille.

*Article 8 was adopted.*

#### ARTICLE 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

*Article 9 was adopted.*

THE PRESIDENT (speaking in French). — It is understood that the concluding words of the Convention *in faith whereof...* are reserved.

M. PUSTA (Esthonia; speaking in French). — As a matter of fact, this forms part of the formal articles which it was decided to reserve.

THE PRESIDENT (speaking in French). — It is understood that the vote by roll-call upon the whole text of the Convention is reserved.

#### DECLARATION

THE PRESIDENT (speaking in French). — M. Winiarski, the Polish Delegate, will now speak.

M. WINIARSKI (Poland; speaking in French). — I wish to address the Conference in order to read a declaration which certain delegations have asked me to make known. It relates to the Brazilian proposal on the subject of the principle of reciprocity of obligations and benefits, in connection with the carrying out of Article 23 (e) of the Covenant, including equitable treatment for commerce. As you are already aware, the Brazilian proposal has been made the subject of a report by the Sub-Committee, stating that the Brazilian Delegate's memorandum will be transmitted to the Council.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The report has been altered.

M. WINIARSKI (Poland; speaking in French). — The following is the Declaration which I have been asked to read to you :

The report of the British Delegate has just been distributed, concerning the decision taken by the Sub-Committee which, under his Chairmanship, considered the proposal put forward by the Brazilian Delegation, on the application of the Draft Conventions which the Conference is engaged in drawing up.

We agree with the point of view of the Sub-Committee, whilst expressing the earnest hope that the Council and the Assembly of the League of Nations will take the necessary measures to safeguard the application of the principle of reciprocity in the execution of the Conventions which have been drawn up by the Conference.

Further, in view of Article 23 (e) of the Covenant, we ask that the attention of the Council and of the Assembly of the League be drawn to the necessity for defining, at the earliest possible date, the principles proper to ensure an equitable treatment of commerce.

This Declaration is signed by :

MM. WIELOWIEYSKI (Poland), FREIRE D'ANDRADE (Portugal), V. SIDZIKAUSKAS (Lithuania), PLANAS SUAREZ (Venezuela), CARLIN (Switzerland), TSANG-OU (China), MIRZA HUSSEIN KHAN ALAI (Persia), VELASQUEZ (Paraguay), PERIETZEANO (Roumania), Manuel RIVAS VICUÑA (Chile), M. de PERALTA (Costa Rica), Luis Maria SOLER (Haïti), LANKAS (Czecho-Slovakia),

MORENO MERLO (Cuba), TRIFON MELEAN (Bolivia), TRESICH PAVICHICH (Serb-Croat-Slovene State), P. BIGNAMI (Italy), Guillermo BROCKMANN Y ABARZUZA (Spain), Norberto GALVEZ (Guatemala), Norberto GALVEZ (Honduras), ALBAT (Latvia), FERNANDEZ Y MEDINA (Uruguay).

The signatory delegations request the President to add this Declaration to the files of the Conference, for transmission to the Council of the League of Nations.

THE PRESIDENT (speaking in French). — This Declaration will be placed among the archives of the Conference, and the Officers of the Conference will take the measures necessary to communicate it to the Council of the League of Nations.

*The meeting adjourned at 7.40 p.m.*

# TWENTY-FOURTH MEETING OF THE CONFERENCE

(Thursday, April 14th, 1921, at 11 a.m.)

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DISCUSSION OF FORM TO BE GIVEN TO ARTICLES ON FREEDOM OF TRANSIT — ADOPTION OF ARTICLE 1 OF CONVENTION — ROLL-CALL FOR ADOPTION OF CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

*The Meeting opened with M. Hanotaux, President, in the Chair.*

## DISCUSSION OF FORM TO BE GIVEN TO ARTICLES ON FREEDOM OF TRANSIT

THE PRESIDENT (speaking in French). — We are now approaching a subject upon which we had reserved our opinion; namely, the choice between the words *Convention* and *Regulations*. Sir Cecil Hurst will give us the view of the jurists upon this point, whilst there is also, I think, a statement to be made by the British Delegation. All these matters having been cleared up, it remains for the Conference to be made conversant with the present state of affairs concerning the Protocol and the signatures to be appended to the various Acts. Sir Cecil Hurst will now speak on behalf of the Jurists' Committee.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — The text which was submitted to the Officers of the Conference, and which has been circulated amongst you, was the work of the Jurists' Committee, over which I have the honour to preside. All its members are in agreement with regard to the system proposed. This system is the one adopted at the Hague in 1907, and at Geneva in 1920. It consists in making a distinction between the formal clauses and the technical clauses. The Jurists' Committee made this proposal because experience has proved that this system has already produced good results, and also because there are precedents which, to lawyers, are always of capital importance. There does not appear to me to be any necessity to explain in detail the advantages of the system, because, in my opinion, they are clearly apparent. If, however, the members of the Conference consider that difficulties might be created if it were applied, I shall be happy to calm their apprehensions, but I can assure you that a division into a *Convention* and *Regulations* of the articles adopted by the Conference will not in any way, either from a legal or a technical point of view, prove a source of trouble to the States which accept them.

Another question was submitted to the jurists. The use of the word *Regulations* has been criticised. We have been told that we have adopted regulations for organisation and regulations for procedure, and we are now asked to adopt a third set of regulations. those on transit—This will cause confusion. The Jurists' Committee was asked by the Conference to ascertain whether, in order to avoid this confusion, it were possible to find a synonymous term. We have gone into the question carefully, and the word which we can recommend to the Conference is the word *statute*. In certain ways it is better than the word *Regulations*. If, however, the Conference is not of this opinion; the Jurists consider that there would be no objection in keeping to the word *regulations*.

May I now be permitted to speak, no longer as Chairman of the Jurists' Committee, but as a member of the British Delegation? I had occasion at a previous meeting



to give some explanations on this subject, and I pointed out that from the British point of view it is desirable to accept this division of the articles into a Convention and appended Regulations. Some difficulties of an internal character arose within the British Empire through the admission of the great Dominions into the League of Nations as separate Members. This decision was taken at Paris by distinguished statesmen, perhaps without fully reflecting on the legal and constitutional consequences of such admission, but the difficulties which it has involved for the British Empire are of an internal nature. I do not think the Conference would desire me to make a statement on the organisation of the British Empire, and I am equally convinced that it does not desire to raise difficulties for the British Empire. In a conference of this kind, when certain members are threatened with difficulties, it is natural that the others should do all in their power to remove these difficulties. As a jurist, I can give you an assurance that by accepting the division of the articles into a Convention and appended Regulations, the various States will in no way suffer prejudice from a legal point of view, and, if I point out further that the system offers great advantages for the different Powers, I hope that the Conference will be willing to accept it.

M. ORTUÑO (Spain; speaking in French). — I should like first of all to thank Sir Cecil Hurst for the explanation which he has been good enough to give us. It is the third time that I am speaking on this subject, and I will therefore endeavour to be brief. On the first occasion when I addressed you, I enquired why we talked of Regulations when up till now we had been engaged in making a Convention. I was given satisfaction on this point. On the second occasion, I indicated that the division into formal articles and technical articles received the approval of the Spanish Delegation, stating, however, that the word *Regulations* did not seem to me quite the right one to use. In Spain—and I suppose that it is so almost everywhere—*Regulations* conveys the meaning of an adjective; it is the law which is the substantive element. The administration decrees regulations in order to apply the laws. I therefore feared that, at first sight, the division into formal articles and regulations might give rise to doubt as to what these regulations exactly refer to. It was for this reason that I took the liberty of requesting Sir Cecil Hurst—who is to be congratulated upon having initiated this change—to endeavour to find a word which could be substituted, I think with advantage, for the word *Regulations*. Sir Cecil Hurst found this word. I see eye to eye with him, and I raise no objection to the word *statute*, which I consider the right one. The Spanish Delegation will vote for Sir Cecil Hurst's proposal.

THE PRESIDENT (speaking in French). — May I be allowed to give a short philological explanation. *Statute* is *quod stat*,—that which exists. As M. Ortuño has observed, the word is an excellent choice,—in fact, nothing short of a discovery on the part of our lawyers, not only for the present Convention, but also for any similar instrument which may be concluded in the future. I feel sure the Conference will approve, and will tender its thanks to its legal advisers for having made us this proposal.

M. SCASSI (Greece; speaking in French). — The excellent reasons adduced by Sir Cecil Hurst are all arguments in favour of making a distinction between the various contents of our Convention, whilst his proposal has also this in its favour, that it is not only rational but also practical and convenient. The legal position remains unchanged, and we need surely not hesitate to adopt a proposal carrying with it all the practical advantages which Sir Cecil Hurst has demonstrated.

But these observations do not apply to the term *Regulations*, which is rather an administrative term. Its introduction into the wording of a diplomatic instrument would constitute an innovation which could only be justified if accompanied by a definite improvement in terminology. But this is not so here. The word *Regulations* does not render the meaning of the special articles. There is no question here of regulating. We are not regulating traffic,—we are only making certain agreements in respect to traffic. I should propose adopting some term corresponding more closely to the object in view, and which would include the idea of an agreement, as we are here in order to agree. I would suggest the word *arrangement*, which has in its favour the fact that it is the one commonly used in diplomatic terminology to qualify conventions

which are not solemn engagements, but are special in the sense that these articles are special or technical.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The question which has been raised with regard to dividing the Convention into two parts, one to be called *Convention* and the other *Regulations* or *Statute*, is of considerable importance from every point of view, especially with regard to avoidance of difficulties in the future; and this is why at a previous meeting I requested the Officers of the Conference to prepare a short documentary statement giving the facts, and the documents for distribution among the members of the Conference, with the object of throwing light upon the question before the discussion and the taking of the vote. In place of this, however, the Chairman of the Legal Committee, Sir Cecil Hurst, has given us some explanations on the question. The idea of dividing the Convention into two parts—Convention and Regulations,—is an innovation for most of the States, which up till now have been in the habit of seeing all the provisions relating to obligations and duties contained in a single instrument, namely, a Convention, subject not only to ratification but also, should necessity arise, to revision and denunciation. As regards the form, I am of opinion that the division into two parts, one containing the articles relating to legal and conventional matters, and the other comprising the substance of the agreement, is a happy and most acceptable idea. But we feel some anxiety with regard to the proposal made by Sir Cecil Hurst. At the meeting on April 9th Sir Cecil Hurst addressed us on the subject of the technical articles, which I consider to be the really essential ones—those, in fact, which make the Convention. Articles on the subject of dues, tariffs, restrictions, obligations, are, in fact, those which make the actual Convention. If, however, we accept Sir Cecil Hurst's proposal, will the article beginning *The Present Convention does not in any way affect the provisions of the Treaty of Peace signed at Versailles...* appear in the Convention or in the Regulations? In the same way, as regards Article 9 : *A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties*. Further, will articles dealing with duties, obligations, notification, denunciation, etc., come under the first or under the second part? A second question : Why is there a difference in form in the first part of the Convention with regard to the expression *High Contracting Parties*, whilst in the Regulations the term used is *States*? We fail to understand the motive for this distinction. A third question : Would the word Regulations,—that is to say, the Convention,—which was to be a homogeneous whole and not to be divided into a Convention and Regulations, in reality give rise to such insurmountable difficulties that the British Empire would be unable to accept it? Sir Cecil Hurst stated that he could not give any explanation in view of the difficulty of the question.

Sir Cecil HURST (Great Britain). — Not at all.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then I shall welcome any explanation. A fourth question : Does the acceptance of the Convention by Great Britain necessarily imply acceptance by the whole British Empire? If the Dominions, for instance, are unwilling to accept the Regulations, what will be their legal position in regard to the application of the Convention? A Dominion may, for example, come to me with a request for the right of transit, basing its demand upon the Convention. I reply : "I am sorry, but you have not signed the Regulations." The Dominion retorts : "I belong to the British Empire." Will the British Empire in such a case come to me and ask to be accorded the right of transit, taking its stand upon Article 6? I am led to ask all these questions, not with any particular interest in mind, but simply in order to be enlightened upon the subject; because when we return to our own country we may have it said to us : "You started out with a Draft Convention of which all the articles were contained in a single instrument. You have divided it into two parts; what is the relation between this new Convention and these new Regulations?" It is therefore in order to provide myself with the correct answer to the Government which I have the honour to represent that I am asking for these explanations. We shall then see whether or not we can support your point of view.

Sir Cecil HURST (Great Britain; speaking in French). — Allow me to endeavour to reply without delay to the questions put by the Serb-Croat-Slovene Delegate. The first question which he raised was that of the interpretation of Article 9 of the Convention, on the subject of revision. This article was worded by a Committee presided over by M. Loudon, and I am sure that the Committee in adopting this wording had in mind all possible revision, not only of the terms of the Regulations, but also of those of the Convention itself. The whole discussion which took place at this Committee, and all the arguments which Captain Avramovitch brought forward in support of his amendment, were based upon the necessity of revising, not only the Convention itself, but, should experience prove it to be necessary, the Regulations as well. The reason for which the article referring to revision was inserted in the Convention was that it is through the Convention that the Regulations derive their force. In my own personal opinion,—for this is not a question which has been discussed or considered by the Jurists' Committee,—Article 9 authorises a revision of the Regulations. If my interpretation be correct, and if the Conference so desire, it will be possible to clear up this point by adding to Article 9 the following words : *A request for the revision of the present Convention, and also of the Regulations, may be made.* Another means of achieving the same object would be to mention the matter in the Report. As it is, a mention of this question of revision is to be included in the Final Act, and Captain Avramovitch would perhaps be satisfied if, in the paragraph of the Final Act where mention is made of the means of carrying out such revision, it were also mentioned that it is not only the revision of the Convention but also that of the Regulations which is intended. Such is my own personal opinion upon this first point.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I wish the articles of the Convention also to be made fully applicable to the Regulations in every respect,—notification, ratification, revision. I ask the question in order that the matter should be made quite clear.

THE PRESIDENT (speaking in French). — I understand M. Avramovitch to mean that the word *obligation* only includes engagements of a practical nature, leaving out the various other kinds of undertakings which may be entered into side by side with such obligations. The Serbian Delegate wishes, therefore, to know whether these other undertakings are covered by the word *obligations*; he is apprehensive lest this word should be too restrictive. Might not M. Avramovitch's view find accurate expression in the following words : *all the obligations and undertakings?* The second paragraph of Article 1 of the Convention on Freedom of Transit would then read as follows : *Consequently they hereby declare that they accept all the obligations and undertakings...*, the word *undertaking* being added in order to supplement the word *obligations*, which might seem to imply only obligations bearing a technical character, whilst the word *undertakings* is applicable to every kind of undertaking concluded between one country and another on any subject. The text would thus be quite clear; but we could adopt a still more simple wording which Sir Cecil Hurst has just proposed to me : *Consequently they hereby declare that they accept the word "statute" in conformity with the terms and in accordance with the conditions set out in the Convention.*

The words *Statute* and *Convention* must be included in the same phrase.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Exactly.

Sir Cecil HURST (Great Britain; speaking in French). — The second point raised by Captain Avramovitch concerns the use of the word *States* in the Statute. This question is bound up with that raised by the third and fourth points brought forward by him. It concerns the peculiar situation of the Empire and the British Dominions. May I be permitted to deal with these different questions at the same time? The Dominions were admitted as Members of the League of Nations, and as Members of this League they accept certain principles and certain obligations. All the Dominions, taken individually as Members of the League of Nations, have accepted the terms of Article 23 (e) of the Covenant concerning freedom of transit and communi-

cations. The present Conference met on the invitation of the League of Nations, addressed to all its Members.

The Delegates present at this Conference are entitled to be informed of the exact situation of the Members of the League of Nations who are taking part in the discussions and in the voting at this Conference and who will adhere to the Conventions which result from it. Captain Avramovitch has asked to be informed what would be the exact situation of these Dominions if the Convention were not accepted, signed or ratified by them. I shall try to make this question quite clear by asking you to remember that this Conference includes a representative from one of the Dominions—India—and I ask him whether he agrees with what I am saying; if he does not, will he point out to the Conference wherein I have erred? India, as a Member of the League, is entitled to accept or reject the Statute which I hope will be adopted by this Conference. If this Statute is accepted by India, commerce originating from that country will be entitled to all the benefits and advantages accruing from the Statute. In return, the commerce of all the other countries will obtain the benefit of the application of the Statute to India. This will follow from the acceptance of the Statute by the Delegate for India and its ratification by our Sovereign on behalf of that Dominion.

There is another British Dominion which is a Member of the League,—Canada. She is not represented at this Conference. As a Member of the League, Canada will be free to accept or reject the Statute on Transit. As she is not represented at this Conference she will signify her accession to the Statute, if she decides to accede to it, by acceding to the Convention at some future date. In that case the commerce of the other Powers will be entitled in Canada to all the advantages arising from the Statute, and Canadian commerce will be entitled to reciprocal advantages in other countries. If any British Dominion does not accept this Statute, it will not be able to claim for its commerce the advantages derived from the Statute, and the other countries in their turn could not claim for their commerce the advantages of the Statute in the territory of the Dominion in question. This matter now appears to me sufficiently clear.

I will now return to the main question. The British Delegation is faced with certain constitutional difficulties by reason of the fact that the British Dominions—and India in particular—remain under the authority of our Sovereign, although they are separate Members of the League of Nations. I am afraid that my previous speech led Captain Avramovitch to think that this was a point which I regarded as very difficult and which I did not desire to discuss before the Conference. That is a complete mistake; far from this, I desire to be absolutely open and frank. I did not think, however, that the Conference desired to listen to long speeches on the constitution of that wonderful machine,—the British Empire. I hope that my remarks have satisfied Captain Avramovitch.

M. COLDING (Denmark; speaking in French). — In our view the Statutes are the compulsory rules for applying the Convention, in accordance with the procedure followed in the international convention on tariffs. It is for this reason that we now desire to keep the word *statute*. In Article 1 I should prefer simply the words : *the High Contracting Parties declare that they accept the Regulations of the Convention, of which it forms an inseparable part.*

THE PRESIDENT (speaking in French) — This amendment will be taken into consideration. I may tell you that we are endeavouring to establish a text to this effect.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like first of all to thank Sir Cecil Hurst for his explanations, which have thrown much light on the position to be taken up as regards the Convention and the Regulations. We should not like the Convention to be rejected and the Regulations to remain in force for ever. We should like the two parts to concord and to be inseparable, and to receive uniform treatment throughout.

THE PRESIDENT (speaking in French). — We are therefore all agreed. This is exactly what we are trying to introduce now in the text of Article I, which will be submitted to the Conference before the end of this discussion. Of course your proposal will be taken into consideration.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I thank you very much, Mr. President.

THE PRESIDENT (speaking in French). — The attention of the Conference has been drawn to the special situation of the British Dominions at the time of signing the Conventions. Sir Cecil Hurst's statements appear to be perfectly clear. There will be reciprocal treatment, and those Dominions who do not adhere to the Conventions cannot share in any of the advantages arising therefrom. Sir Cecil Hurst's text will be carefully revised in order to obviate any misunderstandings. A statement in writing to this effect will be made by Sir Hubert Llewellyn Smith on behalf of the British Delegation. This written statement will supplement the clear and precise verbal explanation which Sir Cecil Hurst has given us. I think the subject is now closed.

As regards the Transit Convention, we have now to consider whether we can accept the terms which have been proposed,—*Convention* and *Statute*. Does the Conference accept them? Are there no objections? The terms *Conventions* and *Statute* are therefore adopted.

#### ADOPTION OF ARTICLE 1 OF CONVENTION

We now return to the Transit Convention. The following is the text of Article 1 in its final form :

The High Contracting Parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference, on...

This Statute will be deemed to constitute an integral part of the present Convention. Consequently they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

This text has been proposed by the jurists and approved by the Officers of the Conference.

Does anyone object?

*Article 1 was adopted.*

#### ADOPTION BY ROLL-CALL OF CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

I will now take the vote by roll-call on the Convention and Statute on Freedom of Transit as a whole.

Albania. . . . .	Yes	Denmark . . . . .	Yes
Austria . . . . .	Yes	Esthonia . . . . .	Absent
Belgium. . . . .	Yes	Finland . . . . .	Yes
Bolivia . . . . .	Yes	France . . . . .	Yes
Brazil. . . . .	Yes	Greece . . . . .	Yes
British Empire. . . . .	Yes	Guatemala . . . . .	Yes
Bulgaria . . . . .	Yes	Haiti . . . . .	Yes
Chile. . . . .	Yes	Honduras . . . . .	Yes
China. . . . .	Yes	India . . . . .	Yes
Colombia . . . . .	Absent	Italy . . . . .	Yes
Cuba . . . . .	Yes	Japan. . . . .	Yes
Czecho-Slovakia . . . . .	Yes	Latvia. . . . .	Yes

Lithuania. . . . .	Yes	Portugal. . . . .	Yes
Luxemburg . . . . .	Absent	Roumania. . . . .	Yes
Netherlands . . . . .	Yes	Serb-Croat-Slovene State. . .	Yes
Norway. . . . .	Yes	Spain . . . . .	Yes
Panama. . . . .	Yes	Sweden . . . . .	Yes
Paraguay . . . . .	Absent	Switzerland . . . . .	Yes
Persia . . . . .	Yes	Uruguay . . . . .	Yes
Poland . . . . .	Yes	Venezuela . . . . .	Absent

*The Convention on Freedom of Transit as a whole was adopted, 35 voting for.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — The voting being completed, I should like to take the opportunity of announcing to the Conference that I have just received full powers from the British Dominion of New Zealand to accept this Convention on its behalf.

THE PRESIDENT. — This acceptance will be entered in the minutes and will be considered as final.

The Officers of the Conference congratulate the delegates and thank them for having completed this difficult work, particularly those who, under the chairmanship of our friend M. Loudon, shared in the labours of the Plenary Committee.

*The meeting adjourned at 1.20 p.m.*



## PART IV

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### TEXTS RELATING TO FREEDOM OF TRANSIT

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SECTIONS I, II AND III. — Texts discussed by the Commission of Enquiry on Freedom of Communications and Transit.

SECTION IV. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications (*Green Book*) with attached Report.

SECTIONS V AND VI. — Texts discussed at the Barcelona Conference.

SECTION VII. — Text adopted by the Conference.

COMMISSION  
OF ENQUIRY  
ON  
FREEDOM OF COMMUNICATIONS  
AND TRANSIT

*Secretariat.*

SECTION I

DRAFT CONVENTION ON FREEDOM OF TRANSIT

*(Text based on notes of the deliberations of the Commission on the International Régime of Ports, Waterways and Railways of the Peace Conference and presented for information by the Secretariat.)*

(October 1919.)

ARTICLE 1

The High Contracting Parties by this Convention enunciate the principle of freedom of transit in time of peace by railway, navigable waterway or canal, for persons, goods and ships or other means of transport, across territories belonging to or controlled by them, and in consequence they have agreed upon the following provisions :

ARTICLE 2

Each Contracting Party will allow, by the routes which are (for the time being) (1) most convenient for international transit, the free passage across its territory or territory placed under its control of persons, goods, vessels, railway wagons and postal services by railway, navigable waterway or canal proceeding to or from the territories of any one of the other Contracting Parties and for this purpose will allow the crossing of its territorial waters.

ARTICLE 3

Such persons, goods, vessels, railway wagons and postal services shall be exempt from any duties imposed solely in respect of transit.

Goods in transit shall be exempt from all customs or other similar duties.

ARTICLE 4

Except in so far as concerns restrictions necessary in regard to general police and national safety, each Contracting Party undertakes that such persons, goods, vessels, railway wagons and postal services shall not be unduly delayed, nor subjected to any restrictions which are not imposed equally on its own nationals or on national goods and means of transport in transit.

ARTICLE 5

All charges or payments relating to transport in transit shall be reasonable having regard to the conditions of traffic. (The rates thereof shall not be higher than the usual rates for inland traffic.) They shall be the same for persons, goods, vessels, railway wagons and postal services of all the Contracting Parties, subject to the provisions of Article 8; no charges, facilities or restrictions shall depend directly or indi-

(1) The words between parenthesis ( ) are those with regard to which a difference of opinion arose in the Committee on the International Régime of Ports, Waterways and Railways.



rectly on the nationality or ownership of any ship or of any other means of communication on which any part of the through journey has been or is to be accomplished. (Nevertheless, subject to rights acquired under previous international Conventions with regard to railways the cost of which has been wholly or in part covered by public funds, without corresponding tolls or dues, a reasonable kilometric charge on transit may be imposed.)

#### ARTICLE 6

Every Contracting State which before the signature of the present Convention had granted concessions of means of communication to private companies undertakes to secure that such companies carry out the provisions of the preceding clauses.

#### ARTICLE 7

The present Convention in no way affects the rights and duties of belligerents and neutrals in time of war and can impose on no-one of the High Contracting Parties any obligation conflicting with its obligations as a member of the League of Nations. No Contracting Party shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited or for goods of classes the importation of which is prohibited either on grounds of public health or morals or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to prevent smuggling, to ensure that passengers and goods are *bona fide* in transit and to avoid danger to the safety of any waterway or other means of communication.

#### ARTICLE 8

Nothing in this Convention shall be construed as imposing an obligation on one of the High Contracting Parties to allow freedom of transit for persons, goods and means of transport belonging to a State which has not adhered to the present Convention and which does not grant reciprocity with regard to its own territory.

#### ARTICLE 9

Any question arising with regard to transit over any means of transport of international concern shall be settled in accordance with the conventions governing such means of transport. Differences concerning transit over a means of transport of international concern shall be settled in the manner fixed by the League of Nations.

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## SECTION II

### DRAFT CONVENTION ON FREEDOM OF TRANSIT

*(Presented by the Secretary-General for discussion in second reading.)*

(December 30th, 1919.)

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#### PREAMBLE

##### *Principles of the Convention.*

The High Contracting Parties, whilst safeguarding their legitimate rights of sovereignty and of administration, being desirous, in conformity with Article 23 (e) of the Covenant of the League of Nations, to secure and maintain freedom of communications and transit, by land, water and air, for persons, goods and postal services, as well as for vessels, railway wagons and other means of transport, and for telegraphic and telephonic communications, have accordingly agreed upon the following provisions for the settlement forthwith of certain of these questions.

#### ARTICLE 1

##### *Definition of Freedom of Transit.*

Each of the High Contracting Parties will allow, by the routes most appropriate for international transit, the free passage across its territory or territory placed under its control, of persons, goods and postal services, as well as of vessels, railway wagons or other means of transport, by railway or navigable waterway, proceeding to or from the territories of any of the other Contracting Powers and for this purpose the crossing of territorial waters shall be considered on the same footing as the crossing of territory.

#### ARTICLE 3

##### *Regulation and execution of Traffic in transit by countries across which such transit takes place.*

Each of the High Contracting Parties undertakes that persons, goods, postal services, vessels, railway wagons and other means of transport proceeding to or from the territories of any of the other Contracting Parties, and in course of transit by railway or navigable waterway across its territory or territory placed under its control, shall not in any circumstances be unduly delayed, it being understood rather that measures taken for the regulation and execution of traffic in transit by countries across which such transit takes place shall facilitate transport as much as possible, and shall be inspired by the principle of perfect equality between the persons, goods, postal services, vessels, railway wagons and other means of transport of any of the Contracting Powers, including the country across which the transit takes place, without any distinction being made either as to the nationality of the persons, or as to the point of starting, entry, exit, destination or ownership of goods, postal services, or other means of transport in transit.

ARTICLE 3

*Duties.*

Persons, goods, postal services, vessels, railway wagons or other means of transport in transit shall be exempt from any duties imposed in respect of their entry, exit or transit.

ARTICLE 4

*Charges relating to services rendered.*

All charges relating to traffic in transit shall be reasonable, having regard to the conditions of the traffic.

In particular, the High Contracting Parties undertake not to use transit tariffs as an instrument of international economic warfare; consequently, they undertake to apply to the transit of persons, goods, postal services, vessels, railway wagons and other means of transport of all the Contracting Parties, on the transport routes administered by the State or by concessionnaire companies, whatever the starting-point or destination, tariffs founded solely on technical conditions of transport or on considerations of commercial competition between different routes. Other conditions of working being equal, these tariffs shall be at least as advantageous as those allowed for similar traffic on the routes in the country across which transit will take place, including (excluding) its own traffic. No charges, facilities or restrictions shall depend directly or indirectly on the nationality or ownership of the vessel or any other means of transport in which any part of the through journey has been or is to be accomplished.

ARTICLE 5

*Restrictions.*

No High Contracting Party shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited, or for goods of classes the importation of which is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to suppress smuggling, to ensure that persons, goods, postal services, vessels, railway wagons and other means of transport are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication.

ARTICLE 6

*Positions of the present obligations with regard to the other obligations of members of the League of Nations.*

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its other obligations as a Member of the League of Nations.

ARTICLE 7

*Relations between Contracting and Non-Contracting Powers.*

Notwithstanding the provisions of Articles 1 and 2, the present Convention does not impose on any of the High Contracting Parties a fresh obligation, in virtue of the said Convention, to accord freedom of transit to the vessels, railway wagons or other means of transport of a State which does not adhere to the present Convention, nor to the nationals or postal services proceeding to or from such a State.

Each of the High Contracting Parties undertakes not to conclude with a State

which does not adhere to the present Convention any agreement relating to transit, by which it would receive from that State the benefit of advantages not extended to the other High Contracting Parties.

#### ARTICLE 8

##### *Relations between the present Convention and the Peace Treaties.*

The present Convention does not prejudice the application of Articles 378 and 379 of the Treaty of Versailles, 330 and 331 of the Treaty of Saint-Germain, etc. Consequently, Germany, Austria, etc., cannot, because certain of the stipulations provided for in Articles 378 of the Treaty of Versailles, 330 of the Treaty of Saint-Germain, etc., are also included in the present Convention, claim from any one of the others Powers which has signed not only the Treaties of Versailles, Saint-Germain, etc., but also the present Convention, the benefit of such articles, before the expiration of the period provided for in the said articles.

On the expiration of this period, the benefit accorded by any one of the said stipulations cannot be demanded from Germany, Austria, etc., by a Power which has signed both the treaties of Versailles, Saint-Germain, etc., and the present Convention, in favour of any part of its territory regarding which reciprocity is not granted to Germany, Austria, etc.

Nevertheless, if, after the expiration of the said period, Germany, Austria, etc., are at any time Members of the League of Nations, their being so shall obtain for them from the other Contracting Parties the entire benefit of the stipulations of the present Convention, on a footing of perfect equality.

#### ARTICLE 9

##### *Temporary exception in favour of the devastated districts.*

As a temporary exception in the present Convention, and in conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can oppose against freedom of transit across its territories, as defined and laid down in the above articles, the economic emergency arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be relieved of the obligations of the present Convention, during a period of..... beginning from.....

#### ARTICLE 10

##### *Position of the present Convention with regard to particular agreements, previous and subsequent, relating to transit.*

Each of the High Contracting Parties recognises in its own particular case that the present convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to enter into similar agreements in the future, without a previous specific decision in each case by the Council of the League of Nations.

Nevertheless, the following remain in force...

#### ARTICLE 11

##### *Settlement of disputes.*

Subject to the stipulations of the Conventions relating to navigable waterways, and to ports of international concern, all disputes with regard to the interpretation and application of the present convention shall be settled in conformity with the provisions of the "Draft Proposals for the Permanent Organization of Communications and Transit under the League of Nations."

ARTICLE 12

*Scope of application of present Convention.*

The present Convention in no way affects the rights and duties of belligerents and neutrals in time of war, which will be settled by subsequent provisions, nor measures for national security, which the Powers reserve to themselves the right of taking, on their own territory, in case of national emergency, it being understood that invariably the principle of freedom of transit shall be maintained so far as possible.

ARTICLE 13, ETC.

*Provisions as to protocol, revision, ratification, etc.*

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ANNEX TO SECTION II

ANNEX TO DRAFT CONVENTION ON FREEDOM OF TRANSIT

DATED DECEMBER 30th, 1919

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1. — The term "Convention" used in the text does not in any way prejudice the final legal form of the said text.

2. — The final drafting of Article 10 is reserved until the various delegations have been able to lay before the Commission the text of previous transit agreements in which they are individually interested.

The discussion of Articles 13 *et seq.* is reserved until after the discussion of the "Draft on the Permanent Organisation of Communications and Transit under the League of Nations".

3. — At the discussion on the first reading it was provided that the following remarks should be inserted in the report to accompany the text :

*Re the Preamble.* — That the aim of the Commission is to proclaim also the principle of freedom of transit by road, air and for telegraphic and telephonic communications, quite apart from the feasibility, for the moment, of regulating the application of these principles to any given question, or from its own competence to deal with such questions.

*Re Article 1 : 1.* — This has not been thought the moment to define "Transit", in view of the future uncertainty in the developments of the forms of transit. It is, however, possible now to lay down that the term Transport in transit does not necessarily involve three States—a country of origin, a country of transit and a country of destination. It is sufficient that the traffic should begin and end outside the territory of the country across which the transit takes place. Nevertheless, transit may admit of transshipment from one means of transport to another; the passage through a port, with or without transshipment from one vessel to another, with or without warehousing, is to be considered as transit across the territory of the country under whose sovereignty the port is placed.

2. — The use of the term "the most appropriate routes" is on no account to be taken as meaning that one country may demand of another the bringing into traffic of a new route which would be more favourable for transit than the routes in norma

use, but implies the routes most appropriate at the time when the traffic is actually in transit, all the conditions of traffic, such as congestion, etc., being borne in mind. .

3. — The Commission has no intention of interfering in questions relating to maritime law and common usage as to the crossing of territorial waters. The words *for this purpose the crossing of territorial waters shall be considered on the same footing as the crossing of territory* apply only to the crossing of territorial waters considered as a part of the whole journey across the territory.

4. — The category *persons, goods, means of transport*, etc. is intended by the Commission to include locomotives forwarded on their own wheels, and light engines; it does not include warships; it includes the transport of munitions of war subject to the restrictions provided in Article 5 and to the stipulations contained in Article 12 as to the scope of application of the Convention.

*Articles 3 and 4.* — The distinction between duties on the one hand and charges on the other hand is based upon the following principle : a duty may be defined as any payment of a fiscal character, in cases where the country across which transit takes place receives payment as a contribution towards its revenue, without any direct service being rendered in return to the persons, goods, etc., in transit. A charge, on the other hand, may be defined as any payment imposed in return for a service rendered directly to persons, goods, etc., in transit. Payments intended to defray the expenses of administration of a port are counted as charges; payments for the expenses of the customs service should be included amongst duties.

*Article 12.* — The expressions *la sûreté de l'État* justifying, *en cas d'événements graves* des mesures de *sauvegarde nationale* are rendered in English by the words *national emergency*.

COMMISSION  
OF ENQUIRY  
ON  
FREEDOM OF COMMUNICATIONS  
AND TRANSIT

*Secretariat.*

SECTION III

DRAFT CONVENTION ON FREEDOM OF TRANSIT

*Presented by the Secretary-General for discussion in third reading.*

(March 5th, 1921.)

PREAMBLE

*Principles of the Convention.*

The High Contracting Parties, being desirous of applying the principle of freedom of transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, have agreed hereby to lay down the following provisions for guaranteeing and maintaining freedom of transit by rail and waterway.

ARTICLE 1

*Definition of Freedom of Transit.*

Persons, goods, (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) shall be deemed to be in transit across the territories placed under the sovereignty or authority of any one of the High Contracting Parties, within the meaning of the present Convention, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk, or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the Contracting Party across whose territory the transit takes place.

ARTICLE 2

*Regulation and Execution of Traffic in Transit.*

Subject to the stipulations contained in Articles 3, 5, 6, 7, 8, 9, 12 and 13 below, each of the High Contracting Parties undertakes to facilitate the free transit, by rail and waterway, across the territories placed under its sovereignty or authority, and by the routes most convenient for international transit, of persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) of every nation, without distinction as to the nationality of travellers, or the flag flown by vessels, or as to the point of starting, entry, exit or destination, or the ownership of goods (mails or postal parcels), coaching and goods stock (or other means of transport) in transit, and to remove all obstacles unduly placed in the way of such transit; being nevertheless understood that certain routes or ports may be reserved for certain traffic in transit to the exclusion of all other, but only where this is necessitated by the existence of a combination of special economic, topographical and technical circumstances..... (1).

(1) Text concerning territorial waters reserved.

ARTICLE 3

*Duties.*

Persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) in transit shall be exempt from any duties imposed solely in respect of their entry, exit or transit; it being nevertheless understood that on goods in transit there may be levied duties intended to cover legitimate expenses of administration and supervision incurred on account of such transit by the Powers over whose territory it takes place; moreover the sum total of the duties levied under this head, which must not in any case exceed that of the duties charged on free imports or exports, may be reduced, or even abolished, in favour of certain places of origin or destination, to the exclusion of every other. Such abolition or reduction must not, however, envisage or result in the favouring of certain traffics to the detriment of others.

ARTICLE 4

*Charges.*

The High Contracting Parties undertake to apply to the transit of persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) of all the Contracting Parties on the routes administered by the State or by concessionaire companies, irrespective of the starting-point or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, traffic conditions being taken into consideration including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to favour international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

ARTICLE 5

*Restrictions.*

None of the High Contracting Parties shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited, or for goods, the importation of which is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to suppress smuggling, to ensure that persons, goods, (mails and postal parcels), vessels, coaching and goods stock (means of transport) are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication.

ARTICLE 6

*Relations between Contracting and non-Contracting Powers.*

Notwithstanding the provisions of Article 2 *et seq.*, the present Convention does not impose on any of the High Contracting Parties, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the persons, goods (mails and postal parcels), coaching and goods stock (or other means of transport), originating in or proceeding to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other High Contracting Parties concerned. It is further understood that, for the purposes of this article, goods in transit under the flag of one of the Contracting Parties shall, if no transshipment takes place, benefit by the advantages granted to that flag.



ARTICLE 7

*Scope of application of the Convention.*

The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of national emergency; it being nevertheless understood that the principle of freedom of transit shall be maintained as far as possible.

ARTICLE 8

*Application of the Convention in time of war.*

The stipulations contained in the present Convention shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 9

*Position of the present obligations with regard to the other obligations of the Members of the League of Nations.*

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its other obligations as a Member of the League of Nations.

ARTICLE 10

*Position of the present Convention with regard to previous and subsequent particular agreements relating to transit.*

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude similar agreements in the future, except where a combination of special economic, topographical and technical considerations might justify such agreements.

Nevertheless, the following remain in force as exceptions...

ARTICLE 11

*Relations with States not adhering to the present Convention.*

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to transit, in conditions such that a similar agreement would be considered as contravening the terms of the preceding article, if such agreement were concluded between Contracting Parties.

ARTICLE 12

*Position with regard to treaties giving greater facilities.*

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted to freedom of transit, on the territory placed under the sovereignty or authority of any one of the High Contracting Parties, conditional upon their being compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties, as defined in and applied to the present Convention, or on the other hand the prohibition of the granting of such further privileges in the future.

ARTICLE 13

*Temporary exception in favour of the Devastated Regions.*

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can reasonably oppose against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, the economic emergency arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the application of the said stipulations.

ARTICLE 14

*Position of the present Convention with regard to the Peace Treaties.*

The present Convention does not prejudice the application of Articles 372 and 379 of the Treaty of Versailles, 330 and 331 of the Treaty of St. Germain, etc.

ARTICLE 15, etc.

*Jurisdiction, ratification, denunciation, revision.*

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## SECTION IV

### DRAFT CONVENTION ON FREEDOM OF TRANSIT

*(Text prepared by the Commission of Enquiry and submitted to the Conference.)*

(See p. 286.) The General Communications and Transit Conference of the League of Nations, ..... assembled at..... by.....

Having decided to adopt certain proposals relating to Freedom of Transit, constituting the item..... of their agenda, and

Having decided that these proposals should be drawn up in the form of a Draft International Convention,

Adopts the following Draft Convention with a view to its ratification by the Members of the League of Nations, as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present Draft Convention being known hereafter as High Contracting Parties.

#### PREAMBLE

##### *Principles of the Convention.*

(See p. 286.) The High Contracting Parties, being desirous of applying the principle of Freedom of Transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, agree hereby to enact the following provisions for guaranteeing and maintaining Freedom of Transit by rail and waterway.

#### ARTICLE 1

##### *Definition of Freedom of Transit.*

(See p. 286.) Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the High Contracting Parties, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk, or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting Party across whose territory the transit takes place.

#### ARTICLE 2

##### *Regulation and Execution of Traffic in Transit.*

(See p. 287.) Subject to the stipulations contained elsewhere in this Convention, the measures taken by the High Contracting Parties for the regulation and execution of traffic in transit across the territories situated under their sovereignty or authority, shall facilitate the free transit of persons, goods, mails and postal parcels, vessels, coaching and

goods stock, or other means of transport, by rail and waterway, by the routes most convenient for international transit, it being understood that the crossing of territorial waters is free. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit, or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport in transit.

### ARTICLE 3

#### *Duties.*

Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport in transit shall be exempt from any special duties in respect of their entry, exit, or transit; nevertheless, on goods in transit there may be levied duties intended solely to defray legitimate expenses of supervision and administration incurred on account of such transit by the Powers over whose territory it takes place. The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes. (See p. 288.)

### ARTICLE 4

#### *Charges.*

The High Contracting Parties undertake to apply to the transit of persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, on the routes administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to favour international traffic as far as possible. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished. (See p. 288.)

### ARTICLE 5

#### *Restrictions.*

None of the High Contracting Parties shall be bound by the present Convention to afford transit for passengers whose admission into its territories is proscribed, or for goods belonging to a class of which the importation is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to ensure that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication. (See p. 290.)

### ARTICLE 6

#### *Relations between Contracting and Non-Contracting Powers.*

Notwithstanding the provisions of Article 2 *et seq.*, the present Convention does not impose on any of the High Contracting Parties, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the goods, mails and postal parcels, coaching and goods stock or other means of transport entering from, leaving by, or proceeding from or to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other High Contracting (See p. 290.)

Parties concerned. It is further understood, for the purposes of this Article, that goods in transit under the flag of one of the Contracting Powers, shall, if no transshipment takes place, benefit by the advantages granted to that flag.

#### ARTICLE 7

##### *Scope of Application of the Convention.*

(See p. 291.) The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of national emergency; it being nevertheless understood that the principle of Freedom of Transit shall be maintained as far as possible.

#### ARTICLE 8

##### *Application of the Convention in Time of War.*

(See p. 291.) The stipulations contained in the present Convention shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

#### ARTICLE 9

##### *Relationship of the present obligations to the other obligations of the Members of the League of Nations.*

(See p. 291.) The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

#### ARTICLE 10

##### *Relationship of the present Convention to previous and subsequent Particular Agreements relating to Transit.*

(See p. 292.) Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude any similar agreement in the future, in the absence of such a combination of special economic, topographical and technical considerations as might justify exceptional agreements of this nature.

Nevertheless, the following remain in force.....

(Conventions to remain in force although not referred to at the close of the preceding paragraph.)

#### ARTICLE 11

##### *Relations with States not adhering to the present Convention.*

(See p. 293.) Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to transit which would be contrary to the terms of the preceding article as between High Contracting Parties.

#### ARTICLE 12

##### *Greater Facilities.*

(See p. 293.) The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for freedom of transit, on the territory situated under the sovereignty or authority of any one of the High Contracting Parties, under conditions compatible with the principle of equality between

the subjects, property and flags of all the High Contracting Parties, as defined in and applied to the present Convention; or on the other hand the prohibition of the granting of such further privileges in the future.

#### ARTICLE 13

##### *Temporary exception in favour of the Devastated Regions.*

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can establish a good case against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulations. (See p. 292.)

#### ARTICLE 14

##### *Relationship of the present Convention to the Peace Treaties.*

The present Convention does not prejudice the application of the Treaties of Versailles, St. Germain, Neuilly, etc., between the Powers signatory to those Treaties. (See p. 293.)

#### ARTICLE 15

##### *Settlement of Disputes.*

In the absence of any direct agreement between the Parties concerned, any disputes as to the interpretation and application of the present Convention shall be brought before the Permanent Communications and Transit Committee of the League of Nations, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated..... and in the Scheme for the organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee, adopted by the General Communications and Transit Conference on..... (See p. 293.)

These disputes shall in cases of urgency be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

The present article does not preclude the settlement of disputes either by arbitration or by any other means, in virtue of special conventions between interested States.

#### ARTICLE 16

##### *Consequences of non-execution.*

Should any one of the High Contracting Parties fail to comply with the findings of the Permanent Communications and Transit Committee, or, if an appeal has been made, with the judgment of the Permanent Court of International Justice, any High Contracting Party may bring the matter before the Permanent Court of International Justice in order to obtain from it a declaration as to the measures which each of the High Contracting Parties may be entitled to take. (See p. 294.)

ARTICLE 17

*Ratification.*

(See p. 294.) The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention and shall register them.

ARTICLE 18

*Notification.*

(See p. 294.) As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding article.

ARTICLE 19

*Coming into force of the Convention.*

(See p. 294.) The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 20

*Date of Application of the Convention.*

(See p. 294.) Each Member which ratifies this Convention agrees to bring its provisions into operation not later than July 1st, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation not later than eighteen months after the date of the said communication, and to take such action as may be necessary to make these provisions effective.

ARTICLE 21

*Denunciation.*

(See p. 294.) Any Member or Power which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 22

*Revision.*

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the

working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 23

*Official Text.*

The French and English texts of this Convention shall both be authentic.

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ANNEX TO SECTION IV

REPORT ON THE DRAFT CONVENTION ON FREEDOM OF TRANSIT<sup>(1)</sup>

*Presented to the General Communications and Transit Conference  
by the Commission of Enquiry.*

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The question of transit, unlike other questions which may arise in connection with international communications, is referred to explicitly in Article 23 (e) of the Covenant. Without doubt, the authors of the Covenant considered that though, in the present state of the world, no transport question is, strictly speaking, without interest to all nations, yet the question of transit stands out as one of the most specifically international problems. International imports or exports are of direct interest only to the producing and consuming countries respectively. On the other hand, goods in transit crossing national territory but originating in and destined for places outside that territory cannot be impeded or restricted at the will of the State exercising sovereignty over such territory, without resultant injury to other States, not only inadmissible in itself, but the effects of which, in the form of reprisals, are liable to extend far beyond the States originally concerned, and, by the material inconvenience inflicted and the spirit of rivalry engendered, may contribute in no small measure to disturb the peace of the world. Just as, under existing legislation in most countries, a person who has to cross his neighbour's property in order to leave his house and reach the thoroughfare enjoys a right of way over the property, in the same way every State whose external trade is absolutely or virtually forced to pass across neighbouring territory ought likewise to enjoy a guaranteed right of freedom of transit across that territory. Otherwise, it would be open to any State, merely by impeding that freedom or—what amounts to the same thing—by applying to the transit of a State conditions different from those which are accorded to the transit proceeding from or to another State, to extort from its neighbour a veritable economic tribute, and to use its geographical position as a means of diverting arbitrarily the normal flow of commercial traffic. Such a situation would be highly prejudicial to every State anxious to promote economic co-operation between States—prejudicial, too, it might be said, to every State which takes a broad and far-sighted view of its own interests. It is to the interest of States importing goods to receive them by the most convenient and economical route, quite apart from any political considerations connected with the countries traversed. Exporting States have a similar interest in the delivery of their products and the development of their commerce. Further, it is to the interest of States whose geographical situation is such that they generally serve as transit countries to encourage the development of transit traffic by granting legal guarantees for security. Lastly, and perhaps most important,

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(1) This Report forms part of the preliminary documents for the General Communications and Transit Conference (*Green Book*).



land-locked States, of which new Europe contains so many, will find in such guarantees alone security against bearing the brunt, in spite of anything they can do, of quarrels between their neighbours, and against being victimised in their legitimate competition with those States whose territory they are obliged to traverse.

The object of the attached Draft Convention (See *Annex II*, p. 113) is to assure to freedom of transit this minimum of indispensable guarantee. It will be evident that the code therein laid down is not applicable to every category of transit, but only to such traffic as takes place *via* waterways and railways. The Preamble does, however, lay down the general principle of Freedom of Transit, and certain delegations had proposed to include specific reference to Freedom of Transit by road and air respectively. The Commission were of opinion, however, that the inclusion of road transport would entail special difficulties, particularly in connection with customs, while its economic importance has not, in the present stage of development of commercial motor transport, grown sufficiently to justify its immediate inclusion. With regard to the conditions of aerial transport, as the International Convention on Aerial Navigation which had already been drawn up seemed to be a more appropriate instrument to deal with the subject, there would have been a risk of overlapping had any stipulations been inserted in the Transit Convention.

The Commission confined itself to dealing in detail with Freedom of Transit in time of peace, although the obligation has been placed upon every State of maintaining such freedom in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals. The Swiss delegation had proposed that the Convention should include more definite obligations with regard to transit in time of war—in particular an undertaking only to suspend freedom of transit within the zone of operations, or to suspend such freedom on the remainder of the territory of the belligerent State only in the event of the State demanding the right of transit failing to provide its own means of transport for this purpose. Whilst choosing the present time to enunciate the general principle that Freedom of Transit should be maintained in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals, the Commission were of opinion that the question should be dealt with in a special convention to be studied at a latter date.

With this reservation, and within the limits of its application, the Convention applies rigorously the principle of the Covenant referred to in the Preamble; Freedom of Transit constitutes its motive and its goal; one of the articles defines the meaning of that freedom, whilst the others lay down the conditions necessary for its exercise.

On no account is Freedom of Transit, so conceived in the Convention, to imply any infringement of the rights of States exercising sovereignty or authority over the territories crossed, to administer transit routes in their own way, so far as is compatible with the provisions contained in the Convention. In particular, it is for the States across which transit takes place to regulate the conditions of transit, to select the routes to be employed, to fix the scale of charges for services rendered, to collect duly authorised dues and charges, to take any police or other measure which they consider not incompatible with the Convention, subject, however, in the event of a complaint, to explaining their motives and justifying their action before the prescribed jurisdiction.

The Convention on Freedom of Transit merely admits the right to use transit routes. The Commission decided to define this idea more clearly by the use of the expression *routes most appropriate to international transit*, thus laying down that the right of free transit may not be exercised except over routes in existence at the time when that transit takes place; a demand may not, in virtue of this Convention, be made for the construction or bringing into traffic of new routes or for alterations to those already existing, but only for freedom to use those which, at a given moment, and taking into account all considerations of traffic, congestion, etc., are the most suitable for international traffic. It may be observed, also, that nothing in the Convention obliges a State to give transit traffic general priority over interior traffic.

Freedom of Transit implies equality in the conditions of transit, such equality to be enjoyed within the territory of the various Contracting Parties by all the signatories to the Convention; without this equality Freedom of Transit would be but an empty phrase. Any preferential treatment accorded to one State and refused to another entails in practice a hindrance or interruption of the traffic proceeding from or

to this latter State. Equality, in the sense here intended, does not in any way exclude the inevitable differences of treatment based on purely commercial grounds, such as the establishment for the various international traffics of tariffs varying both in their rates and conditions of application, so far as such differential treatment would be considered as legitimate, on commercial grounds, in the interior of a State.

The equality which it has been the unanimous hope of the Commission to see realised is equality between all nations. Nevertheless, and in spite of the proposals of two delegations, the Swiss and the Dutch, the Commission did not consider it equitable to insert this idea in the Convention, and has confined itself, subject to certain reservations which will be explained in the course of the commentary on these articles, to stipulating in Articles 2 and 6 that equality shall only apply as between all the Contracting Parties. The Swiss and Dutch delegations did not see their way to support this view of a question which, it was recognised, was linked up with the general policy of the League of Nations. The majority of the members of the Commission considered that as every nation could be invited to adhere to the Conventions which form the subject of this Report, it was only reasonable to reserve their benefits to those who had assumed their obligation, since all were free to accept both at will.

The sole stipulation of equality is not sufficient to assure Freedom of Transit in all cases, even if, as intended, this equality comprises not only all the contracting parties, with the exception of that over whose territory transit takes place, but also the latter Power. It is possible that a State may have very little interest in favouring its own transit, if this occupies only a small place in its economic life. A State not possessing vessels of commerce, for instance, might impose on its national flag conditions of transit such as would render it practically impossible for it to cross its own territory, and this, while causing practically no inconvenience to itself, would suppress Freedom of Transit for foreign vessels, contrary to the intention of the Convention, though in accordance with the principle of equality.

Equality itself, though a condition essential to the equitable exercise of freedom, must be supplemented by other more precise guarantees as to the reasonable regulation of transit, and the economic and financial obligations to which it may be subjected. This is the object of a certain number of articles in the Convention.

The Commission fully realises that in spite of its persistent efforts through four successive discussions to elaborate the most precise text possible in the present state of public opinion throughout the world, a State can always, if it likes, find something in the interpretation of the text which will enable it, even if only temporarily, to impede Freedom of Transit. This cannot be otherwise. A Convention on Freedom of Transit, however composed, is bound to admit legitimate restrictions; derogations are necessitated by rights in connection with the general policing of a country, precautions for national defence, the necessity for protecting the health of the public or the supervision of customs, and so forth. In the same way provision must be made for temporary exceptions in favour of the regions devastated during the war, to which Article 23 (e) of the Covenant draws special attention. Lastly, there exist certain already established situations which cannot be reversed by a stroke of the pen. Naturally, these restrictions must be strictly defined and limited. But in a matter so technical it is evident that any text which attempted to give an exhaustive list of such cases would undoubtedly result either in omitting some of them, or in extending prematurely the scope of their application. How, then, in the face of these two extremes—the freedom essential for transit and the equally necessary restrictions—is the happy mean to be conserved, and all necessary guarantees assured? Had the usual form of the majority of previous conventions been maintained, there might have been no answer to the question, and it might have been wiser to abandon the drawing up of a document which would unavoidably have been only too liable to provide every sort of opportunity for wilful misapplication, and to offer the most tempting loopholes for evasion.

The organisation of the League of Nations provides stable guarantees for the carrying out of technical Conventions such as the present Convention on Freedom of Transit. In virtue of one of the articles contained in the Convention, the signatory Powers will agree to submit all disputes to compulsory arbitration, which includes submission in the first instance to an attempt at conciliation by the Permanent

Communications and Transit Committee. In this way the Committee, deriving part of its authority from the various Conventions, which in their turn owe to the Committee all their usefulness, should be enabled in every case, through possessing the confidence of all, and as a result of frank "conversations", to interpret the intention of the text and to promote good faith amongst all parties. Gradually the jurisprudence of the Committee will come to be considered as the code to be followed in questions of communications and transit. The various Conventions are but the basis and starting-point of its action; it is this action which as time goes on will in practice give expression and new life to the spirit underlying them.

It has further been possible to use in the Convention certain essential though very general expressions, such as *legitimate*, *reasonable*, *valid reason*. But for the existence of the Committee, these expressions could not be relied on invariably to convey a definite meaning, but thanks to it they can in every particular case indicate clearly the intention of the Convention with regard to their interpretation.

Lastly, before proceeding to a summary of the observations to which the articles considered in detail may give rise, the Commission wishes to affirm that although it looks upon the principle which it has unanimously adopted as the only possible one by which Freedom of Transit can be secured and maintained in conformity with the pledge embodied in Article 23 (e) of the Covenant, yet it is far from implying that identical principles should always serve as a guide in other spheres not its own, such as the equitable treatment of commerce, or other questions. The Commission has endeavoured to confine its activities to its own sphere, by proposing a set of stipulations which it considers indispensable to guarantee to the international régime of traffic in transit both juridical consistency and the stability of a recognised legal status. In the conviction, moreover, that no innovation has been made upon the generally accepted practice of the liberal Powers before the war, it lays before the Members of the League of Nations for the first time in crystallised form the codification of such practice, leaving to the peoples of the world, now being reconstituted, the choice between rejecting and perpetuating such code.

HEADING. — The Heading of the Convention put forward for adoption by a General Conference, which in its deliberative procedure will be similar to the General Labour Conference, follows closely the form of the heading of the Conventions adopted by the International Labour Organisation. After the words *with a view to its ratification by the Members of the League of Nations*, has been added, however, *as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations*, because, in accordance with the constitution of the General Conference, Powers other than Members of the League of Nations may take part in its deliberations and be invited to ratify the Conventions which are the subject of this Report, if they have not already contracted to adhere to them.

The expression *High Contracting Parties* has been maintained solely from motives of convenience in drafting, although, in common with the Labour Conventions, it cannot be considered as being exactly suitable to the form in which the Convention will be adopted by the Conference.

PREAMBLE. — The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application. Where, for example, sovereignty and authority are apportioned between different States, as a result of *settlements*, which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

ARTICLE 1. — The definition of transit given in this article is intended to eliminate any possibility of misunderstanding as to the meaning of the word *transit*, more

particularly in States where it carries a wider significance, and where it would be liable to be construed wrongly to include all international traffic, including import and export traffic, or even traffic which is not even international but is transported within the boundaries of certain territory between various portions of such territory.

The word *frontiers* in this definition refers to political frontiers, though there are a few specifically mentioned exceptions in the other texts, such as in the case of free zones in ports. Goods in transit are debarred from any process of manufacture, packing or unpacking *en route*. A vessel calling at a port, or its cargo in a transit warehouse in a port, are considered by the present article as being in transit.

The catch of a fishing vessel operating outside the limits of territorial waters and consigned to its destination through a fishing port is not considered as being in transit through that port, but, if consigned to another country, as exported therefrom.

In the enumeration of *persons, goods, etc.*, the word *persons* does not include soldiers in uniform, and the word *vessels*, subject to special provisions contained elsewhere, does not include vessels of war, police vessels or vessels connected with the exercise of any public authority in the name of a sovereign State. The word *goods* includes, *inter alia*, new wagons, also locomotives in steam or cold, in the cases and under the conditions admitting their conveyance as goods, in conformity with the railway tariffs.

The words *goods and postal parcels* have been retained by the Commission, although the British and Italian Delegations would have preferred their omission, fearing a possible overlapping between the present Convention and the postal Conventions. In the opinion of the Commission, however, no difficulty arises from the wording of the present Convention, as compared with that of the Postal Convention, nor need the present document, which is a General Convention with regard to transit by rail and waterway, and lays down the application of the principle of Freedom of Transit for all classes of transport falling within this sphere, exclude in any way the various methods of application prescribed for any given category of transport in special Conventions, such as the Railway and Postal Conventions.

The words *other means of transport* refer in particular to rafts, tugs, with or without tow, and any means of transport by rail or waterway which may be evolved in the future.

ARTICLE 2. — Article 2 should be read in conjunction with the other articles of the Convention which admit of certain restrictions to Freedom of Transit; in particular it should be compared with Article 6, which indicates clearly the States entitled to claim its benefits.

The words *by the routes most convenient for international transit* have already been fully commented upon; they do not in any way signify that, in virtue of this Convention, a State can demand from another State the bringing into traffic of new lines of greater utility for transit, or the carrying out of alterations to routes already existing, but refer to the routes most convenient at the actual time of transit, *i.e.*, considerations of traffic, congestion, etc., being taken into account. It is implied, however, that no State has the right to prohibit passage by an existing route, except as a result of genuine and temporary obstacles. In any event, these expressions are not to be construed as in any way curtailing those rights with regard to the routing of traffic which are already possessed by forwarding agents or railway administrations, in virtue of special international conventions.

The word *ownership* is intended to cover the personality of the owner, or his nationality, or the question whether ownership is vested in an individual or a corporation.

At the end of the first paragraph of the present article, details are given as to how, in the opinion of the Commission, discrimination should be regulated as between Contracting Parties with regard to persons, vessels, goods, mails and postal parcels, etc. This discrimination was the subject of considerable discussion. Once it had been decided not to adopt the proposal of the Swiss and Dutch Delegations to grant equality to all nations it became necessary to provide some criterion for discrimination. As regards persons, the test of nationality appeared the obvious one, and for vessels, their flag; but for goods, mails and postal parcels, etc., although it might appear possible to endow them with nationality, the practical drawbacks of this method (compulsory certificates of origin, etc.) would be so great as to exceed the actual benefits

of the Convention; the only practical tests remaining appeared to be the points of departure, of entry, of exit, or of destination. In the language of the texts, in the case of goods produced in a State X, coming from a State A, crossing States B, C and D, with a State E as their destination, so far as State C is concerned, State X is the State of commercial origin, State A is the starting-point, State B corresponds to the point of entry, State D is the State of exit, and State E is that of destination.

The second paragraph of this article simply recognises freedom of transit across territorial waters.

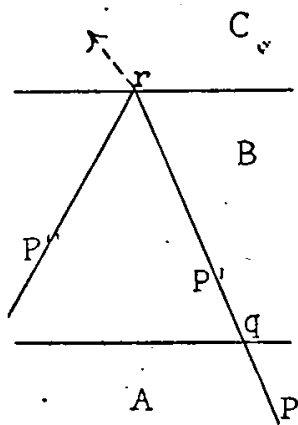
With regard to the word *flag*, the Swiss delegation had proposed to include a recognition of the right to a maritime flag, in certain conditions, of landlocked States, a right which was recognised in the Treaty of St. Germain by the signatory Powers as existing amongst themselves. Whilst decidedly favourable to the principle of this proposal, the Commission considered the treatment of a question of this nature out of place in the present Convention.

ARTICLE 3. — There is a definite distinction between Article 3 and the succeeding article. Article 3 deals with payments which are not in return for services rendered to persons, goods, etc., in transit, and which in principle are considered as inadmissible, whereas Article 4 deals with payments in return for services, and consequently described as *charges*.

Article 3 authorises duties intended to defray certain legitimate expenses of supervision and administration. Precautions are taken to ensure that the tariff of these duties shall be moderate, and shall not impede transit. It was proposed by the Belgian, British, Dutch, Greek and Japanese Delegations to limit this provision, which they considered to be a derogation, to a statistical duty, this only being admitted in order to avoid upsetting the customs systems of a considerable number of countries. The Czecho-Slovak, Italian, Polish, Roumanian and Serb-Croat-Slovene Delegations held an opposite opinion, maintaining that such duties were equivalent to charges, and that the railway administrations to which they were paid were, indirectly, benefiting transit. Finally, the Commission adopted a compromise. It was of opinion that such duties could not be assimilated to charges, as, strictly speaking, no actual service was rendered to persons, goods, etc., in transit, but that with the safeguards necessary for restricting their consequences, they might be maintained.

The very small amounts involved in these duties made it possible to admit, at the end of the article, a derogation from the principle of equality in order to facilitate the arrangement of special exemptions, more particularly between neighbouring States.

ARTICLE 4. — Article 4 deals with charges for services, such as the actual transport or handling of goods, etc., rendered to traffic in transit by public services administered by the State or under concession, and, being therefore more particularly concerned with railway tariffs, gave rise to considerable discussion. It was generally admitted that the State across whose territory transit takes place ought, from the standpoint of tariffs, and subject to differences of rates based on purely commercial considerations, to treat on a footing of perfect equality goods proceeding from or to other States. Failing this, the State across whose territory transit takes place could to all intents



and purposes, by means of practically prohibitive tariffs, abolish transit between any two States whose traffic has necessarily to proceed through its territory, or could reserve the benefit of this transit to any State at will. But, on the other hand, the Commission investigated whether the State across whose territory transit takes place ought to be bound to treat traffic in transit proceeding from or to other States on a basis of perfect equality, not only as towards each of those States, but also as towards its own traffic and the tariffs and facilities reserved for its own benefit. In particular the question arose as to whether transit traffic should be entitled to the benefits of special import and export rates for traffic passing through the same port or frontier station.

In the diagram opposite, the letter A denotes the country of departure, the letter B

the country traversed in transit, the letter C that of destination (or the sea, if the traffic leaves B at a seaport), and the letters p, p' and p" are important points of departure for goods, centres of industry, etc. The letter q is the point of entry into the territory of B, and the letter r the point of exit from B's territory (either frontier or port). The question was whether on the journey q to r (technical considerations of working or of commercial competition between transport routes being taken into account) traffic from p—r should benefit by State B's export tariffs established in favour of traffic p'—r or p"—r. In the reverse direction, should transit traffic benefit from State B's import tariffs?

The following text gave the two alternatives :

The High Contracting Parties undertake not to use transit tariffs as an instrument of international economic warfare; consequently, they undertake to apply to the transit of persons, goods, postal services, vessels, railway wagons and other means of transport of all the Contracting Parties, on the transport routes administered by the State or by concessionnaire companies, whatever the starting-point or destination, tariffs founded solely on technical conditions of transport or on considerations of commercial competition between different routes. Other conditions of working being equal, these tariffs shall be at least as advantageous as those allowed for similar traffic on the routes in the country across which transit will take place, including (excluding) its own traffic. No charges, facilities or restrictions shall depend directly or indirectly on the nationality or ownership of the vessel or any other means of transport in which any part of the through journey has been or is to be accomplished.

It was maintained by the Chinese, Czecho-Slovak, Italian, Polish, Roumanian and Serb-Croat-Slovene Delegations that both as regards the export of its products and the import of raw material, a State should possess the right to encourage its own industry and agriculture by means of transport tariffs, without regard to the technical conditions of traffic, or to any considerations of commercial competition between traffic routes. Accordingly, these delegations were in favour of the more restrictive text.

These delegations emphasised the fact that they based their observations solely on the logical application of Article 23 (e) of the Covenant of the League of Nations, which speaks of equitable treatment for the commerce of all Members of the League and of the legitimate and often necessary measures of protection to be taken by the countries of less wide economic, industrial or agricultural resources, with a view to their being enabled, should need arise, to adopt measures for giving any justifiable assistance to national products with which similar products from other countries were in competition, should the latter countries take up an attitude prejudicial to the national production. In this connection, the system of dumping which had been practised by certain nations might be cited.

Further, the principle of commercial competition being already admitted by the convention, the proposition of these delegations was, in their opinion, no more than a strict application of that same principle.

They added that it appeared to them unfair that, should a country elect to grant to any given national product for its transport from one point to another inside its own territory, a special tariff, possibly less even than cost price, that country should be obliged to accord the same tariff to goods in transit.

If a country should decide to make sacrifices, which might be very considerable, in the interests, for example, of its own agriculture, did it not appear unreasonable to require that it should make equal sacrifices in favour of foreign agricultural products in transit across its territory?

Accordingly, if traffic in transit were granted the same tariffs as those available for traffic proceeding from any one point in a country to all other points, this should be considered as amply sufficient to promote the required conditions of equality. Other tariffs applicable only to certain goods, or available only between specified points, and founded on special considerations, ought not to be included in the question.

It was certainly the general desire that the establishment of tariffs calculated to operate to the detriment of traffic in transit should by all means be prevented; the feeling of the above-mentioned delegations was most strong on this point, but seeing that railways constitute one of the most important factors in the economic life of each country, their best utilisation could not be threatened without a protest being raised by the States concerned.

On the other hand, it was held by the British, Dutch and Portuguese delegations that, if this right to differentiate against transit traffic were accorded to a State over whose territory transit takes place, a State whose import and export traffic must necessarily traverse another State's territory becomes to all intents and purposes economically dependent upon that State,—a situation which is tantamount to the suppression of freedom of transit.

Supposing, for instance, that in order to reach its outlet to the sea the traffic of a certain State must cross the territory of three or four other States, that traffic has to pay a supplementary toll when crossing the territory of each of these States, simply because each will have been able to establish import and export tariffs which are more favourable than transit tariffs. Under these conditions the very principle of freedom of transit is at stake; a State is at a disadvantage purely owing to its geographical position; competition in the world's markets is no longer equal; international traffic routes, instead of facilitating economic co-operation, stand for rivalry, reprisals, in fine, for a universal struggle for supremacy.

The French delegation maintained that although the right of every nation to adopt whatever policy of protection or of free trade it pleased remained unchallenged, that policy ought to be carried out exclusively by means of customs tariffs or direct subsidies, and not by means of transport tariffs. The sole result of the latter practice, which must be clearly distinguished from the usual differences between import, export and transit tariffs on purely commercial grounds, would be to interfere with the natural working of transport undertakings, to vitiate indirectly customs régimes, and to disturb the application of commercial treaties.

The Belgian delegation, whilst supporting the British, Dutch and French view, considered that the whole question ought rather to be dealt with in the Railway Convention.

In face of this deadlock, the Commission decided to adopt a compromise. It was thought that as regards tariffs, it was probably useless to lay down a hard and fast rule for the application or non-application of national treatment to transit, since within every country there exist numerous measures of commercial differentiation, and tariffs are not as a rule founded on simple bases. In the opinion of the Commission, it was wiser, for the present, to be content with maintaining those general principles embodied in the text of the convention, which authorise commercial differentiation and exclude political discrimination, leaving to the competent jurisdiction the task of an interpretation which should be *reasonable*, that is to say, in conformity with the spirit of the Convention, or in other words, in conformity with the unanimous intention to prevent any unfair obstacle to transit.

ARTICLE 5. — In virtue of Article 5, none of the High Contracting Parties shall be bound to afford transit to emigrants whose admission into the country of destination is prohibited. Such emigrants could not be considered as *bona fide in transit*. Every contracting party may likewise take all necessary precautions to suppress smuggling and to prevent emigrants in transit from immigrating into its territory; any measures for this purpose, such as requiring the emigration companies to deposit a bond, the provision of special wagons, etc., are admissible.

ARTICLE 6. — Article 6 is the result of a compromise between two entirely opposite views. The Swiss and Dutch delegations proposed, as mentioned above, to treat all nations on a basis of perfect equality whether they adhered to the Convention or not. On the other hand, the Serb-Croat-Slovene delegation considered that States which did not adhere to the Convention should on no account be allowed to share in its benefits. This view, in principle, was shared by all the other delegations, because it was felt that if the benefits were the same for those States which adhered to the Convention and those which did not, a large number of States would inevitably decide not to adhere. At the same time, in the special case of transit, it did not seem possible to admit a provision by which a Contracting State might be indirectly injured through the refusal of transit by another Contracting Party to the subjects or flag of a State not adhering to the Convention, or to traffic entering from, leaving by or proceeding from or to such a State. It cannot be denied that the dislocation of traffic resulting

from such a system would in many cases become a source of grave injury to other States adhering to the Convention. For instance, should State A, which has adhered to the Convention, suspend or impede the transit of goods proceeding from a State B, which has not adhered, to a State C, which has adhered, State C may be in urgent need of these goods, and thus be indirectly injured, as a result of the measures taken by State A. A similar state of things might arise in connection with the export of goods from country C to country B, which has not adhered to the Convention. For this reason, the Commission, without prejudice to any existing rights, laid down that while the Convention itself should not in any way impose on a State adhering to it an obligation to grant free transit to the subjects or flag of a State which has failed to adhere, nor to the goods, mails and postal parcels, coaching and goods stock or other means of transport entering from, leaving by or proceeding from or to a State which does not adhere to the present Convention, yet it will always be open for a State adhering to the Convention to request the State across whose territory the transit is to take place to grant such Freedom of Transit. The British delegation considered that this request alone should suffice. At the instance of the French delegation, the Commission decided that in such a case the State demanding an exception must furnish valid reasons to the State across whose territory the transit would take place, that is to say, must substantiate the claim that serious injury would be caused to it by the stoppage of the transit in question. In spite of the proposal of the French delegation, it was not considered possible by the Commission to apply a similar principle when the conditions were reversed, that is to say, to admit the right of a State adhering to the Convention to request a State across whose territory the transit would take place deliberately to interrupt the transit of the subjects or flag of a State not adhering, and of the goods, mails and postal parcels, etc., entering from, leaving by or proceeding from or to a State not adhering, when such transit would cause serious harm to the adhering State making the demand.

Goods being classified according to the States from which they enter, by which they leave, or from or to which they proceed, and vessels being classified according to the flag, the question arose which of these régimes was applicable to the vessel and its cargo considered as a whole. For practical reasons, and in order to avoid the necessity of the cargoes being examined on board ship—which would be in effect a violation of the principle of Freedom of Transit—the text concedes that as regards the application of this article the flag covers the goods. The same practical considerations do not hold good in the case of transshipment.

ARTICLE 7. — National security, which justifies the taking of certain measures in case of national emergency, includes, in particular, dangers both from without and from within, famine and strikes affecting transport, it being understood that grave events of an exceptional character are envisaged.

It is in virtue of this article, and only under the conditions laid down therein, that the Contracting Parties reserve the right to prohibit the passage across their territory of arms and munitions liable to be a grave menace to themselves. In this Convention the Commission have no intention of clashing with the Convention of 10th September, 1919, for the Control of Trade in Arms and Ammunition.

ARTICLE 8. — The Commission did not consider it opportune to deal here with the rights and obligations of belligerents and neutrals. It is possible that these may be defined afresh in a future Convention on the limitation of the rights of war, which the Commission decided the time had not yet arrived to deal with. In that case Article 8 as now drafted would at once be revised to correspond with the new text.

ARTICLE 9. — By certain delegations this article was considered superfluous, seeing that the task of the present Convention is limited to carrying out the stipulations of one of the articles of the Covenant, and is incapable of modifying the Covenant itself. Nevertheless, the necessity was recognised for specifying clearly that should the rights and obligations of the Members of the League of Nations as such conflict with the Convention, those rights and obligations should prevail. An illustration of this principle might be found in connection with economic penalties imposed on a State by



Members of the League of Nations. According to the terms of Article 9, this State, even though it is a Contracting Party, may not benefit by the provisions of the Convention, if the economic penalties imposed entail the suspension of Freedom of Transit.

ARTICLE 10. — The present article cancels all existing obligations and agreements between High Contracting Parties, which are inconsistent with the terms of the Convention. The ratification of the Convention does not, however, of itself entail the automatic cancellation, as it were, of these obligations or agreements, but merely their abrogation in so far as they are inconsistent with the present Convention. A State adhering to the present Convention shall have the right, as regards such previous obligations and agreements, either to consider them as cancelled by the coming into force of the present Convention, or else to extend their benefit to all other High Contracting Parties, in those cases in which the incompatibility with the Convention consists of preferential treatment having been accorded by the terms of these previous engagements.

With regard to future conventions, the question is much more simple : the High Contracting Parties undertake not to conclude any agreements inconsistent with the present Convention.

Nevertheless, the Commission recognised the necessity of providing for the possibility of apparent derogations from the above principle, both in the past and in the future, when justified by *a combination of special economic, topographical and technical considerations*. The Convention as a whole is calculated to gain in elasticity by a stipulation of this kind, which will render easier its application throughout the world. In the opinion of the Commission when, for example, two neighbouring States find their mutual situation such that the benefits which they contemplate granting to each other are economically, topographically and technically such that they cannot be extended to other Contracting Parties, these benefits should nevertheless be considered as in conformity with the spirit of the Convention. Were it otherwise,—and these benefits could not be granted unless they were extended to all,—the only result of the Convention would be to debar any State from granting them, and thus to hinder instead of to promote the development of international traffic. In particular the Commission had in mind the existing Greco-Serb Convention relative to the Port of Salonika. Similar cases can be imagined where a port, or a transit route serving the port, is so constricted or lacking in technical facilities that for these or similar reasons it can only be used, wholly or in part, for transit traffic proceeding from or to a single State separated from such port by a frontier, but nevertheless dependent on it for natural access to the sea.

It is understood that the phrase *special economic, topographical and technical considerations* constitutes an indivisible whole, of which all the conditions must be present. At one time the Commission had thought it desirable that the examination of these conditions in every future case should be submitted to the Permanent Communications and Transit Committee, or to the Council of the League of Nations, but it was subsequently considered preferable not to force upon States a procedure which in cases of urgency or of vital national concern might prove delicate, but to leave the matter so that only in the event of a dispute arising would the normal jurisdiction provided for in Article 15 come into play.

In addition to these apparent derogations, which, in the opinion of the Commission, do not really contravene the intention of the Convention, it has been thought necessary in the second paragraph of the present article to provide for the possibility of maintaining in force certain existing obligations and conventions which are really inconsistent with the Convention, when their actual consequences are inconsiderable and do not disturb the general effect of the Convention. The Portuguese delegation declared its intention of drawing attention in particular to the Anglo-Portuguese Convention of June 3rd, 1891, concerning East Africa. Special reference will be made to every such Convention in the final text of Article 10, as adopted by the General Conference. To this end, Powers wishing to claim the benefit of the second paragraph of the present article are invited to draw up a list of the previous conventions of this nature which they desire to see maintained, and to submit copies to the Secretary-General of the League of Nations at least a month before the meeting of the Conference.

ARTICLE 11. — With regard to existing conventions concluded between the Contracting Parties and Powers which have not adhered to the present Convention, there is nothing in the present Convention which obliges Contracting Parties to denounce such previous conventions. On the other hand, as regards the future, Contracting Parties undertake not to conclude with non-adhering States any agreement relating to transit which would be illegal in the terms of the preceding article as between Contracting Parties.

ARTICLE 12. — The present Convention lays down the minimum rights of free transit which may be accorded. With regard to greater facilities already granted by virtue of other conventions or in any other way, or which may be granted in the future in similar conditions, and consistently with the principle of equality as defined and applied in the present Convention, that is to say, taking into account in particular the stipulations of the last sentence of Article 3 and of the end of the first paragraph of Article 10, the existence of the present Convention does not in any way preclude such arrangements being made. The Convention neither cancels nor prohibits greater facilities granted by treaty, and it neither suppresses nor guarantees juridically greater facilities granted by custom.

ARTICLE 13. — This article permits certain Contracting Parties, by reason of the grave economic situation caused by devastations perpetrated by enemy troops on their territory, to establish a case for the suspension or temporary reduction, for instance, of facilities for transit as guaranteed by the present Convention, in order to give increased facilities to the transport necessary for the reconstitution of the devastated regions. It should be noted that only the economic aspect of these devastations is dealt with in this article. It is not necessary to provide for any special exception being made on account of the technical or material damage resulting from such devastations, since, as has been stated above, the Convention can in no case be interpreted as entailing the bringing into traffic of new routes, or the carrying out of works, but merely the utilisation of existing routes so far as is practicable.

ARTICLE 14. — This article refers in particular to certain obligations which, though provided for as being reciprocal between Contracting Parties under the present Convention, would be unilateral as regards certain Powers signatory to the Treaties of Versailles, St. Germain, etc.

ARTICLE 15. — Article 15 lays down the conditions in which compulsory arbitration shall be applied to disputes arising out of the present Convention. In the preface to the commentary to these articles, the Commission has emphasised the importance of these particular provisions, and has shown that the establishment of a technical procedure for conciliating disputes, to be followed by compulsory arbitration, will place this Convention in a slightly different position from that of the majority of previous conventions by rendering it more flexible, and by entrusting the details of its execution to international organisations charged with following its operation and progressive development. The details of this procedure consist merely in an adaptation to the Convention on Freedom of Transit of the principles laid down in the text of the Permanent Organisation, and in the Resolution adopted by the Council of the League of Nations on May 19th, as applicable to similar disputes arising out of the interpretation and application of the Peace Treaties. The normal procedure is, first, an attempt at conciliation through the Permanent Communications and Transit Committee, which in most cases should suffice to settle the dispute; secondly, and failing this, the decision of the Permanent Court of International Justice, to whom appeal may be made by either party within the periods prescribed by the regulations of the Court. The last paragraph of the article, however, gives the Parties in dispute the option of any other procedure for effecting a settlement. The Secretary-General of the Commission had proposed in every case to leave the final settlement of disputes to the Permanent Court of International Justice, being of opinion that it was to the interests of all that a common jurisprudence on transit questions should be established at the earliest possible moment, through the instrumentality of the Court. The Commission, however, desirous of leaving greater liberty to the States, and in the absence of definite information regarding the Scheme of Organisation of the Permanent Court

of International Justice, thought it would be better, at least for the time being, to adopt the last paragraph of the article.

Having regard to the possibility of serious and almost irremediable damage being caused in a short time by the non-execution of the obligations of the present Convention, the necessity was realised of providing, in the second paragraph of this article, for an accelerated procedure for obtaining an injunction which would permit of the resumption of freedom of transit without prejudice to the matters in dispute.

ARTICLE 16. — The intention of this article is to prevent injury resulting from the non-execution of the Convention by one of the Contracting Parties from reacting upon a large number of third parties as a consequence of the measures of reprisal which any injured Contracting Party might consider it had a right to take. It was decided that the Permanent Court of International Justice alone should be qualified to determine what measures might be taken.

ARTICLE 17. — Articles 17 *et seq.* are, with a few verbal modifications, some of which have been explained in connection with the heading, a facsimile of the provisions of the Draft Labour Conventions drawn up, after deliberation, by a conference analogous in its procedure to the proposed Communications and Transit Conference.

In Article 17 the word *notified* has been substituted for the word *communicated*, in order that States situated at a considerable distance from the seat of the League of Nations may signify their adhesion by telegraph, to be followed by the deposit of their ratification.

The words *Draft Conventions* apply to the text as adopted by the General Conference, and before being submitted for ratification. After ratification the *Draft Convention* becomes a *Convention* for Members or Powers which ratify it. It is for this reason that the term *Draft Convention* has been adopted in connection with its communication by the Secretary-General to the Members. On the other hand, in the second paragraph the expression *the ratification of the present Convention* is used.

ARTICLE 19. — The words *or which have already contracted to adhere* have reference in particular to Articles 338 and 379 of the Treaty of Versailles, as also to the corresponding articles in the other Treaties of Peace.

ARTICLE 20. — The date mentioned,—viz., July 1st, 1922,—is, of course, only provisional and may, according to the stage which the discussions have reached, be altered by the General Conference. It was obviously necessary to fix a definite date after which Members of the League of Nations, or Powers to which the Convention had been communicated, should be considered as not having ratified it. In certain special cases the Conference, following the precedent of the Labour Conference at Washington with regard to various conventions, may enquire whether explicit reasons exist which would justify its allowing a special time-limit to a particular country for the application of the Convention.

ARTICLE 21. — Article 21 admits of the denunciation of the Convention in certain conditions. The Commission is unanimous in hoping that a day will come when provisions such as those contained in the Convention on Freedom of Transit will be considered as actual annexes to the Covenant of the League of Nations, and as such obligatory for all the Members of the League. For the present, although it is certain that the Members of the League of Nations cannot but consent to take the necessary measures to secure and maintain freedom of communications and transit—seeing that a refusal to do so would be contrary to Article 23 (e) of the Covenant—yet the tradition of Conventions, such as that on Freedom of Transit, is not yet firmly enough established for Members of the League to consider themselves obliged either to bind themselves definitely by the Convention or, as an alternative, to secede from the League of Nations. The option of denunciation provided for in Article 21 indicates clearly that the Convention, although intimately bound up with the Covenant by a common inspiration, is yet juridically independent of the Covenant, and that the States which adhere to it only do so as a voluntary effort to further the work of international co-operation.

## SECTION V

### DRAFT CONVENTION ON FREEDOM OF TRANSIT

*Text prepared at Barcelona by the plenary Committee on Transit and referred to the drafting Committee.*

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The General Communications and Transit Conference of the League of Nations  
Assembled at \_\_\_\_\_ by \_\_\_\_\_  
Having decided to adopt certain proposals relating to Freedom of Transit, constituting the \_\_\_\_\_ item of their Agenda, and  
Having decided that these proposals should be drawn up in the form of a draft international Convention,  
Adopts the following draft Convention with a view to its ratification by the Members of the League of Nations, as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present draft Convention being known hereafter as the Contracting States.

#### PREAMBLE.

(The Preamble was referred to the Drafting Committee together with the amendments of the Austrian, British and Chilian Delegations.)

#### *Principles of the Convention.*

The Contracting States, being desirous of applying the principle of Freedom of Transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, agree hereby to enact the following provisions for guaranteeing and maintaining Freedom of Transit by rail and waterway.

#### ARTICLE 1

##### *Definition of Transit.*

Persons, luggage, goods, vessels, coaching and goods stock or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the Contracting States, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting State across whose territory the transit takes place.

#### ARTICLE 2

##### *Regulation and Execution of Traffic in Transit.*

Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods,

luggage, vessels, coaching and goods stock or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

To ensure the application of the provisions of the present Article the Contracting States shall authorise transit through their territorial waters in conformity with the usual conditions and reservations.

### ARTICLE 3

#### *Duties.*

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and such duties or charges must be imposed under the conditions of equality laid down in the preceding article. Such duties or charges may be reduced, or even abolished, on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.

### ARTICLE 4

#### *Charges.*

The Contracting States undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport on the routes operated or administered by the State or under concession irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessels or other means of transport on which any part of the through journey has been or is to be accomplished.

### ARTICLE 5

#### *Restrictions.*

None of the Contracting States shall be bound by the present Convention to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on the grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, luggage, goods, particularly monopolised goods, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit, as well as to ensure that passengers in transit are in a position to complete their journey and to avoid danger to the safety of any route or means of communication.

Nothing in this Convention shall affect any measures which any of the Contracting States, are, or may be, required to take by virtue of any general international Conventions, to which they are parties or which may be concluded hereafter, particularly those concluded under the auspices of the League of Nations, relating to the transit, export or import of a particular class of goods such as opium or other dangerous drugs, arms or the produce of fisheries, or general Conventions concluded with a view to

preventing the infringement of the rights of industrial, literary or artistic property, false marking, false indications of origin or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

#### ARTICLE 6

##### *Relations between Contracting and Non-Contracting Powers.*

The present Convention does not impose on any of the Contracting States, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the goods, coaching and goods stock or other means of transport entering from, leaving by, or proceeding from or to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other Contracting States concerned. It is further understood, for the purposes of this Article, that goods in transit under the flag of one of the Contracting States shall, if no transshipment takes place, benefit by the advantages granted to that flag.

#### ARTICLE 7

##### *Scope of Application of the Convention.*

Exceptions may be made in special cases to the terms of the preceding Articles in virtue of special or general measures which one of the Contracting States may be obliged to take in case of emergency affecting the vital interests of the country, it being understood that the principle of Freedom of Transit shall be observed as far as possible.

#### ARTICLE 8

##### *Application of the Convention in time of War.*

The present Convention does not govern the rights and obligations of belligerents and of neutrals in time of war; with this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

#### ARTICLE 9

##### *Relationship of the present Obligations to the other Obligations of the Members of the League of Nations.*

The present Convention does not impose on any of the Contracting States any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

#### ARTICLE 10

##### *(replacing Articles 10 and 11)*

##### *Relationship of the present Convention to previous and subsequent particular agreements relating to transit.*

The Conventions, Agreements and Treaties concluded between the Contracting States, in regard to Transit, before the 1921, are not abrogated as a result of the present Convention, subject to the provisions of Article 19 of the Covenant.

In pursuance of the above provision the Contracting States undertake, either at the expiration of these Agreements or as soon as circumstances permit, to introduce into any Agreements thus maintained in force, which may conflict with the terms of the present

Convention, such amendments as may be necessary to bring these Agreements into harmony with its terms, so far as the geographical, economic, or technical conditions in the countries or regions, which are the subject of these Agreements, allow of this being done.

The Contracting States further undertake not to conclude any Conventions, Treaties, or Agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

Moreover, the Contracting States will be entitled to conclude regional ententes regarding transit, in conformity with the principles of the Convention.

#### ARTICLE 11

##### *Greater Facilities.*

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of the still greater facilities granted for freedom of transit on the territory situated under the sovereignty or authority of any one of the Contracting States, under conditions compatible with the principles of the present Convention, or, on the other hand, the prohibition of the granting of such further privileges in the future.

#### ARTICLE 12

##### *Temporary exception in favour of the Devastated Regions.*

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulations to the said territory or part thereof.

#### ARTICLE 13

##### *Relationship of the present Convention to the Peace Treaties.*

As regards the Contracting States who are signatories of the Treaties of Peace concluded with Germany on the 28th June, 1919, with Austria on the 10th September, 1919, with Bulgaria on the 27th November, 1919, with Hungary on the 4th June, 1920, the present Convention in no way affects their rights and obligations, as established by the said Treaties.

#### ARTICLE 14

The present Convention shall be considered as the general Convention regarding the international régime of Transit which is provided for by Article 279 of the Treaty of Peace with Germany of the 28th June, 1919; by Article 331 of the Treaty of Peace with Austria of the 10th September, 1919; by Article 246 of the Treaty of Peace with Bulgaria of the 27th November, 1919; by Article 314 of the Treaty of Peace with Hungary of the 4th June, 1920; by Article 17 of the Treaty between the Principal Allied and Associated Powers and Poland of the 28th June, 1919; by Article 19 of the Treaty between the Principal Allied and Associated Powers and Czecho-Slovakia of the 10th September, 1919; by Article 15 of the Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State of the 10th September, 1919; and by Article 15 of the Treaty between the Principal Allied and Associated Powers and Roumania of the 9th September, 1919.

ARTICLE 15

*Settlement of Disputes.*

In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation or application of the present Convention shall be brought before the Permanent Court of International Justice, unless, by the application of a special Convention or of a general arbitration clause, a settlement of the dispute be effected, either by arbitration or in any other manner.

The procedure shall be in the form of a request by the Government which intends to submit the dispute to the Court.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion, to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning communications and transit. In urgent cases, a provisional opinion may be given recommending any temporary measures destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

ARTICLE 16

*Ratification.*

The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention and shall register them.

ARTICLE 17

*Notification.*

As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding Article.

ARTICLE 18

*Coming into force of the Convention.*

The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 19

*Date of Application of the Convention.*

Each Member which ratifies this Convention agrees to bring its provision into operation not later than the 1st July, 1922, and to take such action as may be necessary to make those provisions effective.



Each Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation not later than eighteen months after the date of the said communication, and to take such action as may be necessary to make these provisions effective.

ARTICLE 20

*Denunciation.*

Any Member or Power which has ratified this Convention may denounce it after the expiration of five years from the date on which the Convention comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 21

*Revision.*

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 22

*Official Text.*

• The French and English texts of this Convention shall both be authentic.

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## SECTION VI

### CONVENTION ON FREEDOM OF TRANSIT AND ANNEXED REGULATIONS

*Text prepared by the Drafting Committee, based on the text prepared by the Plenary Committee and submitted to the Conference.*

#### CONVENTION ON FREEDOM OF TRANSIT

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit, and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose, have appointed as their plenipotentiaries :

.....  
.....  
who, after communicating their full powers found in good and due form, have agreed as follows :

#### ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on.....

Consequently they hereby declare that they accept the obligations of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

#### ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties.

#### ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until..... (1st October, 1921).

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant, the Secretary-General will register the present Convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present Convention before... (October 1st, 1921)..... may accede to it.

The same applies to States not Members of the League, to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times and copies of it shall be published from time to time in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 279 of the Treaty of Versailles and the corresponding provisions in the other Treaties of Peace, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General and shall operate only in respect of the notifying Power.

In faith whereof.....

Done at..... the.....day..... in a single copy which shall remain deposited in the archives of the League of Nations.

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## REGULATIONS ON FREEDOM OF TRANSIT

### ARTICLE 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations *traffic in transit*.

### ARTICLE 2

Subject to the other provisions of these Regulations, the measures taken by States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

### ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

### ARTICLE 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

### ARTICLE 5

No Contracting State shall be bound by these Regulations to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly,

and also vessels, coaching and goods stock and other means of transport are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in these Regulations shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party or which may be concluded hereafter, particularly conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

#### ARTICLE 6

These Regulations do not of themselves impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage or to the flag of a non-Contracting State, nor to the goods, nor to the coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-contracting State except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

#### ARTICLE 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

#### ARTICLE 8

These Regulations do not prescribe the rights and duties of belligerents and neutrals in time of war. The regulations shall, however, continue in force in time of war so far as such rights and duties permit.

#### ARTICLE 9

These Regulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

#### ARTICLE 10

The coming into force of these Regulations will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before..... 1921 (subject, however, to Article 19 of the Covenant).

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of these Regulations the modifications required to bring them into harmony with such

provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of these Regulations, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of these Regulations.

#### ARTICLE 11

These Regulations do not entail in any way the withdrawal of facilities which are greater than those provided for in the Regulations and have been granted, under conditions consistent with their principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Regulations also entail no prohibition of such grant of greater facilities in the future.

#### ARTICLE 12

In conformity with Article 23 (e) of the Covenant, any Contracting State which can establish a good case against the application of any provision of these Regulations in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision in some or all of its territory.

#### ARTICLE 13

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members in the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

## SECTION VII

### CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

*(Text adopted by the Conference.)*

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Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czechoslovakia, Uruguay and Venezuela :

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose, the HIGH CONTRACTING PARTIES have appointed as their Plenipotentiaries :

The President of the Supreme Council of Albania :

The President of the Republic of Austria :

M. Henri REINHARDT, Ministerial Councillor;

His Majesty the King of the Belgians :

M. Xavier NEUJEAN, Member of the Chamber of Representatives, Minister of Railways, Marine, Posts and Telegraphs;

The President of the Republic of Bolivia :

M. Trifon MELEAN, Bolivian Consul-General in Spain;

The President of the Republic of Brazil :

His Majesty the King of Bulgaria :

M. Lubin BOCHKOFF, Civil Engineer, Assistant to the Director-General of Railways and Ports;

The President of the Republic of Chile :

The President of the Republic of China :

The President of the Republic of Colombia :

The President of the Republic of Costa Rica :

M. Manuel de PERALTA, Envoy Extraordinary and Minister Plenipotentiary  
of the Republic of Costa Rica to Spain;

The President of the Republic of Cuba :

His Majesty the King of Denmark and of Iceland :

M. Peter Andreas HOLCK-COLDING, Chef de Bureau in the Ministry of Public  
Works;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of  
the British Dominions beyond the Seas, Emperor of India :

Sir Hubert LLEWELLYN SMITH, G.C.B., Economic Adviser to the Govern-  
ment;

and for the Dominion of New Zealand :

Sir Hubert LLEWELLYN SMITH, G.C.B.;

For India :

Sir Louis James KERSHAW, K.C.S.I., C.I.E., Secretary in the Revenue and  
Statistics Department in the India Office;

His Majesty the King of Spain :

Señor Don Emilio ORTUNO Y BERTE, Member of the Chamber of Deputies,  
formerly Minister of Public Works;

The President of the Esthonian Republic :

The President of the Republic of Finland :

The President of the French Republic :

His Majesty the King of the Hellenes :

M. Pierre SCASSI, Envoy Extraordinary and Minister Plenipotentiary of His  
Hellenic Majesty in Spain;

The President of the Republic of Guatemala :

Dr. Norberto GALVEZ, Guatemalan Consul-General at Barcelona;

The President of the Republic of Haiti :

The President of the Republic of Honduras :

His Majesty the King of Italy :

His Excellency M. Camillo PEANO, Minister for Public Works, Member of the  
Chamber of Deputies;

M. Paolo BIGNAMI, Engineer, Member of the Chamber of Deputies, formerly  
Under-Secretary of State;

His Majesty the Emperor of Japan :

The President of the Republic of Latvia :

M. Germain ALBAT, Under-Secretary of State for Foreign Affairs;

The President of the Lithuanian Republic :

Her Royal Highness the Grand-Duchess of Luxemburg :

M. Antoine LEFORT, Chargé d'Affaires at Berne;



His Majesty the King of Norway :

The President of the Republic of Panama

Dr. Evenor HAZERA, Consul-General for Panama in Spain, formerly Under-Secretary of State;

The President of the Republic of Paraguay :

Her Majesty the Queen of the Netherlands :

Dr. C. LELY, Formerly Minister for "Waterstaat", Commerce and Industry, Member of the Second Chamber of the States General;

Jonkheer Dr. W. J. M. van EYSINGA, Professor of International Law in the University of Leyde;

M. A. G. KROLLER, Member of the Economic Council of the Ministry of Foreign Affairs;

His Imperial Majesty the Shah of Persia :

His Excellency Mirza HUSSEIN KHAN ALAI, Envoy Extraordinary and Minister Plenipotentiary to Spain;

The President of the Polish Republic :

M. Joseph WIELOWIEYSKI;

The President of the Portuguese Republic;

His Majesty the King of Roumania :

His Majesty the King of the Serbs, Croats and Slovenes :

Dr. Ante TRESICH-PAVICHICH, Envoy Extraordinary and Minister Plenipotentiary to Spain and Portugal;

His Majesty the King of Sweden :

The President of the Swiss Confederation :

The President of the Czecho-Slovak Republic :

Dr. Ottokar LANKAS, Ministerial Councillor and Director of Transport in the Ministry of Railways;

The President of the Oriental Republic of Uruguay :

M. Benjamin FERNANDEZ Y MEDINA, Envoy Extraordinary and Minister Plenipotentiary to Spain;

The President of the United States of Venezuela :

Who, after communicating their full powers found in good and due form, have agreed as follows :

#### ARTICLE 1

The High Contracting Parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on April 14th, 1921.

This Statute will be deemed to constitute an integral part of the present Convention. Consequently they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

#### ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th,

1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

#### ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until December 1st, 1921.

#### ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

#### ARTICLE 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

#### ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

#### ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

#### ARTICLE 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

ARTICLE 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Barcelona the twentieth day of April, one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the Archives of the League of Nations.

*(Here follow the signatures of the Delegates.)*

*The British Delegate signed subject to the Declaration inserted in the Procès-verbal of the Meeting of April 19th, 1921, as to the British Dominions which have not been represented at the Barcelona Conference.*

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STATUTE ON FREEDOM OF TRANSIT

ARTICLE 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in this Statute *traffic in transit*.

ARTICLE 2

Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be

imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

#### ARTICLE 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

#### ARTICLE 5

No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in this Statute shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

#### ARTICLE 6

This Statute does not of itself impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

#### ARTICLE 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 8

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 9

This Statute does not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 10

The coming into force of this Statute will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before May 1st, 1921.

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this Statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of this Statute.

ARTICLE 11

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

ARTICLE 12

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 13

Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice,

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

#### ARTICLE 14

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Statute, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary customs and police supervision.

The States concerned, however, will apply in the cases referred to above a régime which will respect the principles of the present Statute and facilitate transit and communications as far as practicable.

#### ARTICLE 15

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

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